



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



In the matter of:)
)
) ISCR Case: 12-11364
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

03/16/2017

Decision

WHITE, David M., Administrative Judge:

Applicant has a lengthy history of financial irresponsibility, including failure to properly file or fully pay his Federal income taxes. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On February 9, 2011, Applicant submitted a security clearance application (SF-86). On October 6, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on January 7, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On March 17, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on March 21, 2016, and received by him on April 11, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He did not file any objection to the Government's FORM, submit additional evidence or comments in response thereto, or request additional time to respond. DOHA assigned the case to me on January 27, 2017. Items 1 through 7 are admitted into evidence.

Findings of Fact

In his answer to the SOR (Item 2), Applicant admitted the allegations set forth in SOR ¶¶ 1.a through 1.d, 1.f, 1.g, 1.k, and 1.l. He denied the allegations in SOR ¶¶ 1.e, 1.h, 1.i, and 1.j. His admissions, including his responses in Item 4 (a DOHA financial interrogatory dated August 26, 2015), are incorporated into these findings of fact.

Applicant is 54 years old, and divorced with no children. He earned an associate's degree from an online university in 2004. He has been employed by a defense contractor since April 2000, and is seeking to renew the security clearance that he has held since June 2000 in connection with that employment. (Item 3; Item 4.)

Applicant admitted that he owed a total of \$15,953 in Federal income taxes that he failed to pay for tax years 2004, 2005, 2006, 2007, 2009, and 2010, as alleged in SOR ¶¶ 1.a through 1.d, 1.f, and 1.g. He denied owing the IRS for two tax liens totaling \$19,905 that were entered against him in 2009 and 2006, as alleged in SOR ¶¶ 1.i and 1.j, claiming that those liens had been paid and satisfied. He formally denied the allegations in SOR ¶¶ 1.e and 1.h, but apparently misread those statements. These paragraphs accurately stated that he filed Federal income tax returns for 2008 and 2011, but further alleged that he deliberately and falsely reported that he earned \$0.00 in taxable income during each of those years despite having earned taxable income. Documents provided by Applicant confirmed that these allegations were correct. (Item 2; Item 4; Item 7.)

Applicant filed for Chapter 7 bankruptcy relief in 1997, which resulted in his then-existing debts being discharged in October 1999. (Item 2; Item 5.) During August 2012 he followed his attorney's advice and filed for bankruptcy relief again, this time under Chapter 13. Applicant did this as a means of dealing with his income tax delinquencies without continuing to make payments under his previous IRS installment agreement or through automatic levies pursuant to the 2006 and 2009 tax liens. Applicant's Chapter 13 plan was confirmed in February 2012. He made plan payments to the bankruptcy trustee until December 2015, when the bankruptcy court granted his motion to dismiss the case. According to the trustee's final report and account, Applicant made \$25,458 in

payments during the 39 months that the plan was in effect. From those funds, the trustee paid \$21,432 to Applicant's creditors; including \$20,357 that was paid to the IRS toward the \$41,354 in plan-allowed IRS principal and interest claims. (Item 2; Item 4; Item 6.)

Applicant explained in January 2016 that, after his bankruptcy case was dismissed, he hired "a tax attorney who is going to get all these tax problems with the IRS resolved." He said, "I am doing my best to take care of these tax issues. It will take a little time, but I am working on it." (Item 2.)

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(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. 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 describes three 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; and
- (g) failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial irresponsibility dating back at least to his 1997 Chapter 7 bankruptcy, and continuing to date with respect to his substantial delinquent Federal tax debt. From 2004 to 2011, he accumulated Federal income tax delinquencies totaling more than \$15,000. His 2012 Chapter 13 bankruptcy plan included more than \$40,000 in allowed IRS claims for unpaid income taxes. Despite

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

working full-time for his current employer in 2008 and 2011, he fraudulently filed Federal income tax returns for those years certifying that he earned no taxable income. His financial history and ongoing pattern of inability or unwillingness to pay his debts raise security concerns under the above disqualifying conditions, and shift 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 ongoing 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 financial problems are extensive, ongoing, and arose from voluntary choices on his part. They continue to reflect irresponsibility, unreliability, and poor judgment. AG ¶¶ 20(a) and (b) do not provide mitigation of the security concerns. There is insufficient evidence that he participated in effective financial counseling or that his financial problems are under control. Thus, he failed to establish mitigation under AG ¶ 20(c). He made partial payment toward his IRS tax debt during the 39 months of his court-supervised Chapter 13 bankruptcy plan, but he voluntarily ended that process shortly before providing his notarized response to the SOR and provided no evidence of a plan to resolve the rest of it. Little significant mitigation was established under AG ¶ 20(d) given these circumstances. Applicant recently acknowledged the legitimacy of these debts, and abandoned his prior claim that the Federal government has no legal authority to impose or collect income taxes. Accordingly, AG ¶ 20(e) 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 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 mature adult, who is responsible for his choices and conduct that underlie the security concerns expressed in the SOR, including willful income tax fraud. The alleged incidents of financial concern took place between 1997 and 2015. He did not present an effective current plan for addressing the remaining debt, or establish a record of recent compliance with tax laws and regulations, either of which could demonstrate rehabilitation or behavioral change. The likelihood that similar problems will recur remains a security issue, such that the potential for pressure, coercion, or duress is undiminished.

Some of the specific debts and liens alleged in the SOR probably reflect overlapping reported claims related to Applicant's income tax delinquencies during the years in question, and some of his total delinquent debt to the IRS was repaid during his Chapter 13 bankruptcy proceeding. These circumstances do not support findings for Applicant concerning any specific SOR allegation, or Paragraph 1 in general, based on the record evidence. The totality of those allegations, while recognizing such potential duplication, accurately describes his financial history, fraudulent tax filings, and inability or unwillingness to resolve his remaining tax obligations.

Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for 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**

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.

DAVID M. WHITE
Administrative Judge