



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



In the matter of:)
)
) ISCR Case No. 12-03278
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July 24, 2015, 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 (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).¹

Applicant answered the SOR on August 18, 2015. The case was assigned to me on January 18, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

notice of hearing on February 21, 2017, and the hearing was convened as scheduled on March 14, 2017. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE H through J, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 22, 2017.

Procedural Issue

Department Counsel moved to amend the SOR to add an allegation. The new allegation is stated as: “You failed to file your 2004 through 2014 federal and state tax returns as it was your duty to do.” Applicant admitted the allegation and did not object to the addition. The amendment is granted and the new allegation will be reflected in my formal findings as ¶ 1.m.²

Findings of Fact

Applicant admitted all the SOR allegations with extensive explanations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 61-year-old employee of a defense contractor. He has worked for defense contractors since 2009. He was unemployed for about seven months from 2015 into 2016. He has a master’s degree. He served in the Navy for 20 years, retiring honorably in 1994. He is divorced from his first wife and separated from his second wife in 2015. He has 11 children. His first wife receives one half of his military retirement pension. His children are all adults and he has no child support obligations.³

The SOR alleges three delinquent medical debts (\$112, \$109; \$49; SOR ¶¶ 1.a – 1.c); a state tax lien (\$7,780; SOR ¶ 1.d); a federal tax lien (\$167,000; SOR ¶ 1.e); an unpaid judgment (\$97,610; SOR ¶ 1.f); a collection account for a second mortgage (\$111,300; SOR ¶ 1.g); five collection or charged-off consumer accounts (\$394; \$500; \$263; \$82; \$1,455; SOR ¶¶ 1.h -1.i); and his failure to file federal and state income tax returns for years 2004 through 2014. The tax liens, unpaid judgment and debts total \$386,654. The liens, judgment, and debts were listed in credit reports from October 2011, April 2015, and February 2016.⁴

Applicant attributed his financial difficulties to his family’s decision to adopt three children in 2004, and losing his job shortly thereafter. He expected that the total cost to adopt a child from Russia would be approximately \$20,000. Instead of adopting one

² Tr. at 68-70.

³ Tr. at 43, 50, 55-56; GE 1.

⁴ GE 3-5.

child, they decided to adopt three Russian children. The total cost of doing so was approximately \$100,000. In order to pay for the adoption costs, Applicant used the funds he earmarked to pay his federal taxes resulting in his trouble paying his federal and state tax obligations. At the time, he was a contractor employee making a yearly income of about \$250,000. He received a 1099-MISC rather than a W-2 tax form and was required to file quarterly tax returns and submit quarterly estimated tax payments. Beginning in 2004, he stopped filing quarterly returns and did not make the required quarterly tax payments. He explained that he stopped making the payments because his company lost the contract he was working on and he became unemployed. His federal tax liability continued to grow and by 2011 it was approximately \$167,000. The IRS filed a federal tax lien against him. Earlier in 2010, state A filed a tax lien in the amount of \$7,780. He admitted not filing federal or state tax returns from 2004 to 2014. Through a series of moves and different jobs he has been unable to pay down his tax liability or the other SOR debts.⁵

The status of the SOR-related allegations is as follows:

SOR ¶¶ 1.a - 1.c (three medical debts).

Applicant admitted all debts. He claims to have investigated all three debts and was unable to identify the creditor or collection service. He failed to provide documentation of his efforts. The debts remain unpaid and are not resolved.⁶

SOR ¶ 1.d (state tax lien).

Applicant provided documentation showing that he satisfied the state tax lien (\$7,780) in July 2015. However, he also admitted that he continues to owe state A approximately \$85,000 in back taxes for other tax years. He provided documentation showing that he made two \$1,000 payments in February and March 2017 toward the existing state tax debt. He also owes state B about \$26,000 in state tax debt.⁷ He also claims to have entered into a formal agreement with state A to pay the remaining tax debt, but he failed to produce that documentation. He provided no proof of payment toward state B's tax debt. Even though substantial state tax debt for two different states are still owed, Applicant did resolve the state tax lien alleged in the SOR.⁸

⁵ Tr. at 18-19, 44-45, 47, 68-69; AE A, B, G.

⁶ GE 3-5; AE B.

⁷ Because the recently admitted \$85,000 and \$26,000 state tax debts were not alleged in the SOR, I will only consider that evidence as it relates to Applicant's credibility, the application of mitigating conditions, and the whole-person factors. GE 3-5; AE B.

⁸ Tr. at 22-23, 39, 59, 74; answer; AE B, D, J.

SOR ¶ 1.e (federal tax lien).

Applicant claims that in 2013, he hired a private tax service (TS) to negotiate a solution with the IRS concerning his federal tax problem. He further claims the TS filed all his delinquent federal and state tax returns in 2014. He also claims that TS contacted the IRS about working out a settlement. He last heard from TS in 2015. He estimates that his current federal tax liability is between \$600,000 and \$800,000. He failed to provide documentation of his showing his contractual relationship with the TS and he failed to provide documentation showing the TS's correspondence with the IRS on his behalf. This debt is unresolved.⁹

SOR ¶ 1.f (judgment).

Applicant admitted that his former employer obtained a judgment against him because he breached an employment contract. Applicant does not feel he should have to pay because he worked for the company again after the judgment and believes his contributions to the company led to an award of a \$30 million contract for the company. He has not made any payments on this \$96,000 judgment and does not intend to. This debt is unresolved.¹⁰

SOR ¶ 1.g (collection account on a second mortgage).

Applicant admitted this debt. He believed this debt was satisfied when his home was foreclosed in 2009. He also believed he received an IRS Form 1099C showing a cancellation of the debt. He failed to produce any documentation supporting these assertions. This debt is unresolved.¹¹

SOR ¶¶ 1.h – 1.l (three collection and two charged-off accounts).

Applicant admitted all five debts, but claims either payment or staleness makes the debts no longer an issue. He failed to provide any supporting documentation. These debts are unresolved.¹²

SOR ¶ 1.m (failure to file federal and state tax returns from 2004 to 2014).

Applicant admitted that he failed to file his federal and state tax returns for the period indicated. He claims that in 2014 the TS filed both sets of returns, but he failed to supply documentation corroborating his assertions. His federal and state tax return issues remain unresolved.¹³

⁹ Tr. at 19, 21-22, 49, 64, 83; answer; AE A, B.

¹⁰ Tr. at 19-20; answer; AE A, B.

¹¹ Tr. at 20; answer; AE A, B.

¹² AE B.

¹³ Tr. at 21-22, 68, 70; answer; AE A, G

Character Evidence.

Applicant presented recommendation letters from five colleagues. Each believe, for various reasons, that Applicant should retain his clearance.¹⁴

Current Finances.

Applicant testified that his current income is \$120,000 annually. His “take home” pay is approximately \$7,000 monthly. He presented documentation that he will receive 10 percent of the sales proceeds of a smart phone repair business. The current CEO of the company believes the company could garner between \$7 million and \$10 million should it sell in one to two years.¹⁵

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 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion to obtain a favorable security decision.”

¹⁴ AE C.

¹⁵ Tr. at 86; AE I.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has delinquent debts that remain unpaid or unresolved. He also failed to file his federal and state tax returns for 10 years. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are recent and multiple, and his inaction in addressing any of the debts, other than the state tax lien, shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's unemployment was a circumstance beyond his control. However, deciding to adopt three children from Russia was a considered decision. Other than paying a state tax lien, Applicant has failed to provide documentation showing that he addressed the larger debts, the federal tax lien, or the judgment. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling. Given the unpaid status of all but one debt, Applicant's financial problems are not under control. Although he resolved one state tax lien, his huge federal tax debt remains. The remainder of his debts are unresolved with no established repayment plan. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶¶ 20(c) and 20(d) partially apply. Applicant failed to document any disputes. AG ¶ 20(e) does not apply. He claims to have filed his federal and state tax returns, ten years late in some cases, but he failed to support this claim with documentation. AG ¶ 20(g) does not apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, his federal contractor service, the letters of recommendation, and the circumstances by which he became indebted. I considered his potential profit from selling his interest in a smart phone repair business. I also considered that he satisfied a state tax lien. However, I also considered that he has made little effort to resolve his remaining debt. He also has federal and state tax debt, his home was foreclosed, and he has a large unsatisfied judgment against him. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraphs: 1.a – 1.c:	Against Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs: 1.e – 1.m:	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.

Robert E. Coacher
Administrative Judge