



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



In the matter of:)
)
) ISCR Case No. 11-12191
)
Applicant for Security Clearance)

Appearances

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

03/19/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines F, financial considerations, J, criminal conduct, and E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On July 17, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, J, criminal conduct, 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on July 19, 2013. He elected to have his case decided on the written record. On October 25, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on November 14, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. The case was assigned to me on March 7, 2014.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a. He denied the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He is not married. He has two children. He is a high school graduate. He has worked for his present employer, a federal contractor, since 2004.

Applicant is indebted to the Internal Revenue Service (IRS) for a tax lien entered against him in April 2010 in the approximate amount of \$6,842. He indicated in his answer to the SOR that he had a payment plan with the IRS to pay \$50 a month. A letter from the IRS dated March 24, 2012, detailed the tax lien is for tax years 2004 through 2011. The letter acknowledged that an installment agreement was being reinstated for the detailed tax years and that Applicant was to pay \$25 a month beginning June 2012. The letter further stated that Applicant agreed that the payment would change to \$180 a month beginning December 2012. Applicant stated he is on a payment plan with the IRS for payments of \$50 a month. Applicant did not provide any proof that he has made any of the payments to the IRS or that the IRS agreed to accept the lesser amount.¹

Applicant answered "no" on his February 2011 security clearance application (SCA) to "Section 16c: Financial Record, Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?" In his answer to the SOR he stated: "I explained when the interviewer went over the questions with me." In Applicant's March 15, 2011 and April 13, 2011 security interviews there is no information indicating Applicant disclosed his federal tax lien to the investigator. Applicant admitted in his answer to the SOR that he had a tax lien entered against him in April 2010. Based on the number of years Applicant was delinquent on his taxes and the fact the letter from the IRS referenced the installment agreement was being reinstated, indicating there was a previous one, I find there is sufficient evidence to conclude Applicant was aware of his delinquent Federal tax debt and intentionally failed to disclose it.²

¹ Items 2, 4, and 5.

² Items 2, 3, and 4.

In 1997, Applicant was arrested, charged, and convicted of driving under the influence. In 1999, Applicant was charged with and convicted of brandishing a firearm, a misdemeanor. Applicant stated in his answer to the SOR that it was self-defense. During his background interview on March 15, 2011, he stated he and his brother went to a residence to confront an individual. A fight broke out and a person pulled out a knife. Applicant went to his car to retrieve his handgun and displayed it.³

In May 2000, Applicant was charged and convicted of carrying a loaded firearm in a public area, a misdemeanor. In his answer to SOR, Applicant stated the gun was lying on the dashboard of the car so it could be seen.⁴

In March 2010, Applicant was charged with possession of marijuana, public swearing/intoxication; reckless handling of a firearm; and discharge of a firearm in the city. He was convicted of reckless handling of a firearm and discharge of a firearm in the city. He was found not guilty of public swearing/intoxication, and the possession of marijuana was nolle prosequi. He received a fine. Applicant stated in his answer to the SOR that he fired a warning shot after he believed his house was broken into and he was making sure his family was safe.⁵

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 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

³ Items 2, 4 and 7.

⁴ Items 7 and 19.

⁵ Items 7 through 18.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an 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 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 includes examples of conditions that could be disqualifying. I have considered the disqualifying conditions under AG ¶ 19 that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations;

Applicant has a Federal tax lien for \$6,842. The tax lien is for payments owed for tax years 2004 through 2011. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 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.

Applicant has not provided any proof that he has made any payments on the installment agreement he made with the IRS in 2012 or why he failed to comply with a previous agreement. He did not provide any evidence for why he failed to pay his Federal taxes. None of the above mitigating conditions apply.

Guideline J, Criminal Conduct

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I have considered the disqualifying conditions under criminal conduct AG ¶ 31 and the following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was convicted in 1997 for driving under the influence. In 1999, he was convicted of brandishing a firearm. In 2000, he was convicted of carrying a loaded firearm in a public area. In 2010, he was charged with possession of marijuana, public swearing/intoxication, recklessly handling a firearm, and discharging a firearm in the city. He was convicted of the two firearm offenses. The marijuana charge was nolle prosequi and the public swearing/intoxication charge was dismissed. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has demonstrated a pattern of misconduct from 1997 to 2010, including several firearm convictions. There is an almost ten-year span from his 2000 firearm conviction to his firearm conviction in 2010. Despite the lengthy period, he continued his pattern of making poor decisions when dealing with firearms. Based on his past conduct, I am not convinced that future criminal conduct is unlikely to recur. His conduct casts doubt on his reliability, trustworthiness and good judgment. He provided minimal explanations for his conduct. He did not provide sufficient evidence in mitigation or of successful rehabilitation.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about 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.

I have considered the disqualifying conditions for personal conduct under AG ¶ 16 and the following are potentially applicable:

(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; 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 deliberately and intentionally failed to disclose on his SCA that he had a Federal tax lien for tax years 2004 through 2011. Applicant has a history of criminal offenses from 1997 to 2010; three are firearms convictions and a driving under the influence conviction. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant intentionally failed to disclose his Federal tax debt for tax years 2004 through 2011 on his SCA. His criminal offenses date from 1997 to 2010. He has a history of firearms convictions. His offenses are not minor and his pattern of misconduct spans approximately 14 years. He has not acknowledged his behavior or provided evidence that he has taken positive steps to alleviate the circumstances that caused his inappropriate and untrustworthy behavior. I am not convinced his behavior is unlikely to recur. Applicant failed to provide sufficient evidence mitigating his conduct and his failure to disclose his tax issues.

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 Guidelines F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

Applicant is 42 years old. He has worked for his present employer since 2004. He has a history of criminal conduct from 1997 to 2010, including firearm convictions. He has a delinquent tax debt for tax years 2004 through 2011. He failed to disclose his tax lien on his SCA. He failed to provide sufficient evidence to show he is resolving it. The record evidence leaves me with questions and serious doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct.

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:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraphs 3.a-3.b: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge