



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-00457
)	
Applicant for Security Clearance)	

Appearances

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

February 29, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 9, 2010. (Government Exhibit 1.) On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations), E (Personal Conduct) and C (Foreign Preference) concerning Applicant. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 26, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 8, 2011. This case was assigned to me on July 18, 2011. DOHA issued a notice of hearing on July 27, 2011. I convened the hearing as scheduled on August 23, 2011. The Government offered Government Exhibits 1 through 10, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through CC. Applicant asked that the record remain open for the receipt of additional

documents. The Applicant submitted Applicant Exhibits DD through LL on September 16, 2011, and they were admitted without objection. DOHA received the transcript of the hearing on August 30, 2011. The record closed on September 16, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 53 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph, except for 1.d, 1.e, and 1.f. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

1.a. Applicant admits that he was indebted to a creditor on a past due debt in the amount of \$2,290. He paid this debt at a reduced amount in May 2011. (Tr. at 67-69; Government Exhibit 10 at 1; Applicant Exhibit A.) It has been resolved.

1.b. Applicant admits that he is indebted to a creditor on a past due debt in the amount of \$8,066. Applicant has two time share accounts, this one and the one set forth in 1.e. He was unsure about the current status of both of these accounts, and his testimony on these debts was confusing. It appears that this debt involves a location and the other is for time share points. Applicant stated that he had redeemed this debt by means of a payment plan. The March 25, 2010 credit report states, "Credit grantor reclaimed collateral." (Government Exhibit 5 at 5.) Applicant stated that he had documentation supporting his statements on this debt, and that he would submit them after the hearing. No documents were submitted. This debt is not resolved. (Tr. at 69-71, 77-81.)

1.c. Applicant admits that he was indebted to a creditor on a past due debt in the amount of \$1,195. He paid this debt in June 2010. (Tr. at 72-74; Applicant Exhibit FF.)

1.d. Applicant denied that he had a state tax lien entered against him for the 2008 tax year in the amount of \$3,668.66. According to Applicant, there was confusion about how much he owed the state in taxes for that year. As will be further described below, Applicant filed that tax return extremely late, in 2011, resulting in a tax refund for that year. He submitted payroll records showing that the state had levied against his pay in 2010 and early 2011, but was not doing so as of September 2011. (Tr. at 74-77; Applicant Exhibits B, P, Q, and II.) This tax lien is resolved.

1.e. Applicant denied that he is indebted to a creditor on a past due debt in the amount of \$8,485.16. This is the second of the Applicant's time share accounts. As stated, he was unsure about the current status of both of these accounts, and his testimony on these debts was confusing. This is the one that consists only of time share points. Applicant stated that he believed he only owed this creditor about \$2,200. Applicant last spoke to this creditor about resolving this debt in approximately May 2010. This debt is not resolved, though Applicant states his intent is to pay it. (Tr. at 69-71, 77-81, 99-100.)

1.f. Applicant denies that he owes the same creditor set forth in 1.e., above, the additional amount of \$623.03. Applicant testified that this was a maintenance fee and he has no problems paying that debt. No evidence was introduced showing the debt has been paid. The debt is unresolved. (Tr. at 79-80, 100-101.)

1.g. Applicant admits that he did not file his 2008 Federal tax return in a timely fashion. The tax return, which was due April 15, 2009, was filed on April 13, 2011. Applicant received a refund. (Applicant exhibits R, U, V, W, X, and Y.)

1.h. Applicant admits that he did not file his 2008 state tax return in a timely fashion. The tax return, which was due April 15, 2009, was filed on April 13, 2011. Applicant received a refund. (Applicant exhibits B, D, E, G, H, P, and Q.)

1.i. Applicant admits that he did not file his 2009 Federal tax return in a timely fashion. The tax return, which was due April 15, 2010, was filed on April 13, 2011. Applicant received a refund. (Applicant exhibits S, U, Z, AA, and BB.)

1.j. Applicant admits that he did not file his 2009 state tax return in a timely fashion. The tax return, which was due April 15, 2010, was filed on April 13, 2011. While he anticipates a refund, Applicant had not received it at the time the record closed. (Applicant exhibits F, I, J, K, L, and GG.)

1.k. The SOR dated April 8, 2011, alleges that Applicant did not file his 2010 Federal income tax return in a timely manner. This tax return was not due until April 15, 2011, after the date of the SOR. Applicant submitted evidence showing it was prepared and submitted in a timely fashion. Applicant received a refund. (Applicant Exhibits T, and CC.)

1.l. The SOR dated April 8, 2011, alleges that Applicant did not file his 2010 state income tax return in a timely manner. This tax return was also not due until April 15, 2011, after the date of the SOR. Applicant submitted evidence showing it was prepared and submitted in a timely fashion. Applicant received a refund. (Applicant Exhibits C, M, N, and O.)

Concerning his failure to file two years of tax returns in a timely manner, Applicant stated that his wife had been in charge of the family finances. Beginning in about 2009, when preparation would have to begin on the 2008 taxes, she turned the process over to Applicant. He testified that it took him a considerable amount of time to

pull all the tax information together. Now that he has filed tax returns for the two delinquent years, and the most current year, he does not foresee any problems in the future. (TR at 83-91, 97-99.)

As stated, Applicant received considerable tax refunds in 2011, totaling approximately \$31,676.77. (Applicant Exhibits B, C, R, S, and T.) Applicant testified that he used some of the money to pay off debts, like that in SOR ¶1.a. In his answer to the SOR, Applicant stated that he would use his tax refunds to resolve the three unresolved debts described above. He did not do so. However, he did use several thousand dollars of the money to go on a vacation after issuance of the SOR. (TR at 91-95, 110-112.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges under Guideline E that Applicant is ineligible for clearance because his failure to file his 2008 and 2009 state and Federal tax returns in a timely manner displays questionable judgment, dishonesty, or unwillingness to comply with rules and regulations.

Paragraph 3 (Guideline C - Foreign Preference)

The Government alleges under Guideline C that Applicant is ineligible for a security clearance because he has acted in a way that shows a preference for another country ahead of the United States. Applicant admitted allegations 3.a. and 3.c. under this paragraph. He denied the remaining allegations (3.b., 3.d., 3.e., 3.f., and 3.g.)

Applicant was born in Costa Rica in 1958. When he was five years old, his family emigrated to the United States. He became a naturalized American citizen in 1973. He has traveled to Costa Rica once, in 1983, since coming to the United States. Applicant stated repeatedly that he and his family are proud to be Americans and of their history in this country. (Applicant Exhibit KK.)

When Applicant became an American citizen in 1973, Costa Rica did not allow people do be dual citizens. Accordingly, Applicant lost his Costa Rican citizenship. By 2009 that law had changed, and Americans of Costa Rican descent could reclaim citizenship. Applicant's mother desired Applicant and his brothers to perform the procedure to regain citizenship, with her as their witness. Applicant agreed and did so. (TR at 51-60.)

As a result of this procedure, he received a Costa Rican identification card, also known as a "seal." This document is not a passport and it is unclear whether it can be used for travel. In any event, Applicant has not used it for travel. Applicant surrendered his Costa Rican seal to his facility security officer (FSO) on September 6, 2011. The notarized document prepared by the FSO is entitled "Proof of Destruction of Costa Rica Citizenship Card." (Applicant Exhibit EE.)

Applicant vehemently denies that he reclaimed Costa Rican citizenship for convenience of travel to Costa Rica, or that he has the intention of obtaining a Costa

Rica passport or voting in elections. He expressed a credible intent to take any actions necessary to revoke his Costa Rican citizenship. As for the allegation that Applicant could not rule out bearing arms for Costa Rica, the United States is an ally of that country, which has no standing military whatsoever. Any concerns on that particular score are, at best, far-fetched, and have no security significance. (TR at 101-108.)

Mitigation

Applicant is a highly respected employee. He submitted his performance reviews from 2004 through 2009. (Applicant Exhibit JJ.) They show a person who consistently exceeds or far exceeds expectations on his job. He is described as “an outstanding employee in every respect.”

Applicant submitted 24 letters of recommendation from past and present co-workers and managers. (Applicant Exhibit LL.) He is described as someone who is “dedicated,” “invaluable,” and “hard-working.” All of the correspondents made a point of talking about how Applicant’s job performance helped these employees do their jobs better. They all strongly recommend that Applicant receive his security clearance.

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant had approximately \$24,327 in past due debts, all of which had been due and owing for several years. In addition, AG ¶ 19(g) also applied, “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties arose in about 2009, and since he has not resolved all of the debts which caused the problems, continue to date. However, he has filed all of his missing tax returns and expresses a credible intent to remain current on his tax obligations in the future. This mitigating condition has partial application in this case with regards to his taxes.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant’s wife became ill and lost her job in 2001. (Government Exhibit 3.) While these acts may have had an impact on his financial situation at the time, he did not explain how these situations continued to have an influence on his ability to pay debts to the present time. Also of concern is Applicant’s choice to go on a vacation while this case was pending, using a considerable part of his tax refunds. This mitigating condition has no application in this case.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not yet made a good-faith effort to pay off all of his creditors. His last contact with one of his largest creditors occurred a year before the record closed. Applicant has made steps in this direction, but his confusion about what he owed the two time share creditors, and his lack of action in resolving those particular debts, make it impossible to apply this mitigating condition in whole. Once again, he has resolved his tax issues.

Finally, looking at his entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Paragraph 1 is found against the Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process

Applicant's conduct set forth under Paragraph 1 regarding his taxes, brings into play the following disqualifying condition under AG ¶ 16:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The following mitigating condition under AG ¶ 17 may apply to his conduct:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant realizes that procrastination in filing his taxes can have an impact on his security clearance. As stated, he has filed all of his taxes and evinces a credible intent not to be delinquent in the future. This paragraph is found for Applicant.

Paragraph 3 (Guideline C - Foreign Preference)

Applicant has mitigated the Government's concerns about his actions to renew his Costa Rican citizenship. The concern is stated thus under ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

In this case the Government has met its initial burden of proving by substantial evidence that Applicant renewed his Costa Rican citizenship in 2009 and received evidence of that citizenship. Accordingly, AG ¶ 10 applies to the facts of this case:

Conditions that could raise a security concern and may be disqualifying include: (b) action to acquire or obtain recognition of foreign citizenship by an American citizen.

Applicant surrendered his Costa Rican identification document to his FSO. He has expressed a willingness to renounce dual citizenship, as required by ¶ 11(b). None of the other mitigating conditions are exactly applicable to this case. However, during the hearing, it became obvious that Applicant engaged in this conduct at the behest of his mother. In addition, it also was obvious that Applicant has no emotional ties to Costa Rica and that he did not have any qualms or problems about surrendering his seal and renouncing any foreign citizenship he may have. Guideline C is found for the Applicant.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F, E, and C, above, applies here as well. Applicant has had financial problems for several years, which have not been completely resolved. There are several troubling factors about this case. First is Applicant's lack of knowledge about three of his credit accounts, (1.b., 1.e., and 1.f.) and his failure to submit any evidence to show that he had resolved them. Second, as he testified himself, he had last contacted one of the creditors a year before the hearing. Third, his decision to go on a vacation after receiving a substantial tax refund, and after receiving the SOR that specifically discusses financial problems, shows extremely poor judgment. In some respects this can be seen as a close case. Applicant is obviously an intelligent and talented employee who many people went out of their way to support by means of letters of recommendation. However, his conduct with regards to his finances was not shown to be mitigated.

Under AG ¶ 2(a)(3), his conduct is recent. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

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 the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

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.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline C:	FOR APPLICANT
Subparagraph 3.a.:	For Applicant
Subparagraph 3.b.:	For Applicant
Subparagraph 3.c.:	For Applicant
Subparagraph 3.d.:	For Applicant
Subparagraph 3.e.:	For Applicant
Subparagraph 3.f.:	For Applicant
Subparagraph 3.g.:	For 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.

WILFORD H. ROSS
Administrative Judge