



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



In the matter of:)
)
) ISCR Case No. 11-03813
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

March 6, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of failing to file annual Federal and state income tax returns as required. He is indebted to both the Federal and state governments for unpaid taxes. He presented little evidence that he is acting responsibly with respect to these tax debts. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 20, 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 revised adjudicative guidelines (AG) effective on September 1, 2006.

Applicant answered the Statement of Reasons (SOR) in writing on October 6, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 22, 2011. A complete copy of the file of relevant material (FORM) was received by Applicant on December 2, 2011. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of January 12, 2012, he had not responded. The case was assigned to me on January 24, 2012.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer from September 1999 to present. He has successfully held a security clearance for 35 years. He is divorced and has two children. (Item 4; Item 5.)

In 2003, Applicant was sick with emphysema. He was unable to work very many hours due to his illness. He was an hourly employee and was not paid when he was unable to work. He failed to file his Federal and state income tax returns that year because he was ill and forgot to file. His illness continued, and it was a number of years before he filed income taxes with either the Federal government or state government. (Item 5.)

Applicant admits that he did not file his Federal income tax returns for tax years 2003-2006 (SOR allegations 1.a and 1. c). He disclosed that he owes the Internal Revenue Service (IRS) \$12,750 for 2003-2005 (SOR allegation 1.b), and an additional \$8,871 for 2006 (SOR allegation 1.d). Applicant provided a copy of his 2007-2009 Federal income tax filings. He prepared the 2007-2009 Federal income tax returns sometime after May 2011 (SOR allegation 1.e). He indicated he owed the IRS \$2,081 for 2007; \$5,847 for 2008; and \$4,301 for 2009. He submitted copies of checks to the IRS to demonstrate payment, but he failed to submit any documentation from the IRS that the payments had been received or that the checks had been cashed. Further, one of the checks was incorrectly dated June 2001. (Item 5.)

In addition, Applicant admitted that he failed to file state income taxes for 2003-2009, as required by law (SOR allegation 1.e). He owes his state at least \$4,000 for tax liens (SOR allegation 1.f). He indicated his wages were garnished by the state to repay his tax debt beginning in 2010. He provided no proof of payment. (Item 5.)

Applicant's personal financial statement indicates he has a net remainder of \$285.80 after his monthly expenses are met. His financial statement did not include any payment to the IRS. (Item 5.)

Applicant presented no other evidence to establish his character. He did not provide any character references, work performance evaluation, or copies of awards and certificates.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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. 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, 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 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:

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. 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 a number of delinquent debts owed to both the Federal and state governments, and is unable or unwilling to pay his obligations. Further, his financial problems have been ongoing since 2003, without resolution. He failed to file his Federal income tax returns from 2003-2006 and failed to file his state income tax returns from 2003-2009. His Federal returns for 2007 through 2009 were filed several years late. 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.

The evidence does not show that Applicant has resolved any of his tax debts alleged in the SOR. He presented no evidence that he has filed his Federal income tax returns from 2003-2006 and failed to file his state income tax returns from 2003-2009. The copies of checks he presented as evidence of paying his 2007-2009 Federal tax debts were not sufficient to show that payment was actually made. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant failed to present any documentation in support of this claim. While he may have been ill in 2003, he presented no documentation showing his illness is prohibiting him from filing his state and Federal income tax returns or making payments on his delinquent taxes. To be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant did not submit concrete evidence of payments on his tax debts. He did not present a plan on how he will address his delinquent debts. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant did not produce any evidence to suggest he attended any financial counseling. Further, there is little indication that Applicant's delinquent tax debts are being resolved or are under control. He did not produce evidence that he filed his Federal income tax returns from 2003-2006 or his state income tax returns from 2003-2009. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay, file, or resolve his delinquent tax debts. AG ¶ 20(d) is not applicable.

Applicant did not dispute any of the allegations in his Answer. Further, he presented no evidence to show that he was in the process of disputing these allegations and debts or that he had successfully disputed this debt in the past. AG ¶ 20(e) is inapplicable.

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 54 years old. He is clearly aware of the need to be financially responsible and file his state and Federal income taxes. He has had ample opportunity to address his taxes, but has failed present evidence that he is taking responsible actions to file and pay his Federal and state taxes.

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
Subparagraphs 1.a-1.f:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge