



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



In the matter of:)	
)	
)	ISCR Case No. 11-13932
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2013

Decision

LYNCH, Noreen A., Administrative Judge:

On May 8, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated July 16, 2013.¹ Applicant received the FORM on July 29, 2013. He did not submit additional information. I received the case assignment on September 16, 2013. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

¹The Government submitted twelve items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant denied all allegations under Guideline F, ¶¶ 1.a through 1.g. with explanations.

Applicant is 49 years old. He is an employee of a defense contractor. He served in the U.S. Air Force from June 1982 until February 1987. Applicant attended college from 1993 until 1996. He obtained a security clearance in June 1982. He married in 2010. (Item 5) Applicant has been employed with his current employer since May 2011. On July 17, 2011, he completed a security clearance application. (Item 5)

The SOR lists two state tax liens totaling over \$30,000; two state tax liens totaling over \$7,000; and a federal tax lien totaling almost \$26,000. (Item 1) In addition, the SOR alleges that Applicant failed to timely file his federal and state tax returns from tax years 2000 until 2011. (Item 1) The credit reports at Items 9-11 confirm these obligations. (Item 5)

Applicant lived and worked abroad from October 2002 until June 2003. (Item 4) From June 2003 until August 2005, he lived in the United States. Applicant returned to live abroad from August 2005 until July 2011. (Item 4) He claimed that he was not required to file state tax returns for many of the years because he was out of the country. There is no information in the record that Applicant established residency in a state other than the one he resided in before moving abroad. Thus, he is required to file state tax returns for at least tax years 2002- 2011. (Item 12)

Applicant completed DOHA 2012 interrogatories. Applicant remarked that the lien of \$5,579 (SOR 1.a) was reported by one credit bureau with a date of 2000 "well past 7 or 11 years." As to the other liens, he stated that he was working with a tax company to resolve the issue. (Item 6) He submitted a series of emails dated 2011 and 2012, which were general correspondence between Applicant and a representative of the company.

Applicant admitted that he failed to timely file his federal and state tax returns for tax years 2000 until 2011. (Item 8) During a November 2011 interview with an Office of Personnel Management (OPM) investigator, he stated that he intended to hire an attorney to resolve the issue of the tax liens. (Item 7) In April 2013, he acknowledged the untimely filings and stated that a tax company would help him rectify the "tax situation." He stated that he was advised to divert all IRS communications to the tax service. He reiterated that he was overseas and not obligated to pay taxes. (Item 8)

Applicant's submitted documentation in the form of emails does not provide evidence of resolution of any of the liens. His submission of unsigned tax forms for the tax years 2003 until 2010 does not support a conclusion that he filed the state tax returns for those years. He also submitted IRS Form 2555, Foreign Earned Income Exclusion.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁵ "The clearly consistent standard indicates that security clearance

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant failed to timely file his federal and state tax returns from 2000 until 2011, and he has yet to establish the tax returns for these years have been filed. AG ¶ 19(g) applies. The tax liens remain unpaid. His admissions and credit reports confirm these debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties since 2008 make it difficult to conclude that it occurred “so long ago.” Since the returns have yet to be filed, the obligations remain current. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant produced documentation in the form of emails from a tax preparer. He submitted unsigned tax forms that were dated March 2012. The record is not clear as to any real filing for the years in question. He also submitted IRS Form 2555, Foreign Earned Income Exclusion, which does not provide mitigation in the case. In addition, there is no record of any payments. He did not present evidence that he received financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. I find that there are no clear indications that his financial problems are being resolved and are under control. He has not met his burden of proof.

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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 49 years old. He has worked for his current employer since 2011. Applicant obtained a security clearance in 1982. He served in the military.

However, Applicant has two state tax liens totaling over \$30,000; he has two state tax liens from another state totaling over \$7,000; and a federal tax lien totaling approximately \$26,000. He failed to timely file his federal and state tax returns for tax years 2000 until 2011 on the basis that he lived and worked abroad. In March 2012, he had a tax service prepare tax forms for 2002-2003 and 2005-2010. He also had state tax returns prepared for tax years 2002 and 2005. There is no evidence that these returns were filed. There is no evidence that he has paid taxes or the tax obligations have been addressed. The liens date back to 2000. Applicant has not mitigated his case to show that he does not owe the liens nor has he presented sufficient documentation that he has addressed or resolved the delinquent debts.

Applicant failed to mitigate financial considerations security concerns. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his security clearance does not necessarily indicate anything adverse about an applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information. Clearance is denied.

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.g:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge