



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



In the matter of:)
)
) ISCR Case No. 11-04032
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

05/15/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file his federal or state income tax returns for tax years 2004 through 2010. He has not resolved an \$8,784 federal tax lien filed in September 2006, and he owes \$7,944 in delinquent consumer debt. Applicant was also not forthcoming on his security clearance application about his involuntary termination from a previous employment in December 2005. The Personal Conduct concerns are mitigated by his prompt disclosure to an investigator, but the Financial Considerations security concerns persist. Clearance denied.

Statement of the Case

On September 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, as to why it was unable to find it clearly consistent with the national interest to grant him a security clearance. DOHA took action 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 responded to the SOR allegations on September 30, 2011.¹ He did not indicate in his notarized response that he wanted a hearing. On January 29, 2012, the Government submitted a File of Relevant Material (FORM) consisting of six exhibits (Items 1-6). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant elected not to respond by the March 11, 2012 due-date, and on April 24, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Findings of Fact

The SOR alleged under Guideline F that as of September 2011, Applicant owed three delinquent medical debts totaling \$740 (SOR 1.a-1.c); the IRS about \$8,784 (SOR 1.d); and a \$7,204 collection debt (SOR 1.e). Also, Applicant allegedly failed to file his federal and state income tax returns for tax years 2004 through 2010 (SOR 1.f). Under Guideline E, Applicant allegedly falsified his November 2010 Questionnaire for National Security Positions (SF 86) by not disclosing that he had been fired from a job in December 2005 (SOR 2.b). Applicant admitted the allegations without explanation. After considering the Government's FORM, which includes Applicant's Answer (Item 2), I make the following findings of fact.

Applicant is a 41-year-old high school graduate, who has applied for his first DOD security clearance to work as a pipefitter with a defense contractor. He was married from 1994 to 2001. He and his ex-spouse divorced, in part, over financial issues. (Items 3, 4.)

Applicant worked for several different employers between February 2004 and November 2010, primarily as a driver in the transportation industry. He lacked a steady income at times, when work was unavailable. From October 2005 to December 2005, Applicant was employed as a helper for a gym equipment company. He was fired for throwing debris from the truck, while unloading it, and breaking a gas line. From January 2006 to August 2006, Applicant was a driver for a commercial paper shredding company, but he was laid off due to lack of work. (Items 3, 4.)

From September 2006 to November 2006, Applicant collected unemployment compensation. While looking for work, he took a course costing around \$5,008 to obtain his commercial driver's license. (Items 4, 6.) In December 2006, he began driving a tractor

¹In its File of Relevant Material (FORM), the Government referenced a date stamp of December 8, 2011, as the date of Applicant's Answer. Applicant's response to the allegations was notarized on September 30, 2011. The third page of Applicant's answer is blank but for two stamps noting receipt by DOHA Arlington on December 7, 2011, and by DOHA Fort Meade on December 8, 2011. There is no indication from Applicant as to whether he requested a hearing or a decision on the written record without a hearing. However, Department Counsel prepared a FORM that was forwarded to Applicant on February 2, 2012, because he had apparently requested a determination without a hearing. Applicant received the FORM on February 10, 2012, and he filed no response to the FORM or objection to proceeding without a hearing.

trailer for the company that provided his training, and he was on the road about three weeks each month. In March 2007, he resigned from the trucking company. He supported himself through part-time work as a driver's assistant for a local company. (Item 4.) From May 2007 to October 2010, Applicant was a part-time truck driver for a company located about 45 minutes from his home. From March 2008 to February 2009, he also held a full-time job as a taxi driver. (Items 3, 4.)

Due to insufficient income, Applicant did not pay for his training for his commercial driver's license. In September 2007, his account was placed for collection. As of December 2009, he owed a past-due balance of \$7,204 (SOR 1.e). Two medical debts, \$685 and \$25, were placed for collection in 2009 (SOR 1.a and 1.c). In July 2010, a \$30 medical debt was referred for collection (SOR 1.b). (Items 4, 6.)

Applicant failed to file federal and state income tax returns when required or pay taxes owed for several years. Between March 1996 and January 1998, the IRS filed four tax liens against him in the amounts of \$34,910, \$11,833, \$23,351, and \$4,279. Applicant claims that he satisfied these liens in 2005 (Item 4), although he presented no evidence showing that they have been paid. In November 2002, the IRS filed an \$861 tax lien against him. In September 2006, the IRS filed an \$8,784 tax lien against him. (Item 6.)

On November 24, 2010, Applicant applied for a security clearance before starting full-time employment as a pipefitter with a defense contractor. On an SF 86 incorporated within an Electronic Questionnaire for Investigations Processing (e-QIP), Applicant disclosed a couple of job layoffs, in January 2005 and in August 2006, due to lack of work. He did not disclose that he had been fired from the gym equipment company in December 2005. He responded "Yes" to financial record inquiries 26.d, concerning any liens placed against his property within the last seven years for failing to pay taxes or other debts, and 26.g, about any bills or debts turned over for collection in the last seven years. He listed an unpaid collection balance of \$7,204 for his truck driver's training and the outstanding \$8,784 federal tax lien. (Item 3.)

On December 15, 2010, Applicant was interviewed by an authorized investigator for the DOD. Concerning the tax liens filed against him between March 1996 and December 1997, Applicant indicated they were for unpaid income taxes for tax years from 1986 to 1996. He asserted that he had satisfied them in 2005. Applicant admitted he had two tax liens outstanding, of \$861 from November 2002 and \$8,784 from September 2006, which he planned to satisfy by 2014. He had recently found out about the liens when he checked his credit report. Applicant averred that he would satisfy his three medical debts in collection by 2011, and his debt for his commercial truck driver's license training by 2015. Applicant attributed his past-due consumer credit debt to insufficient income. He lived with his mother and had no other financial obligations. Applicant described his financial situation as poor because he lacked a permanent job, although he was pending full-time employment with the defense contractor. When reviewing his employment history with the investigator, Applicant related that he had been fired from the gym equipment company in December 2005. He admitted that he had not listed his involuntary termination on his SF 86 because he feared it would be viewed negatively. (Item 4.)

In June 2011, DOHA asked Applicant to update his progress, if any, on repaying his delinquent debts, and for information about his tax filings. On June 21, 2011, Applicant responded that he was looking for a tax attorney to assist him in resolving the \$8,784 tax lien. He had also made no payments on his collection debts, but he was “checking [with] credit reports to fix this problem.” Applicant reported a monthly gross salary of only \$560 and expenses of \$440.² Applicant answered “No” to whether he had filed all his federal and state income tax returns in the last seven years. He admitted that he had not filed his returns for tax years 2004 through 2010 (“A family member was doing this stuff for me and I’ve just discovered recently I need to handle this stuff.”). He was seeking the assistance of a certified public accountant or attorney to address his delinquent returns. Applicant expressed his intent to resolve his outstanding tax issues, but it was going to take some time. (Item 5.)

Applicant was notified on receipt of the SOR in September 2011 that his delinquent debts and his failure to file his tax returns raised security concerns. (Item 1.) As of mid-March 2012, Applicant had presented no evidence of any payments on his debts, including the IRS tax lien, or of any efforts on his part to address his delinquent federal and state income tax returns.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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

² Based on his gross salary, Applicant had apparently not started full-time work as a pipefitter with the defense contractor. He reported \$80 in deductions from his pay and \$440 in monthly expenses, which would leave him a net monthly remainder of about \$40.

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 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 that 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 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.

Guideline F notes several conditions that could raise security concerns. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established. As of September 2011, Applicant owed three medical debts in collection totaling \$740, \$7,204 in past-due debt for his commercial truck driver’s training, and at least \$8,874 to the IRS for delinquent taxes for tax year 2005 or previous tax year(s).

Also, Applicant did not file his federal or state income tax returns for tax years 2004 through 2010. AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” is also implicated. Under federal income tax law, single individuals under age 65 were required to file an income tax return if their gross income met or exceeded the following minimum for the respective tax year: \$7,950 in 2004, \$8,200 in 2005, \$8,450 in 2006, \$8,750 in 2007, \$8,950 in 2008, \$9,350 in 2009, and \$9,350 in 2010.³ The file before me contains little information about Applicant’s income

³ See www.IRS.gov

for the respective tax years. Applicant has not claimed that his gross income fell short of the minimum threshold for filing a return for any of the years. But for a brief period of unemployment from February 2005 to April 2005, Applicant worked full-time for a succession of employers from February 2004 to August 2006. After a short period of unemployment from September 2006 to November 2006, he worked full-time as a long distance trucker until March 2007. He had only part-time work for the remainder of 2007, but he held two part-time jobs simultaneously through June 2007. He worked part-time for a trucking company from May 2007 to October 2010 while also holding a full-time job as a taxi driver from March 2008 to February 2009. It is unlikely that his income fell below the income needed to meet the threshold for filing his federal returns each year, although as of June 2011, his reported gross wages of \$560 per month would not meet the \$9,500 minimum threshold for filing a return for tax year 2011.

Concerning his failure to file state tax returns for 2004 through 2010, I cannot assume that the state filing requirements were the same or similar to the federal requirements for any of the tax years at issue. Pertinent state law is appropriate for judicial notice. Applicant's state of residency requires its individual residents to file a state tax return if they are required to file a federal income tax return. Moreover, even if he is not required to file a federal income tax return, he may be required to file a state income tax return if his income for the taxable year is in excess of the sum of his federal personal exemptions. Applicant's disregard of his tax filing obligation raises doubts about whether he can be counted on to comply with well-established government rules, including the regulations for protecting classified information. See ISCR Case No. 97-0744 (App. Bd. Nov. 6, 1998); ISCR Case No. 01-05340 (App. Bd. Dec. 20, 2002).

Concerning potentially mitigating conditions, AG ¶ 20(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," cannot reasonably apply, given his ongoing failures to comply with his income tax filing obligation and to address any of his delinquent debts, including the IRS tax lien.

Mitigating condition AG ¶ 20(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," has limited applicability. Medical debts are not discretionary. Yet, it is difficult to find that he has acted responsibly. Even on his limited income, he could afford to pay the \$25 and \$30 medical debts. He has known about the debts since his interview in December 2010, if not before then, and they have not been paid as of September 2011. While his decision to obtain his commercial driver's license is understandable, the debt for training was knowingly incurred. Furthermore, AG ¶ 20(b) would not extenuate his disregard of his tax filing obligations.

Also, while Applicant expressed an intent to eventually resolve his debts and address his delinquent tax returns, checking with the credit bureaus and looking for a tax attorney fall short of establishing either AG ¶ 20(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,” or AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Despite only about \$40 or so each month in net remainder as of June 2011, he could have gone a long way toward demonstrating good faith by making some small payments. He has not done enough to mitigate the Financial Considerations concerns.

Guideline E, Personal Conduct

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

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.

When Applicant completed his SF 86 in November 2010, he deliberately concealed that he had been fired from a job in December 2005 because he believed the information would be viewed negatively. A knowing and willful false statement or omission in response to SF 86 inquiries raises significant security concerns under AG ¶ 16(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.

Yet, while reviewing his SF 86 with an investigator on December 15, 2010, Applicant indicated that he had been fired from his job with the gym equipment company for breaking a gas line. There is no indication that he had to be confronted about his involuntary termination, and he was forthright on his SF 86 about his financial problems, including the outstanding tax lien. AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” applies in mitigation of the Personal Conduct concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁴

⁴ The factors under AG ¶ 2(a) are as follows:

(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

Applicant raised serious doubts about his security eligibility by not complying with his federal and state income tax filing obligation. Although not alleged in the SOR, Applicant had very sizeable federal tax liens that were filed against him in the 1990s. His credit record also shows an \$861 federal tax lien filed in November 2002 that was not alleged in the SOR, but may well be unpaid. Whether or not he satisfied the tax debts that were not alleged, he has had a long history of either not filing his returns, or not paying taxes owed, or both. Applicant may not have known about the September 2006 tax lien before he reviewed his credit record in 2010, but he has had some time since then to address the debt. Without some payment on any of his past-due debts, and given his apparent lack of urgency in addressing his delinquent returns, I cannot find that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Elizabeth M. Matchinski
Administrative Judge

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.