



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



In the matter of:)	
)	
)	ISCR Case No. 11-06692
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

08/17/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 9, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on December 28, 2011, detailing security concerns under Guideline F, Financial Considerations. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on May 10, 2012. Applicant received the FORM on June 7, 2012. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on August 1, 2012. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 57 years old, works as an engineer for a Department of Defense contractor. He began working for his employer in February 2000, as a temporary employee. He became a permanent employee six months later.¹

Applicant graduated from college in 1978 with a bachelor's degree. He and his wife married in 1996. They do not have any children.²

Applicant's wife operated a business from 2002 or earlier through 2004. Because of her business operations, they have not filed their federal and state income tax returns for the tax years 2002, 2003, and 2004. Applicant indicated that he timely filed a request for an extension to file his returns each year with the Internal Revenue Service (IRS) and the state tax agency, but this documentation was destroyed in a home flood. He sought assistance from a tax preparer in 2006, but because the business documentation had been destroyed, the tax preparer would not use estimates to prepare his return. Applicant submitted documentation from the IRS, demanding payment of taxes due for 2002 in the amount of \$1,750, for 2003 in the amount of \$5,256, and for 2004 in the amount of \$94,962. He had not paid these taxes nor has he negotiated a payment plan or compromise of his debt with the IRS. He has taken no action on his tax debt.³

Applicant believes he filed his tax returns with the IRS and the state tax agency from 2005 through 2009. He verified to the Office of Personnel Management (OPM) investigator his tax filings with both agencies from 2007 through 2009. He also verified to the OPM investigator that he received a refund in each of these years, which the IRS

¹Item 5 (e-QIP); Item 6.

²Item 5.

³Item 4 - Item 6.

held and applied to his tax debt. Applicant produced a paper copy of his 2006 federal tax return, which showed he owed additional taxes for the tax year 2006. He did not provide any documentation which showed he paid this tax debt, nor did he provide documentation which indicated that he filed his 2005 federal tax return, 2005 state tax return, and his 2006 state tax return. He has not requested a tax filing history from the IRS.⁴

Applicant acknowledged his tax debts on his e-QIP and listed the tax years 2002 through 2004 as the years for which he owed taxes because he had not filed his tax returns. The state tax agency records indicated that Applicant had not filed his tax returns for the years 2002 through 2009, which was incorrect. In his response, Applicant also acknowledged that his security clearance should be revoked because he had not filed his tax returns or resolved his tax debt.⁵

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.

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. . . ." An

⁴Item 5; Item 6.

⁵Item 4 - Item 6.

applicant has the ultimate burden of persuasion for obtaining 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 an 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.

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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following 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.

Appellant developed significant financial problems when he and his wife failed to file their federal and state tax returns for several years. He currently owes taxes to the federal and state governments for these years. These disqualifying conditions apply to SOR ¶¶ 1.a through 1.i. Applicant believes he filed his tax returns for 2005 and 2006

and provided a copy of his 2006 federal tax return to the OPM investigator. Applicant has been forthright about his tax debt since the beginning of this process, and the state records were incorrect about his filings for the tax years 2007 through 2009. However, given that he admitted these allegations, I find that the Government has established its case for SOR ¶¶ 1.j through 1.m⁶ under the above disqualifying conditions.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following 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.

Based on his admissions to the OPM investigator and his statements in his response to the SOR as well as the lack of any documentary evidence, Applicant has not mitigated the Government's security concerns about his tax debts because he has not resolved his debts.

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 an applicant's conduct and all relevant 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

⁶The SOR numbered the last allegation as 1.i, which is a duplicate number. I find that this number is a typographical error and should be 1.m.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant pays his monthly living expenses and lives within his income. In 2002, he and his wife delayed filing their tax returns because of her business. Ultimately, they never filed their federal and state tax returns for the years 2002, 2003, and 2004. The IRS has notified them of the amount of past due taxes owed for these years, which they have not yet paid or resolved. What if any money they owe the state for taxes for these years is unknown. The evidence is less clear about the status of his 2005 and 2006 tax returns. Because Applicant's past-due taxes remain unresolved, he has not mitigated the security concerns raised by his debts.

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 finances under Guideline F.

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.m:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge