



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



In the matter of:

ISCR Case No. 14-01294

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

04/27/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On March 4, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF 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), effective within the DOD on September 1, 2006.

Applicant answered the SOR on March 29, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on May 25, 2016. The evidence

included in the FORM is identified as Items 2-5 (Item 1 contains pleadings and transmittal information). The FORM was mailed to Applicant who received it on June 16, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A-D. All items and exhibits are admitted into evidence. The case was assigned to me on March 24, 2017.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations with explanations, except for ¶ 1.c, which he denied. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 62 years old. He is divorced and has four adult children. He worked for a defense contractor from 1982 until 2004 when he took an early retirement. He has been substitute teaching since 2010. He has a master's degree.¹

The SOR alleges Applicant failed to file his 2007 federal income tax return; owes the IRS approximately \$130,000 in unpaid federal taxes (secured by three federal tax liens in the amounts of \$12,666 for 2010, \$16,991 and \$12,503 for 2011); failed to file state income tax returns for years 2007 and 2009-2011; has two state tax liens entered against him in the amounts of \$3,478 and \$2,946 for year 2013; and accumulated \$80,000 in gambling losses from 2009 to 2010.²

Applicant admitted that he owed the IRS over \$130,000 in federal taxes. In December 2015, the IRS sent Applicant a letter stating that he owed over \$156,500 in federal income taxes for tax years 2005, 2006, 2008, 2009, 2010, 2011, 2013, and 2014. Applicant points out language in the letter characterizing the tax debt as "not currently collectable." He claims that at one time, he was making \$400 monthly payments, but he failed to produce documentation of such payments. He also admitted to the resulting three federal tax liens. Applicant's credit reports document the liens. His federal tax debt remains unpaid.³

Applicant claims he was told by the IRS that he did not have to file a tax return for 2007 because he had insufficient income. The record contains no evidence to the contrary. I find for Applicant on this allegation.⁴

Applicant admitted not filing his state tax returns for years 2007, 2009, 2010, and 2011. He produced documentation showing that the state's tax compliance division

¹ Items 1-2.

² Item 1.

³ Items 1, 4-5.

⁴ Items 1-5; AE A-D.

prepared his returns for the years in question. There is no date contained in the record as to when those state returns were prepared, but the transmittal letters informing Applicant of these actions were dated February 2016. He produced documentation showing that the state tax liens were satisfied in May and June 2015.⁵

Applicant admitted accumulating approximately \$80,000 in gambling losses in 2009 and 2010. He gambled because of his post-traumatic stress disorder (PTSD), which he developed after his father committed suicide. Because of his PTSD, he was prescribed medication (Abilify) that he claims contributed to his gambling urges. He has since stopped taking that medication and no longer gambles.⁶

Applicant provided documentation showing his payment of non-SOR related debts. He did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.⁷

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(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, an "applicant is

⁵ Item 1; AE C.

⁶ Item 1; AE A.

⁷ Item 1, AE A-B, D.

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.”

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 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

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 or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations;
- (g) failure to file Federal, state . . . income tax returns as required . . . ; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling

losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant has delinquent federal taxes that remain unpaid and unresolved. He also failed to file his state income tax returns for 2007, 2009, 2010 and 2011 when due. He engaged in compulsive gambling until approximately 2010. I find all the 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, 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 debts 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 federal tax debts are recent and remain unresolved. He did not provide sufficient evidence to show that his tax problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's federal tax liability is not a condition beyond his control. He offered no explanation for failing to file his state tax returns when they were due. AG ¶ 20(b) does not apply. Applicant presented no evidence of financial counseling. He documented payment of the two state tax liens and successfully disputed his requirement to file a 2007 federal tax return. He no longer gambles. I find AG ¶¶ 20(c), 20(d), and 20(e) partially 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(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 guideline 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 has not shown a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d – 1.f:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge