



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



In the matter of:)
)
) ISCR Case No. 11-08546
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of financial problems dating back to 1999, evidenced by his failure to pay his taxes. He has made some efforts to resolve his tax problems, but his financial problems remain. The evidence fails to establish Applicant’s financial responsibility in the resolution of his delinquent debts. He does not have a viable plan to resolve his delinquent debt, and he is not in control of his financial situation. Moreover, he falsified his last two security clearance applications. The record evidence fails to convince me of Applicant’s eligibility and suitability for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on January 24, 2011. On July 23, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ Applicant

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the

answered the SOR on August 14, 2012, and requested a hearing before an administrative judge.

The case was assigned to me on September 6, 2012. DOHA issued a notice of hearing on September 11, 2012, scheduling a hearing for October 10, 2012. At the hearing, the Government offered exhibits (GE) 1 through 11. Applicant testified, and submitted exhibits (AE) 1 through 8. AE 8 was received post-hearing. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on October 18, 2012.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.c through 1.e, with comments. He denied SOR ¶¶ 1.a, 1.b, 1.f, 2.a, and 2.b. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 60-year-old telecommunications installer and repairman. He graduated from high school in 1971. He has worked for government contractors most of his life. He has worked in his current position, albeit for two government contractors, since 2006. He has possessed a security clearance at the top secret level with access to sensitive compartmented information (SCI) from 2000 to present. There is no evidence that he has ever compromised or caused others to compromise classified information.

Applicant married his first spouse in June 1973, and they divorced in June 1993. He married his current spouse in June 1994. He has three grown children. His 19-year-old daughter attends college, and lives with Applicant. She is financially dependent on Applicant, and he provides her with college financial assistance.

Applicant submitted his first SCA in early 2000. In August 2000, he was interviewed by a government investigator concerning his financial problems, which included two delinquent credit card accounts (owing \$953 and \$9,658), and a state tax lien for \$3,583, not disclosed in his 2000 SCA. He explained to the investigator that he had made arrangements to pay the delinquent credit cards, and that the state was collecting the tax lien through payroll deductions. He attributed his state income tax problems to his wife taking too many deductions and not paying sufficient taxes from her monthly income. He stated that he attended financial counseling, and with the assistance of a credit counselor he had established a budget to preclude future financial problems. (GE 11)

In May 2005, Applicant underwent a periodic reinvestigation and submitted his second SCA. In his answers to the financial questions, Applicant stated that in the last seven years he had not had any wage garnishments or liens placed against him for failing to pay taxes or other debts, and that he had not been over 180 days delinquent on any debts. He also stated he was not currently over 90 days delinquent on any debt. Applicant failed to disclose in his 2005 SCA three state tax liens filed against him in January 2000, May 2000, and March 2002.

Applicant submitted his most recent SCA in January 2011. In his answers to the financial questions, Applicant stated that in the last seven years he had two credit card debts that were turned over to collection agencies. He reported no other financial problems. He specifically denied having any wage garnishments or liens placed against him for failing to pay taxes or other debts, or judgments entered against him.

The subsequent background investigation revealed that Applicant's state of residence filed four liens of judgment for unpaid taxes against him between 2000 and 2009: (1) January 1, 2000, for \$685, satisfied on November 27, 2002; (2) May 1, 2000, for \$2,985, satisfied on May 1, 2002; (3) March 29, 2002, for \$2,479, satisfied on November 24, 2003; and (4) February 1, 2008, for \$5,518, satisfied on May 8, 2009. (GE 5-8)

Additionally, the Internal Revenue Service (IRS) filed tax liens against Applicant on June 5, 2006, for \$45,793; and on April 9, 2008, for \$11,907. (GE 3, 4) The investigation also revealed three delinquent mortgages and one delinquent consumer credit account totaling over \$601,000.

Applicant failed to disclose in his 2011 SCA the February 2008 state tax lien, the two IRS liens filed against him in June 2006 and April 2008, the three delinquent mortgages, and the delinquent consumer credit account. At his hearing, Applicant admitted the he failed to disclose the above information, but claimed that he made an honest mistake. He claimed that he did not understand the questions and was confused about the information requested. Applicant acknowledged he has had financial problems for many years, but testified that he has been continuously working to resolve his debts. He stated that he is not avoiding financial responsibility for his debts. He promised that as long as he is employed he will continue to pay his debts.

Applicant contacted the IRS in January 2009, and established an installment plan promising to pay \$1,350 a month starting in April 2009. The IRS response stated that Applicant owed taxes for tax years 1999 through 2005. (GE 9) Applicant's Installment Agreement Activity for July 2011 through July 2012 (AE 3), indicates Applicant owed the IRS a total of \$53,000 for tax years 2002, 2004, 2005, 2008, and 2009. In September 2012, Applicant contacted the IRS and requested a reduction of his monthly payments. (AE 2) Applicant's electronic fund transfer payment statement (AE 8) shows that he has been making payments to the IRS for tax deficiencies for tax years 2002, 2011, and 2012.

Applicant considers himself to be honest, trustworthy, and a dedicated employee. He is a good Samaritan, and a practicing Christian. Applicant has worked for government contractors most of his life. He has been consistently and fully employed since 1971, with no periods of unemployment or underemployment. Around 2005, Applicant retired after 32 years working for another government contractor. He started working in his current position in 2006. When he started, he was earning approximately \$50,000 a year. He is now earning approximately \$80,000 a year from his current job. Additionally, he receives around \$23,000 a year in retired pay, and his wife makes approximately \$55,000 a year.

Concerning the allegation in SOR ¶ 1.c (total balance of \$31,847), Applicant explained that this is a mortgage on a track of land he owns. As of the hearing date, he was four months behind on his mortgage payments. He testified that he was “juggling” his bills around to make payments on some of his debts. (Tr. 42)

SOR ¶ 1.d (total balance of \$449,000) is the first mortgage on Applicant’s home, purchased in December 2005. His monthly mortgage payment is \$3,355. As of the hearing date, Applicant was \$20,000 in arrears. In May 2012, he entered into the lender’s workshop program in an effort to rehabilitate the delinquent mortgage. Applicant is not paying other debts, or alternates making payments on other debts to meet his new mortgage payment agreement. (AE 8)

SOR ¶ 1.f (total balance of \$120,000) is for the second mortgage on Applicant’s home. His mortgage monthly payment is \$610. As of his hearing, he was five months delinquent on the second mortgage. (Tr. 45-51) He submitted documentary evidence of payments towards this mortgage in January, February, March, July, and September 2012. (AE 8)

Applicant also was delinquent on his car note. He purchased a new 2007 Lexus in 2006 for approximately \$38,000. He only has a few more payments on the car note. Although he was delinquent, Applicant worked out a payment plan with the car dealer. Applicant testified that his wife drives the Lexus. He does not have a car, and his daughter drives a 2010 Volkswagen purchased on her grandmother’s credit.

Applicant did not claim, and the evidence does not show, that circumstances beyond his control prevented him from paying his delinquent debts. He believes his family is going through a financial crisis because of overspending, purchasing “stuff for the household,” and his wife’s frequent trips to visit her mother. (Tr. 51)

Applicant considers himself to be a loyal American and a good worker. He believes that his years of good work for government contractors establish his loyalty, trustworthiness, and good judgment. He would like to continue his service to his country and to resolve his delinquent financial obligations. He needs his security clearance to retain his job. He believes that with his job, he will have the ability to pay all of his delinquent debts.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

Applicant has a history of financial problems that date back to 1999. His financial problems continue to present as evidenced by his delinquent debt, totaling about \$654,000, including the two federal tax liens and the three delinquent mortgages. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's favorable evidence fails to fully establish the applicability of any mitigating condition. His financial problems are ongoing, he has extensive delinquent debt, and the evidence fails to show that he acted responsibly in the resolution of the debts, or that he acquired the debt under such circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant did not present facts to show that circumstances beyond his control contributed to his financial problems. On the contrary, he believes his financial problems were caused by overspending. AG ¶ 20(b) does not apply.

AG ¶ 20(c) applies because Applicant participated in financial counseling. However, it does not mitigate the financial considerations concerns. Considering the number of debts and the aggregate total of the debts, I cannot find that there are clear indications that his financial problems are being resolved or under control.

Applicant has had recurrent problems paying his state and federal taxes. He owes approximately \$53,000 to the IRS, and he is seriously delinquent on his three mortgages. I considered Applicant's efforts to resolve his problems with the IRS by establishing payment plans, and his efforts to bring his mortgages to current. Notwithstanding, questions remain about Applicant's judgment, reliability, and trustworthiness considering that he has had similar problems with the IRS every year since 1999 and he has done little to prevent them.

Questions remain about Applicant's current financial situation and his ability and willingness to continue making his ongoing payments. The viability of Applicant's payment arrangements is in question because he is alternating payments on his delinquent debts to pay his mortgages. Considering that Applicant and his wife have been fully employed for many years, that he receives retired pay, and that there are no circumstances beyond his control preventing him from paying his delinquent debts, Applicant failed to provide a reasonable explanation for his current financial problems. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility. AG ¶ 20(d) partially applies, but does not fully mitigate the financial concerns. The remaining mitigating conditions (AG ¶¶ 20(e) and (f)) are not applicable to the facts of this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Between 2000 and 2008, Applicant's state and the IRS filed six tax liens against Applicant for delinquent and unpaid taxes. Applicant falsified SCAs in 2005 and 2011 when he deliberately failed to disclose five of the tax liens. He also made false statements when he answered "No" to questions asking him whether he had failed to pay taxes, had liens placed against him for failure to pay taxes, and whether he was currently delinquent on any federal debt.

Applicant's false statements and falsifications trigger the applicability of the following disqualifying conditions 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant claimed that his omissions and falsifications were caused by honest mistakes because he was confused by the SCA financial questions. Having observed his demeanor while testifying and analyzed his testimony in light of all the evidence available, Applicant's claims are not credible.

In August 2000, Applicant was interviewed by a government investigator concerning his financial problems which included two delinquent credit card accounts and a state tax lien that he had failed to disclose in his 2000 SCA. He explained to the investigator that he had made arrangements to pay the delinquent credit cards, and that the state was collecting the tax lien through payroll deductions. He stated that he attended financial counseling, and with the assistance of a credit counselor he had established a budget to preclude future financial problems.

As a result of this interview, Applicant was placed on notice of the Government's concerns about his financial problems, including his failure to pay his taxes. He was also placed on notice about the requirement to be truthful and forthcoming in his answers to the SCAs. Notwithstanding, in 2005 and 2011, Applicant again had financial problems and he failed to fully disclose those financial problems and tax liens filed against him on his SCAs. Moreover, he deliberately answer "No" to questions asking whether he had failed to pay state or federal taxes, whether he had tax liens filed against him, and whether he was currently delinquent on any federal debts.

AG ¶ 17 provides seven conditions that could mitigate the personal conduct security concerns. Considering the record as a whole, I find that none of the Guideline E mitigating conditions apply. AG ¶ 17(a) does not apply because he did not correct his falsifications before he was confronted with the facts. AG ¶ 17(c) does not apply because making a false statement is a felony in violation of 18 U.S.C. § 1001. The remaining mitigating conditions are not raised by the facts and are not applicable.

Applicant's false statements and falsifications show lack of judgment, lack of candor, dishonesty, and an unwillingness or inability to comply with rules and regulations. His questionable behavior raises questions about his reliability, trustworthiness, and ability to protect classified information.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is a technically proficient and dedicated employee. He retired after 32 years working for a government contractor and started working in his current position in 2006. He possessed a security clearance from 2000 until present without any problems or concerns, except for the current security concerns. He is a good father, husband, and practicing Christian. He has been making some efforts to resolve his financial problems.

Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the resolution of his delinquent debts. Because of his extensive experience working for federal contractors and years holding a security clearance, Applicant knew or should have known about the importance of maintaining financial responsibility and about the requirement to be honest and truthful in his answers to the SCAs questions. Applicant's unexplained financial problems and his deliberate failure to disclose relevant and material information on his 2005 and 2011 SCAs adversely impacts on his credibility and evidence of extenuation and mitigation.

Considering the record as a whole, Applicant does not have a viable plan to resolve his delinquent debt, and he is not in control of his financial situation. Moreover, because he falsified two SCAs, Applicant demonstrated a lack of eligibility and suitability 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: Subparagraphs 1.a-1.f:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge