



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



In the matter of:)
)
) ISCR Case No. 10-09099
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

February 9, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 54-year-old employee of a defense contractor. He has not filed Federal or State income taxes since 2003. In addition, he has failed to address any of his delinquent debts. Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on June 28, 2011, and requested a hearing before an administrative judge. The case was assigned to another administrative judge and

then reassigned to me on November 7, 2011. DOHA issued a notice of hearing on November 8, 2011, and the hearing was convened as scheduled on December 15, 2011. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. The record was held open until December 20, 2011, for Applicant to submit exhibits. As of that date, Applicant had not submitted any documentation and the record closed. DOHA received the transcript of the hearing (Tr.) on December 30, 2011.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He is single and has no children. He has worked as a defense contractor for the past 17 years and has held a security clearance since 1995 without incident. From 2002 to 2009, Applicant also ran a business in addition to his contracting work. Applicant testified that he received a number of on-spot awards and commendations from his commanding officer in relation to his contracting position. (GE 1; Tr. 22, 31-32.)

The SOR alleges 12 delinquent debts as identified by Applicant on his electronic questionnaire for investigations processing (e-QIP) dated March 22, 2010 (alleged in allegations 1.c. and 1.d, and 1.f. through 1.m.), and one additional lien (allegation 1.e.) that is listed in a report of credit dated March 30, 2010. (GE 1; GE 3.) Applicant attributed his financial problems to a back injury he received in approximately 2004. He was unable to manage his business after his injury and his debts piled up during that time. (Tr. 22-24, 28, 33-35.) Applicant's Personal Financial Statement indicated he had approximately \$232 left over after he satisfied his bills each month. (GE 2.) His debts are as follows:

Allegation 1.a. alleged that Applicant failed to file his Federal income tax returns for tax years 2004 through 2009 in violation of 26 U.S.C § 7203. Applicant admitted this allegation. At hearing he testified that he had his Federal income tax filings prepared for 2004 through 2010, but that he has still not filed them. He was unable to articulate a reason why he had not yet filed them. (GE 1; Tr. 24-25, 27, 36-40, 47.)

Allegation 1.b. alleged that Applicant failed to file his state tax returns for tax years 2004 through 2009. Applicant admitted this allegation. At hearing he testified that he had his state income tax filings prepared for 2004 through 2010, but that he has still not filed them. He was unable to articulate a reason why he had not yet filed them. (GE 1; Tr. 24-25, 27, 36-40, 47.)

Allegation 1.c. alleged that Applicant was indebted to the Internal Revenue Service for a tax lien filed against him in July 1991 in the amount of \$1,863. Applicant admitted he was indebted to the IRS for this amount, but claimed to have satisfied this debt. He failed to produce documentation that this debt has been satisfied. (GE 1; Tr. 26.)

Allegation 1.d. alleged that Applicant was indebted to his state for a tax lien filed against him in June 1996 in the approximate amount of \$106. Applicant admitted this debt. He failed to produce documentation that this debt was satisfied. (GE 1; Tr. 25.)

Allegation 1.e. alleged that Applicant was indebted to his state for a tax lien filed against him in April 1993 in the approximate amount of \$2,409. Applicant claimed he was never notified of this debt. He failed to produce documentation that this debt was satisfied or otherwise addressed. (GE 3; Tr. 26.)

Allegation 1.f. alleged that Applicant was indebted to his state for delinquent excise taxes in the approximate amount of \$4,000. Applicant admitted this debt, but claimed it has since been satisfied. He failed to produce documentation to support his claim. (GE 1; Tr. 26.)

Allegation 1.g. alleged that Applicant was indebted to a collection agent in the approximate amount of \$1,431. Applicant testified that he believed this debt was for a secured credit card. He testified that he deposited \$500 when he initially received the credit card and made charges against his deposit. At the time of the hearing, he had not contacted this creditor to dispute the debt or make payment arrangements. At the close of the record, this debt remained unsatisfied. (GE 1; Tr. 41-42.)

Allegation 1.h. alleged that Applicant was indebted to a collection agent for a bank in the approximate amount of \$1,045. Applicant admitted this debt. He testified that he had not contacted this creditor to arrange payment. At the close of the record, this debt remained unsatisfied. (GE 1; Tr. 26-27.)

Allegation 1.i. alleged Applicant was indebted on a delinquent telecommunications bill in the approximate amount of \$1,158. Applicant admitted this debt. Applicant failed to present documentation showing he contacted this creditor or satisfied this debt. At the close of the record, this debt remained unsatisfied. (GE 1; Answer.)

Allegation 1.j. alleged Applicant was indebted on another delinquent telecommunications company bill in the approximate amount of \$150. Applicant admitted this debt. Applicant failed to present documentation showing he contacted this creditor or satisfied this debt. At the close of the record, this debt remained unsatisfied. (GE 1; Answer.)

Allegation 1.k. alleged that Applicant was indebted on a past due medical account in the approximate amount of \$651. Applicant admitted this debt. He testified that he had not contacted this creditor to arrange payment. At the close of the record, this debt remained unsatisfied. (GE 1; Tr. 46.)

Allegation 1.l. alleged that Applicant is indebted on a past due medical account in the approximate amount of \$128. Applicant admitted this debt. He testified that he had not contacted this creditor to arrange payment. At the close of the record, this debt remained unsatisfied. (GE 1; Tr. 46.)

Allegation 1.m. alleged that Applicant is indebted on a past due medical account in the approximate amount of \$290. Applicant admitted this debt. He testified that he

had not contacted this creditor to arrange payment. At the close of the record, this debt remained unsatisfied. (GE 1; Tr. 46.)

Applicant submitted no character references or evidence tending to establish good judgment, trustworthiness, or reliability. Appellant provided no documentation concerning the quality of his professional performance or the level of responsibility his duties entail.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in 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.

The guideline notes several conditions that could raise security concern under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts and is unable or unwilling to pay his obligations. His delinquencies have been on-going since 1993, without resolution. Additionally, Applicant has failed to file both his Federal and state income tax returns since 2004. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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.

Applicant has not acted responsibly, or in a timely manner, to attempt to resolve his failures to file his income tax returns or his outstanding delinquent accounts. Applicant's failure to file his Federal and state income tax returns and satisfy his debts demonstrate a continuing course of conduct that does not warrant application of AG ¶ 20(a).

Applicant claims his failure to file his Federal and state income tax returns and pay his debts was due to his back injury in 2004 and related subsequent business problems. However, Applicant has known since at least May 2011 that his failure to file his Federal and state income tax returns and pay his other debts were of concern to the Government, and he failed to take any actions on them. There is no evidence that he has received counseling for his financial problems, made a good faith effort to repay his debts, or that he has contested any of his debts. He has not acted responsibly under the circumstances. AG ¶¶ 20(b), 20(c) and 20(d) are not mitigating.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been a contractor for 17 years and has held a security clearance since 1995 without incident. However, his choices, with respect to his debts and unfiled taxes, do not demonstrate the maturity, judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant 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
Subparagraph 1.a.~ 1.m.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge