



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-09818
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/25/2013

Decision

HOWE, Philip S., Administrative Judge:

On March 29, 2011, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP; SF 86). On December 12, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 acknowledged receipt of the SOR on December 12, 2012. He answered the SOR in writing in an undated Answer received by the Defense Office of Hearings and Appeals (DOHA) in January 2013, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 16, 2013, and I received the case assignment on April 25, 2013. DOHA issued a Notice of Hearing on June 5, 2013, and I convened the hearing as scheduled on June 25, 2013.

The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on July 16, 2013. I granted Applicant's request to keep the record open until July 16, 2013, to submit additional matters. At Applicant's request and without objection from the Department Counsel, I extended the due date until August 2, 2013. On August 1, 2013, Applicant submitted Exhibits F to K, without objection. The record closed on August 2, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a to 1.d and 1.f of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.e and 1.g of the SOR. He denied all the allegations in ¶ 2. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 55 years old, married, and has one child. He works away from his home state for a defense contractor in the computer software business. Applicant graduated from college in August 1993. He has been continuously employed since October 1994 in his career field, except for two periods of unemployment, from February to September 2005 and then again from October 2006 to April 2007. (Tr. 24, 33; Exhibit 1)

The SOR lists seven delinquent debts totaling \$23,226. Applicant paid four of the delinquent debts, is paying one tax debt, and does not yet have an installment payment arrangement on the remaining two tax debts. (Tr. 17-30, 48; Exhibits 2-5, 7, A-E, G-K)

The tax debt owed to Applicant's home town is \$11,321 (Subparagraph 1.a). The city obtained a judgment against Applicant for that amount. Applicant contacted the city attorney's office and arranged an installment payment agreement. He pays \$100 monthly on the tax debt and has done so since January 2013. A total of \$600 is paid to the date of the hearing. Applicant is in the process of resolving that debt though it will take him several years to do so. (Tr. 17; Exhibits 2-5, 7, A, I, J)

Applicant owes three state tax debts for years he did not file tax returns. He worked out of state in certain years, paying income tax to those states, not realizing he also owed tax on his income to the state of his residence. He admitted that the state probably sent tax notices to his home in his residence state. The debts are for \$1,218, \$546, and \$837 (Subparagraphs 1.b, 1.c, and 1.d) In 2013 Applicant hired a local accounting firm to file his 2000, 2004, 2009, and 2010 income tax forms in an attempt to resolve the tax debts. In 2012 he hired a tax resolution firm and paid them \$2,000 to work on his home state tax debts. The company did nothing to resolve the debts. Applicant paid \$545 to his home state treasurer to resolve the debt alleged in Subparagraph 1.c for \$546. The other two tax liens remain unsatisfied. His tax debt to his home state is \$11,959.54 for all the years for which he did not file State tax returns.

Applicant's testimony about his confusion regarding what state to pay his income taxes when working outside of his state of residence was credible and persuasive on this issue. (Tr. 18-25, 45; Exhibits 2-5, 7, B, E, G, J)

Applicant owes \$7,374 on a credit card debt dating from 2008 (Subparagraph 1.e). Applicant settled this account for \$4,300 in June 2013, paying from his savings account. This debt is resolved. (Tr. 29, 48; Exhibits 2-5, 7, K)

Applicant owes \$919 on a department store credit account (Subparagraph 1.f). This account was settled for \$643.49 on November 12, 2012. This debt is resolved. (Tr. 29; Exhibits 2-5, 7, C, E)

Applicant's final delinquent debt was owed on a department store credit card account in the amount of \$1,011 (Subparagraph 1.g). This debt is resolved. It was paid in the amount of \$3,500 on September 24, 2008. The account numbers in Exhibits 3 and D end in #7580, showing the accounts are the same. (Tr. 28, 29; Exhibits 2-6, 7, D)

Applicant does not have any credit cards at the present time. His net monthly income after taxes and deductions is \$10,075 according to his November 2012 personal financial statement. His monthly expenses are \$4,723. His net remainder income is \$5,352 from which he tries to save about \$500 a pay period. His bank savings are shown on the personal financial statement as \$3,800. Applicant could not explain clearly how he spends the remaining \$5,352 each month. He and his wife have cars from the late 1990s. He has never participated in financial counseling. Applicant started to work on resolving his delinquent debts in August 2012 when he received the government interrogatories. Applicant claims five exemptions on his income tax because he supports his family and his mother, although she does not live with them. Applicant stated he has no other substantial long term debt. (Tr. 31, 38, 42-44, 48, 64-66)

Applicant did not list on his e-QIP in Section 26 that he had judgments against him in the past seven years, loan defaults, debts turned over to collection agencies, was more than 180 days delinquent on debts, and also more than 90 days delinquent on payment of his debts. This lack of disclosure pertained to all the listed debts except for the debt in Subparagraph 1.b. Applicant denied deliberately falsifying his answers in Section 26 because he did not check his credit record before completing the e-QIP. He claims he was unaware of the tax liens until he was questioned by the government investigator in May 2011. His e-QIP was completed in March 2011 when he was working in another state and on his way to another job in a second state. Neither employment was in his home state. Applicant's testimony was credible on the falsification issue that he did not falsify his e-QIP but provided the information about which he was aware. (Tr. 38-42, 62-66; Exhibits 1, 2-5, 7)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 (AG ¶ 2(a)). 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, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three of those conditions are applicable to the facts found 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 \$23,226 in delinquent debts from 2008 to the present time that remains unpaid. Applicant has seven delinquent debts listed in the SOR. He also had several home state tax returns he did not file because he paid his federal taxes and state taxes where he was working at the time, and did not realize he also had to file in his home of record.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Four of those conditions may be applicable in this case:

- (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.

Applicant's tax debts occurred because he did not understand that he had a legal obligation to pay home state taxes on his income, along with taxes to the state in which he worked. He might be able to take a credit on his home state taxes for any tax paid to another state, but he only recently consulted a tax expert. His credit record shows he paid the credit card debts and does not have other long term substantial debt, whether delinquent or not. Applicant worked diligently to resolve his tax and credit debts after learning of them in May 2011. AG ¶ 20 (a) applies.

Applicant had seven months of unemployment between contracts. Though not significant, those months could have affected his ability to repay his credit debts. They did not relieve him of his obligations on his income taxes, though. That unemployment was beyond his control, but there is no direct evidence that they adversely affected Applicant's ability to repay his debts. AG ¶ 20 (b) has limited applicability under the facts as presented.

Applicant is paying his debts in an orderly manner. He focused on making regular payments on his taxes. One debt was paid in 2008 but continued to appear on his credit report, indicating Applicant had not been diligent in getting it removed from his report. He has an installment payment plan on his city income tax debt. He recently hired a tax accountant to help him resolve state income tax problems resulting from Applicant's out-of-state work and the requirement to pay income tax to his state of residence. Applicant paid three credit card debts and one state income tax debt. Therefore, there are only three state income tax debts to be paid totaling \$2,601.. Therefore, there are clear indications from the evidence he presented that the financial problems are coming under control and being resolved in an orderly manner. AG ¶ 20 (c) has partial application.

Applicant intends to pay his tax debts. He took responsible actions to resolve them after he learned of them in May 2011. He should have known about them earlier than that if he had been aware of his legal obligations. He paid four debts and is filing his tax returns now with professional help. His failure to file his home state returns was caused by his failure to understand the requirement to pay his home state tax on his income, regardless of where he worked as a contractor. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. One condition may apply:

(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's failure to disclose his financial difficulties in Section 26 of his e-QIP was inadvertent and not deliberate falsification. The deliberate omission disqualifying condition, AG ¶ 16 (a), does not apply.

AG ¶ 17 provides seven conditions that could mitigate security concerns. No conditions apply because Applicant did not deliberately falsify his security clearance application.

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 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant acted to resolve his debts when he learned of them. While he should have known of them on a monthly basis, he had only three delinquent credit debts listed in the SOR, and one of them had been paid in 2008 but not removed from his credit record. Applicant had a reasonable explanation for his income tax failures. He did file income tax returns with his home state for certain years. He did not file them in states where he worked because he was unaware of his obligation to do so. However, he paid those states' tax on his income earned. There was no evidence of a deliberate attempt to commit tax fraud by failing to file tax returns, but rather a lack of knowledge of tax laws in a federal republic when Applicant has some connection to two states simultaneously. He acted responsibly to resolve the tax debts upon learning of them. His tax debt to his home town is about \$11,321 on which he is now making installment payments. His home state debt is about \$2,601 which he is trying to resolve.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations and personal conduct. I conclude the whole person concept for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a to 1.g:	For 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 clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge