



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



In the matter of:)	
)	
)	ISCR Case No. 12-04144
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

08/13/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On February 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct)¹. 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 June 9, 2014.² Applicant received the FORM on June 18, 2014. He did not submit additional information for the record. I received the case assignment

¹The Government acknowledged that it had not met its burden for personal conduct concerns or falsification of relevant information. (Government Brief)

²The Government submitted nine items in support of its case.

on August 7, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted allegations under Guideline F, ¶¶ 1.d-1.h and denied allegations ¶ 1.a-1.c, and 1.i. He denied the allegation under Guideline E. (Item 3)

Applicant is 54 years old. He is an engineer with a defense contractor. He attended college, and in 1999 obtained a certificate. Applicant is married. (Item 4) Applicant has been employed with his current employer since July 2003. He has held a security clearance since approximately 1984. (Items 9 and 3) On August 4, 2011, he completed a security clearance application. (Item 4)

The SOR alleges nine delinquent debts totaling approximately \$86,155.00. These include federal tax liens, a state franchise tax, and collection accounts. (Item 1) Credit reports confirm the debts. (Items 6, 7, and 8)

Applicant explained in his Answer that his financial issues began in approximately 2010 when his wife lost her employment, and their income was drastically reduced. At that time, their combined earnings were about \$200,000. In addition, he explained that the IRS issues arose from a withdrawal from an IRA (401(k) and resulting tax amounts that he did not have sufficient funds to pay. (Item 3) He denies living beyond his means. He indicated that he never failed to pay or file taxes. Once the IRS notified him by mail of tax liens, he began a payment plan. (Items 5 and 9) Applicant prioritized his debts and has a payment plan for his IRS taxes.(Item 5) His second priority is his home mortgage account, and finally, his personal credit card debts.

In 2011, during an investigative interview, Applicant explained that there have been a multitude of unfortunate events that led to the present financial difficulties. His wife became deathly ill on a 2004 business trip, which involved additional costs for him. He traveled to see her while she was in the hospital for several months. In addition, she could not work and also incurred about \$20,000 in surgery costs. Moreover, in 2007, his dog bit the mailman and Applicant incurred expenses as a result of a lawsuit. (Item 5) Applicant also disclosed that he was past due on his home mortgage loan in 2010. (Item 3) In 2013, he obtained a home loan modification.

The record reflects that Applicant has had various payment plans with the IRS, and this is corroborated by the IRS account transcripts and an incident history report. (Items 5 and 9) Applicant notes that his wages were previously garnished by the IRS for approximately \$400 a month, and at one point approximately \$866.96 monthly according to a February 24, 2011 JPAS incident report. (Item 9) He is currently paying the IRS \$1,000 a month directly. The tax transcripts substantiate his claim.

As to July 2011 federal tax lien, Applicant denied that he owed this amount. The July 2011 tax lien (SOR 1.a) in the amount of \$5,163 he claims is paid. This appears to be for tax year 2007 and the lien is for the tax year 2010. The 2007 tax year balance is zero. However, Applicant still owes for tax years 2008 to 2010 as of November 2013 in the amount of \$18,778.32. (Item 5)

Applicant is in repayment status for the September 2011 federal tax lien of \$35,249. (SOR 1.b) He submitted documentation that as of February 2014, the balance is about \$8,200. Applicant states that the IRS liens will be paid in full by January 2015. (Item 3) It is not clear from the record what the amount is as of the current date.

Applicant denied the \$16,000 credit card collection account in SOR 1.c because he has paid approximately \$4,000 of the debt. He notes that he pays \$200 a month. There is nothing in the record to support the noted payments. A 2013 pay stub shows a deduction of \$200, but that is listed as a tax levy.

Applicant explained that he is in the process of making payment arrangements to satisfy the delinquent debts for the SOR allegations 1.d through 1.h. (Item 3) However, he did not provide any documentation or detailed information in response to the FORM to substantiate his efforts.

As to the \$3,925 in SOR 1.i for a tax debt to a state franchise board, Applicant denied the debt, stating that it was paid in February. He submitted summaries of his state personal income tax account. The documents show that as of October 31, 2013, Applicant carries a zero balance for tax years 2006 to 2008, 2011, and 2012. He has made payments, but he still owes \$3,925 for tax years 2005, 2009, and 2010. His employer received a wage garnishment order from the state board in the amount of \$5,191.46 for tax years 2009 to 2010. (Item 9)

Applicant's monthly net income is approximately \$5,526. His wife is still unemployed. He has a monthly net remainder of about \$64. Applicant's 2013 personal financial statement indicates payment to IRS and household expenses, but no other SOR debts. (Item 5)

Applicant noted in his answer to DOHA interrogatories that most of his money is going to pay the IRS debts, and he cannot pay his other delinquent debts at this time. (Item 5) He intends to pay all his delinquent debts when the IRS debt is paid, or when his wife finds employment.

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.

The 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. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

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." ⁶ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. ⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

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. "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Applicant's admissions and credit reports establish his delinquent debts and federal tax liens. 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 make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt that he plans to address after he completes payments for his tax liens and his state franchise tax. He has not provided sufficient documentation that he has paid \$4,000 on a collection account. He acknowledges that he has no money to pay the other credit collection accounts. The delinquent obligations remain. 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.

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) partially applies. Applicant provided information concerning his wife's unemployment and tax problem that caused financial difficulties beyond his control. He has been addressing the IRS tax liens and has acted responsibly in that matter. However, he still has a large unresolved amount of debt that he is not able to pay at this time. His wife is still unemployed. In response to the FORM, Applicant did not present new information presenting more documentation or an update on the status of his debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant has been paying his tax debts. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. He is making efforts to address his delinquent debts. However, given his wife's unemployment situation, I find that there are not clear indications that his financial problems are being resolved and are under control.

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 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. 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 54 years old. He has worked for his current employer since 2003. He has held a security clearance since 1984. He has worked in the field for many years. He has been making payments to the IRS. He wants to pay his debts that did occur due to circumstances beyond his control. However, he needs more time to show that his debts are under control. This conclusion, however, does not preclude Applicant from demonstrating the requisite financial rehabilitation and reform in the future.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance or credibility. In relying on the written record, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and fully mitigate the financial 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 Applicant's character or loyalty. It

means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information.

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.i:	Against Applicant
Paragraph 2, Guideline E:	FOR 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