



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 10-05923
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

03/13/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his failure to file his federal and state income tax returns for multiple tax years. He also has failed to repay or resolve most of the tax lien debts that resulted from his failures to timely file tax returns. His request for continued security clearance eligibility is denied.

Statement of the Case

On October 6, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew eligibility for a security clearance he has held for more than 30 years in connection with his work as a defense contractor. Based on the results of the ensuing background investigation, which included Applicant's

responses to interrogatories from Department of Defense (DOD) adjudicators,¹ it could not be determined that it was clearly consistent with the national interest for Applicant to continue to hold a security clearance.²

On July 23, 2013, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline³ for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on December 11, 2013, and I convened a hearing on January 21, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 7, which were admitted without objection. Applicant testified and presented Applicant's Exhibit (Ax.) A, which was admitted without objection. DOHA received the transcript of hearing (Tr.) on February 6, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$34,813 through a federal tax lien (SOR 1.a); that he owed \$18,508 in past-due state taxes being enforced through five state tax liens (SOR 1.b - 1.f);⁴ that he had failed to file his federal income tax returns for the 2010 and 2011 tax years (SOR 1.g); and that he had failed to file his state income tax returns for the 2010 and 2011 tax years (SOR 1.h).

In response, Applicant denied SOR 1.a and claimed the debt has been satisfied through wage garnishment. He attached documents in support of his claim. Applicant admitted SOR 1.b - 1.f, and claimed he was trying to work out a payment plan with the state. He denied SOR 1.g and submitted copies of his 2010 and 2011 federal tax returns. He also denied SOR 1.h, but did not provide his state tax returns. (Answer)

Applicant is 55 years old and a graduate of a prominent merchant marine academy. He has a bachelor's degree in marine transportation, and he was a uniformed member of the U.S. Merchant Marine until 1996. He has worked aboard merchant ships for 36 years and is now a chief mate and navigator for a shipping company doing business with DOD. He has held a security clearance for most of his career. (Gx. 1; Tr. 9 - 10)

¹ Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁴ In each of the SOR 1.b - 1.f allegations, it was alleged that Applicant owed past-due state taxes "for five tax liens" entered against him for a specified amount. Available information shows that there are a total of five state tax liens against him, one each for the debts in SOR 1.b - 1.f. As provided for in the Directive at E3.1.17, I amended the SOR at hearing to conform to the record. Instead of "for five tax liens," each allegation now reads "for a tax lien." (Tr. 58 - 59)

Applicant works at sea for three or four months at a time, then is off for the next three or four months. Between 2004 and 2006, he accrued debts for unpaid taxes because he failed to file his tax returns for several years. The IRS determined that he owed a total of \$40,505.92 (\$11,941.61 for the 2004 tax year; \$11,427.08 for the 2005 tax year; and \$17,137.23 for the 2006 tax year). He discussed those debts during his September 2009 background investigation interview with a Government investigator. At that time, he claimed he would resolve his tax debts by December 2009. In April 2011, his employer paid the IRS \$22,002.94 in response to a notice of wage garnishment. Applicant claims this payment, made with money his employer had withheld from his pay, satisfied his entire obligation to the IRS. However, Applicant has not been able to substantiate his claim or account for the remaining \$18,502.98. As of June 2013, Applicant's credit history still reflected all of the tax liens alleged in the SOR. A 2009 credit report showed the tax liens alleged in the SOR, as well as tax liens filed between 1993 and 1998. (Answer; Gx. 2; Gx. 3; Gx. 6; Gx. 7)

Additionally, Applicant did not timely file his federal income tax returns for 2010 and 2011. However, in November 2013, he filed both returns and paid the required taxes. (Answer; Ax. A; Ax. B)

Applicant also did not file his state income tax returns between 2004 and 2006, and in 2010 and 2011. This resulted in five liens against him for unpaid state taxes in those years. As alleged in SOR 1.b - 1.f, he still owes \$18,508 for unpaid state taxes. He has been aware of these debts for several years. Applicant's personal financial statements show, and he confirmed in his testimony, that he has the means to satisfy these liens. Applicant averred that he has been negotiating with the state tax agency to resolve his liens, but he offered nothing to corroborate this claim. (Answer; Gx. 3; Tr. 40 - 46)

Applicant offered no reason for his failure to meet his income tax obligations other than what he described as his own "stupidity." He often failed to file after the deadline passed when he was at sea. However, at other times he either filed as required or he requested extensions. Applicant did not otherwise explain why he did not file the returns identified here. When he had his federal returns prepared in November 2013, he neglected to also have his past-due state tax returns prepared. At his hearing, Applicant disclosed that he likely owes additional unpaid state taxes for 2012 and 2013. (Tr. 31 - 34, 47, 49 - 57, 60 - 61)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a)

⁵ See Directive. 6.3.

of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*), and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). Applicant has not complied with his federal or state tax obligations on numerous occasions since at least 1993. As a result, he incurred significant unpaid federal and state tax debt, most of which remains unresolved. In addition to the debts alleged here, Applicant also disclosed that he may owe other more recent state tax debts. He has the means to satisfy much of the alleged debt but has not done so.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of these mitigating conditions apply. The payments made on his past-due taxes through involuntary wage garnishment do not constitute a good-faith effort, particularly when Applicant has enough money available to pay much of his remaining debt. Applicant has worked at sea for his entire adult life and knows how to comply with his tax filing obligations even if he is at sea for long periods. He did not present any information that shows his debts or failure to file returns stemmed from unusual or unforeseen circumstances. Nor has he established that any of the debts are invalid. He has not enlisted the help of any financial counseling agency or similar resources to resolve his debts. Finally, Applicant did not show that he has engaged the state or federal tax agencies to try to resolve these problems. On balance, Applicant did not mitigate the security concerns about his failure to comply with his tax obligations or pay his debts.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 55 years old and presumed to be a mature, responsible adult. He has a long history of professional sea service, at times, in direct support of military operations overseas. However, the positive information about his career is not sufficient to overcome the concerns about his continued clearance suitability that have been raised by the Government's information. The record as a whole shows that Applicant has, over a long period, neglected basic obligations regarding his income tax obligations. In response to the SOR, he did not offer anything that would show his current tax debt or his failure to comply with the law in this regard was not caused by his own indifference and neglect. Accordingly, doubts remain about whether he will adhere to procedures and rules pertaining to the safeguarding of classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.f, 1.h:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge