



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



In the matter of:)
)
) ISCR Case No. 11-12235
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

09/28/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 4, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 3, 2012, and initially requested a decision without a hearing. Government Counsel requested a hearing on July 20, 2012. The case was assigned to me on July 25, 2012. DOHA issued a notice of hearing on July 26, 2012, setting the hearing for August 13, 2012. The Government offered exhibits

(GE) 1 through 6, which were admitted into evidence without objections. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, offered one witness, and offered exhibit (AE) A, which was admitted into evidence without objection. The record was held open for Applicant to submit additional information. He did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on August 23, 2012.

Findings of Fact

Applicant is 62 years old and is seeking a security clearance for the first time. He is the chief executive officer (CEO) of a government contractor. He has a bachelor's degree. He is divorced and has two adult children. He is an avid aviation enthusiast and owns several airplanes. Before assuming his current position, he spent 30 years in the real estate business.¹

The SOR alleges Applicant was indebted on 13 accounts for various government-filed tax liens and four collection accounts. The liens and collection accounts were listed on a credit report dated June 8, 2011. Applicant admitted 12 of the liens, but indicated that he paid them all. He denied one lien account. He admitted two collection accounts, but indicated that he paid both of them. He denied two of the collection accounts.²

The liens on Applicant's property were for delinquent property taxes owed in two different counties of a particular state (not the state where he resides). The property taxes were assessed on airplane hangars and airplanes that Applicant owned from about 1985 to present. The reason for his non-payment was that the hangars were leased to other individuals, they failed to pay the tax, and he became responsible. He presented documentary evidence showing payment and or release for 12 of the lien accounts. Those payments and releases were made and obtained between January and June 2012.³

He disputed that he owed the underlying tax on the one remaining lien (SOR ¶ 1.m for \$3,442). Applicant stated that the disputed tax lien is for an aircraft that he moved out of the county trying to tax it in 1996. He believes that since the aircraft was not physically located there during the tax year, he is not obligated to pay the tax on it at that location. He did pay the tax in the county and state where the aircraft was actually located. The chief financial officer (CFO) of Applicant's company testified and corroborated Applicant's position regarding the disputed lien liability and that Applicant pays the property tax where the airplane is located.⁴

¹ Tr. at 5, 19, 60; GE 1; Answer to SOR (Ans).

² Ans.

³ Tr. at 22; GE 3; AE A; Ans.

⁴ Tr. at 22, 33; GE 4; AE G.

Applicant presented documentary evidence that the four collection accounts have been paid. For two of the accounts (SOR ¶¶ 1.n and 1.o), he supplied receipts showing the debts were paid and deleted from his credit report in April and June 2012. The two remaining collection accounts (SOR ¶¶ 1.p and 1.q), arose from a commercial rental property Applicant owned in another state. He believes these were assessed fees and fines from the local housing authority related to the rental property. Applicant sold the property in question in September 2011. The closing statement from that transaction is in the record. Applicant understood, and this understanding was corroborated by the CFO's testimony, that those two obligations were paid out of the proceeds of the sale. A credit report generated by the Government after the sale does not list either of the debts. It appears that these collection accounts were resolved through the sale of the property.⁵

Applicant is current on all his other financial obligations. He does not owe on any federal or state income taxes.⁶

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 that are to be 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

⁵ Tr. at 31-33, 40-41, 51-55; GE 3; AE A.

⁶ Tr. at 59.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had multiple liens placed upon his property for property tax debt and was delinquent on four collection accounts that he owed. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several Financial Considerations mitigating conditions under AG ¶ 20 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

The liens and collection accounts attributed to Applicant were recent and numerous. He has paid all the accounts except for the disputed lien concerning the airplane. Since he has no other delinquent debts in other areas of his life, it is reasonable to conclude that these type of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, or good judgment. AG ¶ 20(a) partially applies.

Applicant's tax lien assessments for his airplane hangars and debts related to his commercial rental property were within his control to make timely payments. He failed to do so. AG ¶ 20(b) is not applicable.

Although there is no evidence Applicant sought financial counseling, there are clear indications that all the debts and liens have been resolved through payment, except for the disputed airplane lien. He made good-faith efforts to resolve all the debts listed on the SOR except for the debt that he disputed. He supplied documentary evidence showing payment for all those debts. In particular, SOR ¶¶ 1.p and 1.q were paid by the proceeds of the rental property sale and do not appear on the post-sale credit report submitted by the Government.⁷ AG ¶ 20(c) and ¶ 20(d) apply.

Applicant has a reasonable basis to dispute the tax assessment made concerning his airplane that is not located in the taxing authority's state. He provided

⁷ See GE 5.

appropriate documented proof of the dispute through the testimony of the company's CFO. The CFO substantiated that the airplane is located in another state, which is taxing it for property tax purposes, and that it should not be taxed elsewhere. AG ¶ 20(e) applies. Applicant met his burden to establish sufficient mitigation evidence under AG ¶ 20 on the liens and debts listed in the SOR.

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 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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I found Applicant to be honest and candid about the circumstances that led to his debt and lien liability. He paid all the debts and liens except for one. He has a legitimate argument as to why he is not responsible for the property tax on his airplane by a state where it is not located. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations security concerns.

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: FOR APPLICANT

Subparagraphs 1.a – 1.q: 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.

Robert E. Coacher
Administrative Judge