



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



In the matter of:

)  
)  
)  
)  
)  
)

ISCR Case No. 12-04481

Applicant for Security Clearance

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

06/17/2015

**Decision**

MASON, Paul J., Administrative Judge:

Applicant made affirmative efforts to deal with some of his delinquent debts and one of his tax liens. However, he presented essentially no evidence to support his testimony of action taken to settle the other federal tax lien that was filed in 2011. Security concerns under the guideline for financial considerations have not been mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on December 5, 2011. GE 3, signed by Applicant on November 13, 2013, contains Applicant's personal financial statement (PFS)

regarding earnings and expenses, and his response to federal tax liens and other debts listed in the SOR.

On June 23, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F). The action was taken pursuant to 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was signed and notarized on July 7, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 6, 2015, for a hearing on February 23, 2015. The hearing was held as scheduled. The Government's five exhibits (GE 1-5) and Applicant's 11 exhibits (AE A-K) were admitted into evidence without objection.<sup>1</sup> The transcript (Tr.) was received on March 3, 2015, and the record closed the same day.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all financial allegations. He indicated the federal tax lien at SOR 1.a was in a hold status while an offer in compromise was negotiated. He disagreed with the federal tax lien amount posted in SOR 1.b because a major portion of the lien represents penalties and interest. The total amount of the tax liens is \$141,831. He stated he forgot about SOR 1.c, but was making payments. He claimed the accounts at SOR 1.d and 1.e were the same account. He complained that he had paid the account at SOR 1.f several times, and had payment agreements and payments. The total delinquent amount of the commercial accounts is \$5,887.

Applicant is 45 years old and has been married since December 2008. He has a seven-year-old son. According to his December 2011 e-QIP, he received college credits from a university between September 1988 and July 1993. He attended the same university from May 1995 to July 1995, and supposedly received a degree in December 1995. He was interviewed in February 2012 and acknowledged that he did not receive a degree.<sup>2</sup>

---

<sup>1</sup> AE L is relabeled AE K.

<sup>2</sup> During Applicant's OPM interview on February 8, 2012, the investigator informed Applicant that no bachelor's degree was on file with the university. Applicant replied that he thought he had a degree, but verified with the university that he did not. He then explained that he changed his degree from a bachelor's of art to a bachelor's of science. He noted that he needed to complete one course for a bachelor's of science degree. In his resume (AE at 5), under the section entitled "EDUCATION," Applicant named the same university that

Applicant has been employed as a lead operations manager and network engineer since October 2009. He seeks a continuation of his security clearance. (GE 1 at 10-11; GE 3 at 18; AE A at 5)

### **Reasons for Financial Problems**

Applicant attributed his federal tax problems to receiving contradictory information from Internal Revenue Service (IRS) representatives during audits of his computer business in 1999 and 2000. He hired an accountant who did not understand why the IRS auditors would not allow the same method of bookkeeping. Between 2003 and 2008, Applicant worked in another state and signed over the power of attorney to the same accountant to prepare and file his taxes. In about 2005, he recalled receiving a letter from the IRS that his tax returns had not been filed. After receiving a second letter from the IRS (no time mentioned), he called the IRS. In 2008, he decided to return to the area to accept a job so his wife could be closer to her family. When he received the third IRS letter (no date provided), he hired his current accountant in 2010 to resolve the delinquent tax years. (Tr. 40-46, 52-54, 66-69)

The other reasons for Applicant's financial problems were periodic unemployment and a reduction in pay when he moved in 2008. (GE 1 at 12-21; Tr. 44, 62) The listed accounts will be discussed in the order that they appear in the SOR.

SOR 1.a, federal tax lien for \$4,271. The lien was filed in June 2012. Applicant admitted that he owed the lien. On October 23, 2012, he made a \$200 payment. He made two \$100 payments in June and July 2013. He provided documentation from the IRS indicating that the lien was released in May 2014, and not being held in abeyance as he indicated in his July 2014 answer to the SOR. (GE 3 at 9; answer to SOR; AE K1)

SOR 1.b, federal tax lien, \$137,560. The lien was filed in March 2011. The same lien tax number (493931) appears in the OPM interviews and in the public record section of the government credit report. In his February 8, 2012 interview, Applicant responded that he did not report this \$137,560 tax lien in his December 2011 e-QIP because of "oversight." He told the investigator that he did not agree with the large amount of the lien. I do not find

---

he identified in his e-QIP, and indicated "BA -Chemistry / Graphic Communications." His resume-reference to a presentation he made in 2013 indicates that the resume was generated after his February 2012 OPM interview. The SOR does not allege falsification. However the DOHA Appeal Board identified five instances when conduct not alleged in the SOR may be considered: (a) to assess Applicant's credibility; (b) to evaluate applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether Applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines applies; or (e) to provide evidence for the whole-person analysis under Directive § 6.3. See, ISCR Case No. 08-09232 at 3 (App. Bd. Sept 9, 2010).

Applicant's oversight explanation credible for the following reasons: (1) the tax lien amount is more than six times the amount of the lien (\$20,000) he did report; (2) the \$137,560 lien was filed by the IRS only nine months before he filed his December 2011 e-QIP; and (3) Applicant knew that he had large-scale federal tax problems that extended to 1999.<sup>3</sup> (GE 3 at 18; answer to SOR; AE K2-4; Tr. 70)

On April 2, 2014, the IRS responded to Applicant's telephonic March 2014 request to make an offer of compromise to settle the federal tax debt for less than the amount owed. The tax years identified in the IRS letter are 2005, 2006, 2007, 2010, 2011, and 2012. Applicant indicated that after the amended federal tax returns were filed and reviewed by his accountant and the IRS, the \$137,560 was reduced to a more accurate amount of about \$62,000. Following a separate discussion with his accountant (no time period indicated), Applicant quoted a second figure of \$42,000, after subtracting interest and penalties. No documentation was furnished to support either reduced figure. (GE 3 at 9, 18; answer to SOR; AE K2-4; Tr. 46-49, 56)

SOR 1.c, credit card for \$155. The account became delinquent in May 2012. On October 25, 2013, Applicant received a payment confirmation from the creditor verifying that he made a payment of \$52 on the listed account (#52911517). On October 22, 2013, he was informed by letter that his auto finance account (#3491) for a 2005 vehicle was paid in full. The documentation refers to two different accounts because the account numbers do not match. In his answer to the SOR, he stated the debt would be paid by July 2014 and referred to an attachment showing payments for a CC (presumably a credit card) ending in #1836. The record contains no documentation of payments ending with #1836. (GE 2, GE 3 at 10, 13; answer to SOR; Tr. 50)

SOR 1.d, boat installment loan for \$1,022. The account (#4083276011541) became delinquent in March 2013. On January 15, 2015, Applicant was informed that the account was satisfied after his payment of \$261 in December 2014. (AE B, AE E1; Tr. 23)

SOR 1.e, boat loan installment account for \$1,966. The account (#408077103287) became delinquent in October 2011. Applicant claimed in his November 2013 response to interrogatories that the accounts in SOR 1.d and 1.e were the same, but different offices of the same creditor used different account numbers to apply to the same account. The creditor also had different corporate names for payment purposes. In his answer to the SOR, Applicant indicated that when the account was transferred from the original creditor to the current creditor, the account was transferred to the current creditor's headquarters. He stated the quoted amount was inaccurate. There is verification of payments of \$100 a

---

<sup>3</sup> Falsification is not alleged in the SOR. However, as set forth in footnote number 2, conduct not alleged in the SOR may be considered in assessing an applicant's case in mitigation or rehabilitation, his credibility, or in the whole-person analysis.

month in 2014, however, those payments apply to the pay off of SOR 1.d, not 1.e. (GE 2, GE 3; answer to SOR; AE E)

SOR 1.f, credit card, \$2,744. This account (#687945012900541) became delinquent in August 2013. Applicant indicated in his answer to the SOR that a dispute arose because he had not been credited for a product he purchased. His payment ledger shows eight monthly payments were made between July 2014 and January 2015. (Answer to SOR; AE C2, AE E2)

Applicant provided documentation of payments to creditors not listed in the SOR. He provided a payment schedule of a credit card account (\$1,036 in December 2014) showing three payments already made and three payments scheduled to be made in 2015. On February 19, 2015, Applicant was informed by letter that his auto account was paid in full. He made a down payment and two installment payments between October 2014 and January 2015 to purchase an automobile. (AE C1, AE H, AE I)

When asked whether he ever had financial counseling, Applicant testified that the only discussion of the subject occurred while talking with his current accountant. After reviewing his debt and his salary, the accountant did not see a need for Applicant to enroll in a financial program. When asked about delinquent debts not listed in the SOR, Applicant replied that he was 30 days late on one credit card. (AE 71-72)

### **Character Evidence**

Applicant submitted four character endorsements. The president of his company submitted a reference on February 19, 2015, indicating that he met Applicant in 2010 and has interacted with Applicant daily since April 2014. As a program manager and network operations manager, Applicant manages a large contract and is the primary point of contact with another government agency. The president recommends Applicant for a security clearance. (AE A4)

On February 20, 2015, the facility security officer (FSO) prepared a statement indicating that he has known Applicant since May 2012. The FSO recommends Applicant for a security clearance because he has always showed fidelity to the national security even though he has faced hardships. (AE A5)

The director of administration of facilities of the parent company of Applicant's employer indicated by letter on February 20, 2015 that he supervised Applicant from July 2011 to October 2013. Applicant was a quick learner in his positions as network manager and project manager. The director recommends Applicant for a security clearance based on director's background as a military officer with a security clearance. (AE A6)

Applicant's neighbor submitted a character statement dated February 20, 2015. He has known Applicant for five years and lauds his overall character as a family man and friend. Applicant's skills will allow him to be successful. (AE A7) Applicant's performance evaluations for April 2011 to September 30, 2013, averaged an assessment of "commendable." (AE A1-2) None of the references commented on Applicant's tax or financial difficulties.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. 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 the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

An individual's financial obligations are generally personal matters except where the evidence indicates that the individual is not paying his taxes or his debts as required by law or contract. Unless there are extenuating circumstances, failure to pay delinquent debts triggers questions about a person's judgment and trustworthiness. One who is financially irresponsible may also show a lack of responsibility in the proper handling of classified information.

The applicable disqualifying conditions under AG ¶ 19 are:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Government's case, consisting of Applicant's May 2014 credit report, his OPM interviews, and his answer to the SOR, as well as his evidence establishes disqualifying conditions AG ¶¶ 19(a) and 19(c). Applicant has a history of federal tax debt totaling more than \$141,000. He has commercial debt totaling more than \$5,887.

The potentially pertinent mitigating conditions under AG ¶ 20 are:

- (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 reliability, trustworthiness, and good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control 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 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 debts became delinquent in 2011, 2012, and 2013. The amount of the federal tax lien account at SOR 1.b signals the likelihood that Applicant's current financial problems are likely to continue in the future. AG ¶ 20(a) does not apply

Applicant's federal tax problems in 1999 and 2000 may have been caused by issues beyond his control. However, while he was working in another location in the United States between 2003 and 2008, he should have taken more proactive measures in dealing with his ongoing federal tax issues. Applicant's periodic unemployment and reduced pay constitute two unforeseen reasons for his financial problems that are mitigating under AG ¶ 20(b). On the other hand, Applicant has been continuously employed since October 2009 and has known about the \$137,560 federal tax lien since March 2011. The limited mitigation that Applicant receives under ¶ 20(b) is based on his successful steps to resolve the federal lien at SOR 1.a and for paying off or making partial payments on some of the listed and unlisted commercial accounts.

Applicant demonstrated good judgment in hiring an accountant in 2010 to unscramble his federal tax problems. The federal tax lien at SOR 1.a has been released. However, without documentation to substantiate Applicant's testimony that action is underway to settle the SOR 1.b federal tax lien, I am unable to conclude that the lien is being resolved or under control. AE ¶ 20(c) has only limited application.

Based on Applicant's efforts to resolve the federal tax lien at SOR 1.a, the delinquent accounts at SOR 1.d and 1.f, and the unlisted accounts, he receives some mitigation under AG ¶¶ 20(d).

Though Applicant disputes the federal tax lien at SOR 1.b, he does not contest the validity of the underlying lien. He contests the interest and penalties that he believes have been added to the lien to bring it to the current amount. There may be reasonable basis for Applicant's claim that the lien amount is too high, but he offered no independent testimony or documentation from his accountant or the IRS to support his claim. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Having weighed and balanced the entire record concerning Applicant's request for continuing security clearance access, I considered the favorable evidence under the whole-person concept. Applicant is 45 years old and is married with one son. He has worked for his employer since October 2009. He has laudable performance evaluations between 2011 and October 2013. The president of his employer, the FSO, and the administrative director recommend him for a security clearance. His neighbor considers him to be a fine citizen who is family-oriented.

However, the favorable evidence does not overcome the evidence against approval of Applicant's continued security clearance eligibility. He paid off one of the federal tax liens in May 2014, but has furnished no independent evidence to support his testimonial assertions that he is actively working toward satisfactory resolution of the federal tax lien at SOR 1.b. Applicant undermined his credibility during the security clearance investigation in December 2011 by falsely averring he had a college degree when he did not. Though he was confronted and admitted he had no degree in February 2012, the college degree reappeared in his resume (AE A) at the February 23, 2015 hearing. Applicant's credibility is weakened even further by his oversight explanation for omitting the SOR 1.b federal tax lien of \$137,560 (filed in March 2011) from his December 2011 e-QIP.

Given the absence of documentation to substantiate Applicant's testimony in negotiating and finalizing an offer of compromise with the IRS, his payoff of the other federal tax lien and partial or complete payoff of the listed and unlisted debts is insufficient to mitigate the lingering security concerns arising from the guideline for 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, 1.d, 1.f: For Applicant

Subparagraphs 1.b, 1.c, 1.e: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason  
Administrative Judge