



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



In the matter of:)	
)	
)	ISCR Case No. 11-01325
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro Se*

September 16, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guidelines F, Financial Considerations and E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 23, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a 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 July 7, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2011. DOHA issued a Notice of Hearing on July 27, 2011. I convened the hearing as scheduled on August 16,

2011. The Government offered Exhibits (GE) 1 through 5, and they were admitted into evidence without objections. Applicant testified on his own behalf and offered Exhibits (AE) A through J. They were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 25, 2011.

Procedural Issues

During the hearing, Department Counsel amended the SOR to add ¶¶ 2.a through 2.g under Guideline E, Personal Conduct. The amended SOR was marked as Hearing Exhibit I. Applicant was advised of his right to proper notice and I offered him the opportunity to delay the hearing for 30 days. He waived his right and elected to proceed with the hearing.¹

Findings of Fact

Applicant admitted all of the allegations in the original SOR except ¶¶ 1.e and 1.f. He admitted all of the allegations in the amended SOR. I incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 53 years old. He has been working for a federal contractor since November 2009. He served in the Navy from 1979 until 1999, when he retired as an E-6. He married in 1981. He and his wife have two adult children, a son, age 30 and a daughter, age 23, who is in college.²

Applicant admitted he did not pay all of his income taxes for tax years 2004, 2006, 2007, 2009, and 2010. He explained that during some of this time he was working as an independent civilian contractor and he failed to handle his income taxes appropriately. He was unemployed from October 2005 to February 2006 and from October 2009 to November 2009.³

Applicant stated that for tax year 2004, he filed his tax returns, and he owed about \$4,000. He did not pay the amount when it was due, but it was paid later as part of an installment agreement.⁴ It is unclear exactly when the debt was satisfied. In 2005, he timely filed his tax return. He stated he paid his taxes for 2005. He did not timely file his 2006 income tax returns. He did not pay his 2006 income taxes when they were due. His adjusted gross income for 2006 was \$135,825. He owed \$22,750 in taxes for that year. Applicant did not timely file his 2007 income tax return. He received an extension, but failed to file during the extension. He owed \$24,813 for income taxes for

¹ Tr. 98-107.

² Tr. 83-84.

³ Tr. 36-37.

⁴ Tr. 31-32. The installment agreement was initiated in 2007.

2007. This amount included interest and penalties. He did not pay these taxes when they were due. In 2007, he contacted the Internal Revenue Service (IRS) to establish an installment agreement to pay his back taxes. He agreed to make monthly payments of \$1,500. Applicant stated he filed his 2008 and 2009 income tax returns on time and did not owe taxes. He filed his 2010 income tax returns and owed \$764, but did not pay it. He stated he added the amount to his installment agreement. From November 2007 through May 2011, Applicant repeatedly made new installment agreements with the IRS. He would occasionally make a payment on each new agreement, but he never made consistent monthly payments as required. He repeatedly defaulted on the agreement. His installment agreement from November 19, 2010, requires him to make payments of \$950 a month. He made four payments from December 2010 to March 2011. He has not made any other payments. In July 2011, he made another new installment agreement with the IRS, and he stated he made the first payment of \$950. He did not provide documented proof of this payment.⁵

Applicant does not know what the cumulative current balance is that he owes to the IRS. The documents he provided do not provide the total balance owed with interest and penalties. He explained he had no excuse for not paying his taxes. The latest installment agreement Applicant has with the IRS includes tax years 2006, 2007, and 2010. Applicant's credit reports list a federal tax lien filed in May 2009 for \$50,197.⁶

The debt in SOR ¶ 1.b (\$216) was charged-off. Applicant provided proof that he satisfied the debt on June 28, 2011. He explained the debt was a judgment and he paid \$3,000.⁷

The debt in SOR ¶ 1.c (\$1,664) is a state tax lien for unpaid taxes. Applicant admitted the debt in his answer to the SOR. At his hearing, he stated he disputed the debt two weeks ago, but did not provide documents to support his dispute. He stated there are two tax liens with the state. He arranged an installment agreement to repay one of the liens (\$14,000) and disputed the remaining one that is in ¶ 1.c. The agreement provides for him to pay \$301.80 a month beginning in April 2011. He stated he made one payment in June 2011. He has not made any other payments. He did not know how many tax years the state tax lien includes. He did not provide any documents to support his position.⁸

⁵ Tr. 20-23, 29-47, 50-60; AE A-G. There is a detailed history of each time Applicant made a new installment agreement with the IRS in AE B, C, D and E.

⁶ Tr. 23-24; GE 3, 4, 5.

⁷ AE H.

⁸ Tr. 24-25, 60-69.

The judgment in SOR ¶ 1.d (\$676) was filed in February 2008. Applicant paid it on August 5, 2011. He explained he did not pay it earlier because he did not have the money. The judgment is resolved.⁹

The debt in SOR ¶ 1.e (\$236) is a collection account for a cable company. Applicant paid the debt in August 2011. The debt was incurred in 2004. The debt is resolved.¹⁰

Applicant disputes the debt in SOR ¶ 1.f (\$471). He stated he spoke with the creditor and does not believe the debt belongs to him. He did not provide any documents to support his dispute.¹¹

Applicant completed a personal financial statement (PFS) on March 14, 2011, that reflected his current finances. It reflects that after paying his monthly expenses he has \$378 remaining. It reflects that he is paying \$950 a month to the IRS. Applicant has not made that payment since March 2011. He stated he began a new installment agreement in July 2011 and resumed the payments, but did not provide proof. Applicant purchased a new car in 2007 that cost \$50,000. His monthly car payments are \$1,060. He also noted that his wife sends their daughter \$1,000 a month for her expenses. This amount is not included in the PFS. He listed he spends \$100 on miscellaneous items. He provided a copy of a partial monthly bank statement that reflects charges on his check card account. For an eight day period he accumulated over \$128 in miscellaneous expenses for golf and purchasing coffee. Applicant has not participated in any financial counseling.¹²

Applicant's wife has been steadily employed since 2003 and earns approximately \$55,000. Before then she worked and earned about \$36,000. Applicant receives approximately \$16,800 in military retirement pay before taxes. He estimated he had about \$3,200 in his bank accounts. Applicant filed for Chapter 13 bankruptcy in 1999. He completed the repayment plan in approximately 2003. He explained he defaulted on a mortgage for a home he purchased in 1987. He owed a \$38,000 deficiency on the mortgage for the foreclosed property. He purchased another house in 1997 and sold it in 2004. He made a \$140,000 profit on the sale. He used \$60,000 for a down payment on a new home. He paid the \$38,000 deficiency he owed. He used \$25,000 to pay off a car loan on a new car he purchased for \$35,000 in 2002. He used the remaining money to pay bills. Based on the IRS documents Applicant provided, he and his wife had a combined adjustable gross income in 2006 of \$135,825; 2007 of \$114,268; 2008 of \$55,897; and 2009 of \$74,238.¹³

⁹ Tr. 25-27, 69-70; AE I.

¹⁰ Tr. 27, 70; AE J.

¹¹ Tr. 28, 70-71.

¹² Tr. 65-80, 86; AE J.

¹³ Tr. 34-38, 85, 47-50, 88-97.

Applicant completed a security clearance application (SCA) on September 7, 2010. He responded “no” to Section 26:

(c) Have you failed to pay Federal, state, or other taxes or to file a tax return, when required by law or ordinance? (d) Have you had a lien placed against your property for failing to pay taxes or other debts? (e) Have you had a judgment entered against you?

. . . .

(g) Have you had bills or debts turned over to a collection agency? (h) Have you had any account or credit card suspended or charged off, or cancelled for failing to pay as agreed?

. . . .

(m) Have you been over 180 days delinquent on any debt(s)? (n) Have you been over 90 days delinquent on any debt(s)?”¹⁴

Applicant admitted he knew when he completed the SCA that he had financial delinquencies. He admitted he intentionally falsified his SCA. He stated he had no explanation for why he intentionally falsified his SCA.¹⁵

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

¹⁴ Tr. 98-108.

¹⁵ Tr.106-108

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.”

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 E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant deliberately failed to disclose on his security clearance application that he failed to file his 2004 income tax return on time; that he failed to pay his 2006 income taxes; that he filed his 2007 income tax returns, but failed to pay the income taxes for the year; that he filed his 2010 income tax return, but failed to pay his income taxes. Applicant also failed to disclose he had a federal tax lien. He failed to disclose he had a state tax lien. He failed to disclose he had a judgment entered against him. He failed to disclose he had debts that were turned over to a collection agency. He failed to disclose he had an account charged off. He failed to disclose he had debts over 180 days delinquent; and he failed to disclose he had debts over 90 days delinquent. Applicant's actions were intentional. I find AG ¶ 16 (a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I have considered all of the mitigating conditions and conclude none apply. Applicant was aware of his financial circumstances and deliberately failed to disclose any of his financial problems. He did not promptly make a good-faith effort to correct his omission. His omissions are not minor, but rather are serious. There is no evidence to suggest that there were unique circumstances surrounding his omissions. His actions cast doubt on his reliability, trustworthiness, and good judgment. Applicant acknowledged his actions were deliberate; however, there is no evidence to suggest the behavior is unlikely to recur or that he has taken positive steps to reduce or eliminate

his vulnerability to exploitation, manipulation, or duress. Applicant intentionally concealed all negative information about his finances. He did this knowing he had tax debts and other delinquent debts.

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 disqualifying conditions that could raise security concerns under AG ¶ 19. Two 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 admitted he failed to file his Federal income tax returns for 2004. He failed to pay his federal income taxes on time for tax years 2004, 2006, 2007, and 2010. He failed to pay his state income taxes timely. He had other delinquent debts that he did not pay until recently and others that are not resolved. 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 five 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 been irresponsible with his finances. He repeatedly did not pay his federal income taxes. He repeatedly made installment agreements with the IRS then failed to make consistent payments. He only recently paid some of his delinquent debts. Based on his history of making agreements to pay his past federal income taxes and failing to make consistent monthly payments, I cannot find that his financial problems are unlikely to recur. I find AG ¶ 20(a) does not apply. Applicant was unemployed and underemployed for a period of time. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not do so. Applicant had years when his income was sufficient to resolve his past debts and he did not. I find AG ¶ 20(b) only partially applies. There is no evidence Applicant has received financial counseling. He did not convince me that there are clear indications his financial problems are being resolved or under control. He owes a large federal income tax debt. Based on his PFS and his history of spending, it does not appear he will be able to make his payments to the IRS. Applicant did not provide documented proof regarding some of his delinquent debts. He disputed a debt, but did not provide documents to substantiate his dispute. I find AG ¶¶ 20(c), 20(d), and 20(e) do 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 Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has delinquent federal taxes and state taxes. He repeatedly failed to abide by installment agreements he had with the IRS. He intentionally falsified his security clearance application. His budget does not reflect a realistic plan to resolve his debts and is incomplete. 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 guidelines for Financial Considerations and Personal Conduct.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.g:	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