



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



In the matter of:)	
)	
)	ISCR Case No. 10-09320
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Jeffreys, Esq., Department Counsel
For Applicant: *Pro Se*

07/27/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On February 23, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 24, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2012. DOHA issued a Notice of Hearing on June 5, 2012. I convened the hearing as scheduled on June 27,

2012. The Government offered Exhibits (GE) 1 through 6, and they were admitted into evidence without objections. Applicant offered Applicant's Exhibits (AE) A through C, and they were admitted into evidence without objection. The record was held open until July 6, 2012, to allow Applicant to submit additional documents. He submitted AE D through G, which were admitted without objection, and the record was closed.¹ DOHA received the hearing transcript (Tr.) on July 6, 2012.

Procedural Issues

At the hearing, the Government moved to amend the SOR. The Applicant did not object, waived his right to delay the case, and agreed to proceed immediately.² The following allegations are added:

1.g. You are indebted to [creditor] on an account charged off in the amount of \$24,006. As of the date of the Statement of Reasons it remained unpaid.

1.h. You are indebted to [credit card company] on an account that is 120 days past due in the amount of \$7,811. As of the date of the Statement of Reasons it remains unpaid.

1.i. You owe approximately \$4,000 for property taxes on a house you purchased in (state). As of the date of the Statement of Reasons the debt remains unpaid.

1.j. As of the date of your hearing you failed to file your 2011 federal income tax return.

1.k. As of the date of the Statement of Reasons you failed to file your state income tax returns from 1994 to 2009 and 2011.

1.l. As of the date of the Statement of Reasons you owe \$549 for 2010 delinquent federal income taxes.

Findings of Fact

Applicant admitted all the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43 years old. He is single and has no children. He attended technical school and completed a journeyman apprenticeship in 2003.

Applicant was unemployed from November 2010 to January 2011; January 2010 to March 2010; February 2006, July 2005 to October 2005; and June 2003. Applicant sought work in different locations that paid less, which affected his financial situation.

¹ AE D, E, and F consisted of one-page documents. AE G is 28 pages. It consists of bank statements from October 20, 2011, to March 16, 2012. Hearing Exhibit I is a memorandum from Department Counsel noting there were no objections to the documents.

² Tr. 103-107.

He also had to find temporary lodging in the places he worked and had travel costs, which also impacted his finances.³

Applicant purchased a home in 2005. His brother rents the home from him and pays \$750 of the \$1,200 mortgage. In 2009, Applicant purchased another home in a different city. The home was being foreclosed, and he purchased it for \$17,000. He took a cash advance on a credit card and used this cash to pay for the purchase of the home. He stated he paid approximately \$7,000 toward the credit card debt, but then had employment problems and was unable to make the payments. He failed to pay his 2010 and 2011 property taxes on the house and owes approximately \$4,000 for the taxes.⁴

In June 2010, Applicant was offered a job in another state that paid better. He then resigned from his present job to accept the more lucrative job. He traveled to the new job and was advised he needed to apply for a security clearance before he could be officially hired. After an initial background investigation, he was advised that he would need to resolve his financial issues before he could be hired. Applicant returned to his home state.

Applicant's background investigation revealed he had not filed his federal income tax returns from 1994 through 2009. In June 2010, upon returning from the prospective employer's location, he contacted the Internal Revenue Service (IRS). He arranged for a person to help him file his federal income tax returns. He stated the IRS advised him to only file for tax years 2001 through 2009. He stated he then filed his federal income tax returns, and it was determined he owed approximately \$26,000 in delinquent taxes. In July 2010, he began paying \$500 a month toward the tax debt. He filed his 2010 federal income tax return and received a refund that was applied to his delinquent taxes. He failed to file his 2011 federal income tax return. He stated he believes he is entitled to a refund for his 2011 taxes. He asked his former employer for his old job back and was rehired in August 2010 and worked through November 2010, while he rectified his financial issues. He then went through training with the prospective employer from November 2010 to December 2010. He was not paid during this period, but received unemployment benefits. He began getting paid sometime in December 2010, but due to his financial issues, he was terminated and received unemployment benefits from January 2011 and until he started a new job in February 2011.⁵

Applicant did not file his state income tax returns from 1994 through 2009 and 2011. He filed his 2010 state income tax return, but did not pay what he owed. Applicant stated that in 1993, his father passed away, he was helping his mother and his tax

³ Tr. 18-21, 88-89.

⁴ Tr. 77-83, 89-93.

⁵ Tr. 17, 27-35, 48-60, 83-84; AE A. I have not considered Applicant's failure to file his federal income tax returns from 1994 to 2009 for disqualifying conditions, but will consider it when analyzing the financial considerations mitigating conditions and the "whole person."

obligations “kind of fell off the track as far as paying the IRS.”⁶ He stated he failed to file his income tax returns because of “lack of conviction on my – on my part of following a bad role model like my brother who’s having his – wages garnished because he hadn’t –he hadn’t paid his taxes.”⁷ Applicant then stated the reason he failed to file his income tax returns was because there was a “domestic thing” with his parents.⁸ He failed to articulate how any domestic issues impacted his ability to file his tax returns, especially since his father passed away in 1993.⁹ He stated his “mind set was not what it should have been.” I did not find Applicant credible.

The debt alleged in SOR ¶ 1.a (\$5,496) is a credit card debt. Applicant last made a payment on the debt in July 2010. He stated that he stopped paying the debt because he was making payments to the IRS for his delinquent taxes. He has not contacted the creditor to resolve the debt. He explained he could not afford to make the payments to the IRS and this creditor.¹⁰

The debt alleged in SOR ¶ 1.b (\$202) is for medical services. It is not paid. The debts alleged in SOR ¶ 1.d (\$4,633) and ¶ 1.e (\$7,728) are for credit cards to the same creditor. Applicant has been paying \$150 a month for the past six months on the debt in ¶ 1.d.¹¹ He is not making payments on the debt in ¶ 1.e.¹²

Applicant settled the credit card debt (\$11,123) alleged in SOR ¶ 1.c for \$5,423 on April 5, 2012.¹³ He has another delinquent credit card debt to the same creditor alleged in SOR ¶ 1.f (\$5,961) that is unpaid.¹⁴

Applicant cosigned a loan for a friend to purchase a truck in 2007. This debt is alleged in SOR ¶ 1.g (\$24,006). He has not paid the loan since July 2010. The truck is at his friend’s house. The creditor contacted Applicant because it wanted to repossess the truck. Applicant has not returned the truck. His friend has not paid Applicant. Applicant stated he never drove the truck. The debt remains unresolved.¹⁵

⁶ Tr. 23, 69-73.

⁷ Tr. 24.

⁸ Tr. 25.

⁹ Tr. 25-27.

¹⁰ Tr. 38-40; GE 1.

¹¹ Tr. 41, 60-63; AE D, G.

¹² Tr. 60-61.

¹³ AE B,E; GE 6.

¹⁴ Tr. 63-64.

¹⁵ Tr. 64-69.

The debt alleged in SOR ¶ 1.h (\$7,811) is for a credit card that Applicant stopped paying in approximately September 2011, when he learned the account was closed. He has not followed up on determining the status of the debt or resolving it.¹⁶

Applicant has four credit cards that are open and not delinquent. The total balance owed on the cards is approximately \$5,850. He has no money in savings and approximately \$1,200 in his checking account. He stated all of his monthly expenses are current. He has other credit cards that he is making monthly payments on. He has some money in a retirement plan, but did not know how much. He stated he has ten years vested in the plan. He indicated he recently received a promotion with a pay raise that will allow him to expedite repayment of his delinquent debts. He indicated he provides about \$400 a month in support for his girlfriend.¹⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

¹⁶ Tr. 76-77.

¹⁷ Tr. 21, 41-49, 85-86, 101-102.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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:

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 concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (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 has nine delinquent debts totaling approximately \$60,380 that are delinquent and unresolved. He failed to file his annual federal income tax return for 2011 and his state income tax returns from 1994 through 2009 and 2011. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant failed to file his federal income tax returns for 16 years. After he sought a job that required a security clearance he was told he could not obtain the job until he cleared up his finances. He then filed his federal income tax returns for tax years 2001 through 2010. He then failed to file his 2011 federal income tax return. He is paying \$500 to satisfy his \$26,000 federal income tax debt. He has yet to file his delinquent state income tax returns for tax years 1994 through 2011. He did not indicate his intention to do so. Applicant indicated that he began experiencing difficulty paying bills when he was required to pay his delinquent federal income taxes. Applicant did not have a good explanation for his failure to file his federal or state income tax returns. He has settled one delinquent credit card debt and has been paying \$150 on another, but his remaining debts are unresolved. His behavior is recent, and the facts do not support that the circumstances are unlikely to recur. I find AG ¶ 20(a) does not apply because his conduct was frequent and casts doubt on his reliability, trustworthiness, and good judgment.

Applicant was required to file his federal and state income tax returns. His failure to do so and the subsequent federal tax debt was a condition totally within his control. The subsequent financial problems that occurred because he had to pay his tax debt are merely the consequences of his own irresponsible conduct. He has settled one credit card debt. His conduct of financing the purchase of a house through a cash advance from his credit card raises questions about his judgment, as does his failure to pay the property taxes on the home. His failure to make the loan payment on a truck he purchased, or return the truck to the creditor after the creditor notified him it wanted to repossess it, also raises questions about Applicant's reliability, trustworthiness, and

judgment. There is insufficient evidence to show he has acted responsibly in resolving his delinquent debts. I find AG ¶ 20(b) does not apply.

Applicant has not received financial counseling. He took no action to resolve his financial problems until he was confronted with the tax issues that affected his ability to obtain a security clearance. At that point, he filed his federal income tax returns for 2001 to 2010. He has made no effort to address his state income tax returns and gave no indication of what his intention was regarding them. Applicant offered no credible explanation for his conduct. Except for settling one credit card debt and making payments on another the remainder of his delinquent debts are not resolved. His actions do not constitute a good-faith effort to pay his creditors. Even after he filed his past federal income tax returns and was well aware of the consequences of his actions, he did not file his 2011 federal tax returns. There are no clear indications his financial problems are being resolved. I find AG ¶ 20(d) applies to the credit card he settled and the other debt he is making paying on, but does not apply to the remaining debts. I find AG ¶ 20(c) does not apply.

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 the 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 is 43 year old. He is single and has no children. He was aware of his responsibility to file his tax returns and pay taxes, but provided little explanation for why he did not do so for so many years. When he finally filed some of his federal income tax returns, it was only after he became aware it would impact his ability to obtain a security clearance. He again failed to file his federal income tax return in 2011 and has taken no action to

address his delinquent state tax returns. He indicated that his debts became delinquent because he had to pay the IRS, and he was unable to pay his other debts. He purchased a home with a credit card cash advance, which is now delinquent. He has not paid the property taxes on the home. Applicant's history of irresponsible conduct raises security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Financial Considerations guideline.

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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.i:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge