



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



In the matter of:)
)
) ISCR Case No. 11-14774
)
Applicant for Security Clearance)

Appearances

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

06/17/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant submitted an undated response to the SOR and requested a hearing before an administrative judge. Department Counsel amended the SOR on April 18, 2014. The case was assigned to me on April 21, 2014. Applicant answered the amended SOR on April 22, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 23, 2014, scheduling the hearing for May 14, 2014.

The hearing was convened on that date. DOHA received the hearing transcript (Tr.) on May 22, 2014.

Procedural and Evidentiary Rulings

Department Counsel's Letter to Applicant

Department Counsel sent an informational letter to Applicant on February 27, 2014. The letter is included in the record as Hearing Exhibit (HE) I.

Evidence

Government Exhibits (GE) 1 through 16 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open until June 16, 2014, for Applicant to submit additional information. He submitted documents that were marked AE G through I and admitted without objection. Department Counsel's memorandum is marked HE II.

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding the following allegation under Guideline F, financial considerations:

- 1.i. You are indebted to the Internal Revenue Service for at least \$22,000 for delinquent taxes.

Applicant did not object, and the motion was granted.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer for about four years. He seeks to retain a security clearance. He is a high school graduate. He is married for the fourth time. He has one adult child.¹

Applicant worked for a non-governmental organization from about 1986 until he retired from the organization with a pension in 2005. Except for short periods of unemployment, he has been steadily employed since then.²

Applicant has a long history of not paying his income taxes when they were due, and he has filed numerous bankruptcy petitions. The IRS filed federal tax liens against him in 1993 for \$15,038, which was released in December 2003; in 1995 for \$1,143, which was satisfied in January 2004; in March 2003 for \$8,569, which was satisfied in January 2004; and in January 2004 for \$7,227. His state filed tax liens against him in

¹ Tr. at 27-29, 54; GE 1-3.

² Tr. at 29-32; GE 1-3.

1996 for \$993; in 1999 for \$1,373; in 2000 for \$7,692, which was satisfied in 2000; in 2003 for \$8,397; in 2006 for \$1,492; in 2009 for \$771; in 2010 for \$840; and in October 2013 for \$4,914.³

Applicant did not file income tax returns for tax years 2007 and 2008 when they were due.⁴ His 2007 and 2008 forms were completed in February 2014. Applicant testified the returns were filed. The completed returns indicated that he owed \$1,967 to the IRS and \$1,485 to his state for tax year 2007; and \$3,728 to the IRS and \$2,449 to his state for tax year 2008.⁵

Applicant retained the services of a tax resolution company in September 2013 to assist him in negotiating with the IRS and his state to resolve his tax problems. In his response to the SOR, Applicant submitted a memorandum from the tax resolution company stating that he owed the IRS \$43,272 for six tax years and that he owed his state \$8,880 for two tax years. The memorandum indicated a plan that Applicant would pay the IRS \$601 per month and his state \$370 per month, starting in April 2014.⁶

Applicant disputes that he owes the IRS \$43,272. He stated that the IRS told him two years ago that he owed about \$23,000. He stated that the IRS seized his refund for tax year 2012. He also stated that he owes about \$5,000 for tax year 2013. He recently retained the services of a different tax resolution company. The company is negotiating with the IRS, and it anticipates a payment plan of \$165 to \$195 per month for 72 months. Applicant stated that he paid his state \$2,000. On May 26, 2014, he entered a payment agreement with the state to pay \$409 per month for 36 months. The balance owed to the state is \$13,100.⁷

Applicant filed Chapter 7 bankruptcy in August 1995. His debts were discharged in November 1995. He filed Chapter 13 bankruptcy in August 2000. The bankruptcy was dismissed in August 2002. Applicant filed Chapter 13 bankruptcy again in September 2003. The bankruptcy was dismissed in October 2003. He filed Chapter 13 bankruptcy in March 2006. The bankruptcy was dismissed in April 2006.⁸

Applicant filed Chapter 7 bankruptcy in January 2010. Under Schedule E, Creditors Holding Unsecured Priority Claims, he listed debts to his state and the IRS, but he listed them without an amount and noted they were “listed for notice purposes

³ Tr. at 21-22, 39-40; GE 2, 4, 7-16; AE B, D-F.

⁴ Failure to file tax returns was not alleged in the SOR. Any conduct that was not specifically alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in analyzing the “whole person.”

⁵ Tr. at 22-23; GE 2; AE H.

⁶ Tr. at 40; GE 2; AE D.

⁷ Tr. at 21, 25-26, 40-46, 65; GE 2, 4; AE H, I.

⁸ Tr. at 38; GE 5-15.

only.” Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed 17 debts totaling \$229,760. The listed debts included mortgage loan deficiencies (\$91,796 and \$91,947); car loan deficiencies (\$31,870 and \$4,052); and various other debts. He received financial counseling in conjunction with the bankruptcy. His debts were discharged in May 2010.⁹

Applicant submitted Questionnaires for National Security Positions (SF 86) in August 2010 and July 2011. Both SF 86s required him to disclose adverse financial information, including any bankruptcy petitions within the previous seven years. Applicant did not disclose his multiple bankruptcies or any other adverse financial information.¹⁰

Applicant was interviewed for his background investigation on several occasions between August 2011 and November 2011. He provided some answers to the financial questions posed by the interviewer, but he was not completely forthcoming. He stated that he did not list his 2010 bankruptcy on his SF 86 due to an oversight, and that he had not filed any other bankruptcy petitions. He did not disclose his delinquent taxes until confronted during his fifth interview. He admitted that he had a federal tax lien, but he stated that he paid the IRS, the lien was released, and he did not owe any other federal taxes.¹¹

In his response to the SOR, Applicant denied intentionally falsifying the SF 86s. He wrote: “Questionnaire Misunderstood (BK Public Record).” He finally admitted at his hearing that he intentionally did not disclose his financial history. He stated that he was afraid he would not be hired if he divulged his financial problems.¹²

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, which 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

⁹ Tr. at 21, 47-48, 55; Applicant’s response to SOR; GE 16; AE A.

¹⁰ GE 1, 3.

¹¹ GE 2.

¹² Tr. at 52-54; GE 1, 3.

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.”

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, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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 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* EO 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:

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 filed multiple bankruptcy petitions and he has unpaid state and federal taxes. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.a alleges that Applicant owes his state \$15,065 for unpaid income taxes. SOR ¶¶ 1.b and 1.c allege judgments of \$4,914 and \$840 awarded to the state against Applicant for unpaid taxes. That information is already addressed under SOR ¶ 1.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, SOR ¶¶ 1.b and 1.c are concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. 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 owes a large amount of state and federal taxes. While he has taken some steps in addressing his tax problems, he is still far from a state of financial stability, as indicated by his owing \$5,000 for his 2013 federal taxes.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The first part of AG ¶ 20(c) is applicable because Applicant received financial counseling as a requirement of his bankruptcy. There are no other applicable mitigating conditions. I find that financial concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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.

Applicant intentionally provided false information about his bankruptcies on his 2010 and 2011 SF 86s. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not correct his false SF 86s during his multiple interviews. Instead, he continued to lie about his finances and the false answers on the SF 86s. He receives some credit in mitigation for finally admitting at the hearing that he intentionally provided false answers on the SF 86s. However, that is insufficient to mitigate the considerable doubts about Applicant's honesty, reliability, trustworthiness, and judgment.

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

Applicant has had financial problems for decades. He is a tax scofflaw, and he cannot be trusted to tell the truth unless it is in his own self-interest.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the personal conduct and 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: | Against Applicant |
| Subparagraph 1.a: | Against Applicant |
| Subparagraphs 1.b-1.c: | For Applicant |
| Subparagraphs 1.d-1.i: | Against Applicant |
| Paragraph 2, Guideline E: | Against Applicant |
| Subparagraphs 2.a-2.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge