



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



In the matter of:)	
)	
)	ISCR Case No. 12-00809
)	
)	
Applicant for Security Clearance)	

Appearances

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

05/13/2013

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated substantial delinquent debts over the past seven years, including unpaid federal income taxes of about \$73,000. He provided credible evidence that he paid one debt. However, he failed to provide sufficient evidence to document the resolution of the remaining debts or to demonstrate reliability or good judgment in addressing his financial obligations. Resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of Case

Applicant submitted a security clearance application (SF 86) on August 26, 2010. On November 23, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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 January 23, 2013 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on March 7, 2013. A complete copy of the File of Relevant Material (FORM), containing ten Items, was provided to Applicant on March 7, 2013. He received it on March 13, 2013, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not submit any additional information. I received the case assignment on April 25, 2013.

Findings of Fact

In his Answer, Applicant agreed that he was responsible for the debts listed in Paragraphs 1.a and 1.c of the SOR, and was making monthly payments. He agreed he owed the tax debt listed in Paragraph 1.h, and was negotiating a resolution with the federal government. He denied the debts listed in Paragraphs 1.b, 1.d, 1.e, 1.f, and 1.g, stating that he either paid them or was paying them. (Item 4.)

Applicant is 54 years old. He has been employed by a defense contractor as a software developer since April 2010. He and his wife were married in 1981, and have two adult children. He was born on a U.S. Navy base while his father served in the Navy. From January 1996 to April 2010, he owned and operated a software company. Between April 2003 and August 2006 of those years, he was also employed with a private company. (Item 5.)

In his August 2010 SF 86, Applicant disclosed seven delinquent debts totaling \$72,532, and a federal income tax debt for an amount not listed. He stated that he was making arrangements to pay some debts or was paying on arrangements he negotiated. He indicated that he had good credit until April 2009, when the business he owned and the company he worked for experienced a decline in the housing market, resulting in his loss of income. At some point his wife was unemployed. (Item 5.)

In September 2010 a security investigator interviewed Applicant about background issues and unfiled tax returns. Applicant admitted that he did not file income tax returns for his software business for 12 years, resulting in unpaid income taxes for monies earned through the business. He said he paid taxes on his outside employment income. He hired a company to resolve his tax liabilities with the Internal Revenue Service, but did not know when he would receive a settlement offer. At this time, the company said he owed about \$50,000 in unpaid income taxes, but could settle the debt for \$25,000. (Item 6.)

On October 5, 2012, Applicant completed and submitted a set of Interrogatories inquiring into the status of five delinquent debts, an income tax lien for 1993, and income tax liabilities for tax years 2006 through 2011.¹ He indicated that he resolved or was resolving the five debts, and had paid the 1993 tax lien. He was in the process of resolving the unpaid income taxes. (Item 7.)

In his January 2013 Answer, Applicant elaborated on the cause of his financial difficulties, stating that when the economy started collapsing his creditors lowered his credit limits and demanded payment on his debts. That forced him to use retirement funds and cash out insurance policies to pay his bills. He decided not to file for bankruptcy, but instead chose to slowly pay his bills. (Item 4.)

Based on credit bureau reports (CBR), dated February 2013, August 2012, and September 2010, the SOR alleged six delinquent debts totaling \$54,173. It also alleged one unpaid federal income tax lien for \$13,731 and unpaid federal income taxes for approximately \$50,000. The total of all delinquent debts alleged was \$117,904. The non-tax debts began accumulating in April 2009. The status of each SOR-listed debt is as follows:

1. (¶ 1.a) The \$5,689 debt is owed to a medical creditor. Applicant submitted a payment agreement, dated July 6, 2010, in which he agreed to make monthly payments of \$225. (Item 6 at 147.) He noted that the balance, as of October 2012, increased to \$12,409 (Item 6 at 137.) He did not submit proof of his payments or the balance. This debt is unresolved.

2. (¶ 1.b) The \$8,496 debt is owed to a national credit card company. It was settled and paid on October 2, 2012. Applicant made monthly payments on the debt. (Item 6 at 143.) This debt is resolved.

3. (¶ 1.c) The \$6,585 debt is owed to a national credit card company. The current balance is \$9,127. Applicant has been making monthly payments on the account since December 2009. He has paid \$6,800 as of October 2012. However, the balance on this debt is increasing, not decreasing. (Item 6 at 138.) It is not being resolved.

4. (¶ 1.d) The \$6,500 debt is owed to furniture credit card company. Applicant asserted that he has been making monthly payments of \$250 on the account and that the balance is now \$1,416. (Item 4.) He did not provide documents to confirm his assertion. This debt is unresolved.

5. (¶ 1.e) The \$14,602 debt is owed to a department store's credit card company. On April 24, 2012, he executed a Stipulated Agreement to make monthly payments of \$280 on the debt's balance of \$10,079. (Item 6 at 145.) According to his Answer, the

¹ During his interview in September 2010, Applicant indicated that he had not filed or paid income taxes for monies received from his business from 1996 to 2010.

balance is \$8,927. (Item 4.) He did not provide documents to verify his assertion. This debt is unresolved.

6. (¶ 1.f) The \$12,301 debt is owed to an automobile company. He asserted in his Answer that after he made monthly payments on the account, the company forgave the balance of the debt. (Item 4.) He submitted a page from a CBR that stated in the Comments section: "Charged off account. Paying under a partial payment agreement." (Item 6 at 142.) He did not provide persuasive proof, confirming his statement that the debt was paid or settled. This debt is unresolved.

7. (¶ 1.g) The \$13,731 federal tax lien was filed in July 1993. In his Answer, Applicant asserted the lien was paid in January 1996 through a home loan. (Item 4.) He did not provide any documentation verifying that he was released from the lien. This tax debt is unresolved.

8. (¶ 1.h) The \$50,000 debt for unpaid income taxes for 12 years remains unresolved. Applicant stated that the company he hired to resolve the issues went bankrupt and that he is resolving the matter.²

Applicant submitted his budget as of October 2010. His net monthly family income was \$7,800, and expenses were \$2,780. He has scheduled monthly payments on a \$331,920 mortgage and an \$80,000 second mortgage. He also has scheduled payments on eight debts, including six SOR-listed debts. The balance on those eight debts totaled \$51,238. His total monthly payment on all ten debts is \$4,198. He has \$822 remaining at the end of the month. The budget does not include payments on his federal income taxes owed. He did not submit evidence of participation in credit or financial counseling.

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept.

²The record does not contain definitive information as to the specific tax years, between 1996 and 2010, for which Applicant failed to file income tax returns or pay taxes while operating his business.

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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

Since approximately 1993, Applicant has been unable or unwilling to satisfy delinquent debts and pay federal income taxes, as alleged in the SOR and totaling \$117,904. Between 1996 and 2010, he willfully failed to file annual federal income tax returns and pay taxes for 12 years. The evidence raises all four security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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.

Applicant's delinquent non-tax debts began accumulating in April 2009 and continue to date. His income tax problems began in 1993 and continue to date. He resolved one debt in October 2010. Although he presented information that he has been paying on another debt since December 2009, the balance on that debt has increased and not decreased over the years. The other SOR-listed debts also remain unresolved to date. His reliability and trustworthiness in managing his financial obligations remain a concern. The evidence does not support the application of AG ¶ 20(a).

To the extent that conditions beyond Applicant's control contributed to his situation, he failed to provide documentation that he began to adequately and responsibly address the majority of the delinquent debts until 2012. His large federal tax liability remains unaddressed. AG ¶ 20(b) has limited application.

Applicant did not provide evidence that he participated in credit or other financial counseling. He failed to submit persuasive proof that he is making payments in accordance with the payment plans he claimed he negotiated or that his 1993 lien was paid and released as stated. His \$50,000 federal tax liability is not resolved. There is insufficient evidence to establish clear indications that his delinquent debts are being resolved or are under control. AG ¶ 20(c) is inapplicable.

Applicant submitted proof that he made a good-faith effort to pay one delinquent debt. AG ¶ 20(d) applies only to the debt listed in SOR ¶ 1.b.

Applicant did not dispute the legitimacy of any of his delinquent debts. Therefore, AG ¶ 20(e) has no 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 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 54-year-old employed by a defense contractor since April 2010. His financial problems are recent, significant, and serious. For approximately 12 years, between 1996 and 2010, he voluntarily decided not to file annual federal income tax returns, resulting in his failure to pay owed taxes on his business income. Prior to that tax problem, the Internal Revenue Service filed a lien for unpaid taxes in 1993.

In August 2010, Applicant disclosed in his SF 86 six delinquent debts and two federal income tax problems. In September 2010 he discussed his debts and income tax problems with a security investigator. He told the investigator that a company he hired was addressing his large tax debt. In October 2012 he completed financial Interrogatories, stating that he was resolving several delinquent debts, had resolved the 1993 tax lien, and was trying to resolve the large unpaid income tax bill. He provided some information regarding the debts he said were resolved or being resolved. He did not submit documents verifying balances or payments on the debts. In his January 2013 Answer he essentially reiterated that he had resolved or was resolving seven of the eight SOR-listed debts, and was working on the tax bill. He did not provide additional information pertinent to those resolutions. He did not provide evidence that he has filed tax returns for the years 1996 to 2010. In March 2013 the Government notified him that the information he had submitted to date, regarding the resolution of his delinquent debts, was insufficient. Although given additional time to produce evidence relevant to the Government's contentions, he did not respond. His inaction and failure to aggressively address his delinquent debts over the past several years is concerning. However, his decision to ignore his responsibility to file returns and pay taxes for 12 years is inexcusable, and raises significant questions about his reliability and judgment.

Overall, the record evidence leaves me with serious doubts as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.h:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge