



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



In the matter of:)	
)	
)	ISCR Case No. 12-02058
)	
Applicant for Security Clearance)	

Appearances

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

03/25/2014

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and written record in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

On May 24, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On August 22, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOD acted 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated September 18, 2013, and on December 6, 2013, he requested that his case be determined on the written

record. The File of Relevant Material (FORM), compiled by the Government, is dated January 17, 2014. The FORM lists documents identified as Items 1 through 11. By letter dated January 22, 2014, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on January 30, 2014. His response was due on March 1, 2014. Applicant timely submitted a response to the FORM. On March 11, 2014, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Ex. A and entered it in the record without objection. I marked the Government's memorandum of March 5, 2014, stating that it did not object to Applicant's submissions in response to the FORM, as Hearing Exhibit (HE) 1.

Findings of Fact

The SOR contains nine allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his answer to the SOR, Applicant admitted all nine allegations, with explanation. Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and the Applicant. In addition to Applicant's response to the FORM, the record evidence includes Applicant's May 24, 2011 e-QIP; his responses to DOHA interrogatories;¹ his credit reports of June 2011 and May 2013; a report of an interview Applicant had with another government agency in January 2007; and his declaration for federal employment, dated March 17, 2005, and May 13, 2005. (See Items 5 through 11; Item A.)

Applicant is 41 years old and a high school graduate. In 1997 he married, and he and his wife divorced in 2001. He remains single. On his e-QIP, he listed his parents and a half-brother as his relatives. (Item 5.)

Applicant has worked for his present employer, a government contractor, since September 2008. In July 2011, he told an authorized investigator from the U.S. Office of Personnel Management (OPM) that he was awarded a security clearance from the DOD in 1997 or 1998. He also stated that another government agency awarded him access to confidential information in 2006. (Item 5; Item 6.)

In March 2005, Applicant filed a Declaration for Federal Employment (Optional Form 306). On the form he reported that he had not filed income tax returns or paid his income taxes for three years. He estimated that he owed approximately \$3,000. He further stated, "In process of making arrangements for payment with IRS" [Internal Revenue Service]. (Item 11.)

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on July 12, 2011. On June 21, 2013, in response to DOHA interrogatories, Applicant signed a notarized statement in which he made no changes to the investigator's summary of his interview and adopted the summary as accurately reflecting his interview. (Item 6.)

Section 26c on the e-QIP Applicant completed in May 2011 asks: “Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?” Applicant answered “Yes” to the question posed at Section 26c. He explained that he had made arrangements with the IRS to pay a tax lien. (Item 5.)

The record reflects that Applicant filed his 2005 Federal income tax return in November 2006. In December 2006, Applicant established an installment payment plan with the IRS to pay his 2000, 2002, and 2005 delinquent Federal income taxes, interest, and penalties. He made six payments according to the plan in 2007, and then stopped. The installment agreement was subsequently terminated. (Item 6.)

When he was interviewed by an OPM investigator in July 2011, Applicant acknowledged that he had not filed or paid Federal, state, or other taxes as required by law or ordinance. He could not recall which years he failed to file returns or pay taxes due. He reported a \$538 state tax lien in 1996, a \$23,269 Federal tax lien in 2008, and a \$3,216 Federal tax lien in 2010. Applicant told the investigator that he did not file his Federal and state tax returns because “he did not get around to fil[ing] them.” He also explained that he had a payment plan with his state of residence to pay delinquent income taxes but stopped making payments when he could no longer afford to do so.² (Item 6.)

Applicant reported that in June 2010, he established an installment agreement with the IRS to pay his delinquent Federal income taxes for tax years 2000, 2002, 2005, 2006, 2007, and 2009. The record reflects that Applicant made payments under the payment agreement from June 2010 through July 2011. In June 2011, he established an installment agreement with the IRS to pay his 2010 delinquent Federal income taxes. In August 2011, the IRS cancelled Applicant’s payment agreement when it determined that he had not timely filed his 2010 federal income tax return. (Item 6.)

Applicant reported that he was able to make a new agreement with the IRS to pay the delinquent taxes he previously owed and to pay the additional delinquency on his 2010 Federal income taxes. He told the investigator that he believed his Federal tax delinquencies totaled \$47,000 to \$48,000, and he reported that his payments on the installment plans totaled \$400 each month.³ (Ex. 6; Ex. A.)

The record reflects that Applicant made payments under the new agreement from September 2011 until May 2012. It does not appear from documentation in the record that Applicant made payments under the plan between May 2012 and February 2013. He made payments in March, April, and May of 2013. It is not clear from the record that he made any payments thereafter. (Item 6.)

² The SOR does not allege that Applicant failed to timely file state income tax returns or to pay income taxes, as required, to his state of residence. Accordingly, I will not consider this information in my Guideline F analysis. However, I will consider it in my whole-person analysis.

³ The tax delinquencies alleged on the SOR total approximately \$38,163. (Item 1.)

The SOR alleges at ¶ 1.a. that Applicant failed to timely file his Federal income tax returns, as required, for at least tax years 2000 to 2008. In his answer to the SOR, Applicant admitted the allegation and stated that he had filed his delinquent returns and had a payment plan in place with the IRS. (Item 1; Item 4.)

The SOR alleges at ¶ 1.b. that Applicant is indebted to the IRS for approximately \$3,031 in unpaid income taxes, interest, and penalties for tax year 2000. The record reflects that Applicant filed his 2000 Federal income tax return in December 2004. (Item 1; Item 6.)

The SOR alleges at ¶ 1.c. that Applicant owes the IRS approximately \$1,928 in unpaid income taxes, interest, and penalties for tax year 2002. The record evidence establishes that Applicant filed his 2002 Federal income tax return in December 2006. (Item 1; Item 6.)

The SOR alleges at ¶ 1.d. that Applicant owes the IRS approximately \$17,050 in unpaid income taxes, interest, and penalties for tax year 2005. The record evidence establishes that Applicant filed his 2005 Federal income tax return in October 2006. (Item 1; Item 6; Item A.)

The SOR alleges at ¶ 1.e. that Applicant owes the IRS approximately \$8,135 in unpaid income taxes, interest, and penalties for tax year 2006. The record evidence establishes that Applicant filed his 2006 Federal income tax return in June 2010. (Item 1; Item 6.)

The SOR alleges at ¶ 1.f. that Applicant owes the IRS approximately \$4,586 in unpaid income taxes, interest, and penalties for tax year 2007. The record evidence establishes that Applicant filed his 2007 Federal income tax return in November 2008. (Item 1; Item 6.)

The SOR alleges at ¶ 1.g. that Applicant owes the IRS approximately \$2,810 in unpaid income taxes, interest, and penalties for tax year 2009. The record evidence establishes that Applicant filed his 2009 Federal income tax return in May 2010. (Item 1; Item 6.)

The SOR alleges at ¶ 1.h. that Applicant owes the IRS approximately \$619 in unpaid Federal taxes, interest, and penalties for tax year 2010. The record evidence establishes that Applicant filed his 2010 Federal income tax return in May 2011. (Item 1; Item 6; Item A.)

The SOR alleges at ¶ 1.i. that Applicant owes a creditor \$91 on a medical account in collection status, and the account remains unresolved. In his answer to the SOR, Applicant stated that he believed the debt had been satisfied. However, he failed to provide documentation to corroborate payment. (Item 1; Item 4.)

Applicant provided a personal financial statement in response to DOD interrogatories. The personal financial statement showed his net monthly income from employment was \$3,324. (Item 6.)

Applicant listed the following monthly living expenses: rent, \$1,058; groceries, \$400; clothing, \$100; utilities, \$200; car expenses (insurance, repairs, gasoline), \$870; and miscellaneous, \$388. Applicant's total monthly expenses total \$3,016. (Item 6.)

Additionally, Applicant listed payments on two debts: \$430 to an automobile creditor and \$388 to the IRS. Applicant's monthly debt payments total \$818. Applicant's monthly expenses and monthly debt payments exceed his monthly income by \$510. Applicant told the authorized investigator that he had not received financial credit counseling. (Item 6.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply 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, the administrative judge applies these 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, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 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.

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.

Applicant has significant delinquent Federal income tax debt. Additionally, he failed to timely file his Federal income tax returns, as required, for at least tax years 2000 through 2008. The guideline notes several conditions that could raise security concerns under the facts of this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Under AG ¶ 19(g), “failure to

file annual Federal, state, or local income tax returns as required” can also be a matter of security concern.

Applicant has a history of failing to file, as required, his annual Federal income tax returns. Additionally, while he has established payment plans to address his Federal tax delinquencies, he has failed to follow his payment plans consistently and reliably. He acknowledged that he often did not “get around” to filing his Federal income tax returns. His personal financial statement suggests that he may be financially overextended, making it difficult for him to meet his monthly living expenses and make the required payments under his payment agreement with the IRS.

The Government did not allege, nor did the evidence establish, that Applicant’s failure to file his Federal income tax returns was willful.⁴ However, his habitual failure to file his Federal income tax returns does raise Guideline F security concerns about his willingness to abide by rules and regulations that bind citizens and residents who earn income in the United States. Applicant’s habitual unwillingness to follow rules for filing income tax returns in turn raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. I conclude that AG ¶¶ 19(a), 19(c), and 19(g) apply to the facts of Applicant’s case.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial behavior. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s failure to timely file his Federal income tax returns, as required. Unresolved financial issues might be mitigated if 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.” (AG ¶ 20(a)) Additionally, unresolved financial behavior might be mitigated if “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.” (AG ¶ 20(b)) Still another mitigating circumstance that might be applicable includes evidence that “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” (AG ¶ 20(c)).

Applicant has a history of failing to file his Federal income tax returns, as required, for at least tax years 2000 through 2008. The record reflects that he has had stable employment with one government contractor since 2008. His Federal income tax delinquencies are ongoing, and the record does not indicate that his failure to file his Federal income tax returns in a timely manner, as required, was a consequence of a situation beyond his control. Moreover, Applicant has not sought financial credit counseling, and his personal financial statement suggests he may be living beyond his means.

⁴ See 26 U.S.C ¶ 7203.

Applicant stated that he had paid the debt alleged at SOR ¶ 1.i., but he failed to provide documentation to corroborate payment. Moreover, Applicant has made several efforts to establish and follow payment plans with the IRS, but at this time, the financial delinquencies associated with the IRS debts alleged at SOR ¶¶ 1.b. through 1.h. remain unresolved.

Applicant has habitually ignored some of the IRS filing rules and regulations for many years. It is too soon to tell if his failure to timely file his Federal income tax returns and to resolve his Federal tax delinquencies will be mitigated by positive, definite, and consistent action. I conclude, therefore, that AG ¶¶ 20(a), 20(b), and 20(c) do not fully apply in mitigation to the facts of Applicant's case.

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. Applicant is a mature adult of 41 years. His failure to timely file his Federal and state income tax returns is long-standing habitual behavior. While he has established payment agreements with the IRS to resolve his tax delinquencies, he has not followed them consistently, making it necessary for him to reestablish the plans after he failed to make his payments as agreed. His financial situation appears precarious, and, according to this personal financial statement, he spends more money than he earns each month.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment and reliability as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate security concerns arising under Guideline F, Financial Considerations.

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. through 1.i.: 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.

Joan Caton Anthony
Administrative Judge