



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



In the matter of:)
)
) ISCR Case No. 15-00961
)
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: Greg D. McCormack, Esq.

08/05/2016

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on October 17, 2012. On August 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² 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 (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 18, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 7, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2016, scheduling the hearing for May 26, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 6, 2016. The record was held open for Applicant to submit additional information. He submitted AE E through N, which were admitted without objection.

Findings of Fact

The SOR alleges Applicant is indebted on 11 delinquent debts, and that he failed to file federal and state income tax returns for tax years 2007 through 2011. Applicant admitted the SOR allegations with some explanations.

Applicant is 52 years old and employed as a field service engineer for a defense contractor since 2012. Applicant has been married since 1987 and has two children, one with special needs. In approximately 2014, his spouse filed for divorce, but the action has been stagnant and the family is still together. Applicant lives and works in state A, while his spouse and children live in state B. Applicant travels extensively for his work and returns home every three to six months. He holds a bachelor's degree and a master's degree in business administration. This is his first application for a security clearance.

The SOR alleges 11 delinquent debts and failure to file state and federal income tax returns when due. Applicant's actions to resolve the SOR allegations are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Mortgage in foreclosure status. Past due \$6,484.	Discovered spouse did not pay or paid late. Learned of foreclosure in Jan 2015. (Tr. 23, 41- 45.)	Paid up to date. AE D(1)
1.b Medical debt for \$2,543.	Paid May 2016	Paid. AE D(2)
1.c Medical debt for \$710.	Paid May 2016	Paid. AE D(3)

1.d Satellite TV debt 572.	Paid in Sep 2015	Paid. AE D(4)
1.e Medical debt for \$301.	Paid May 2016	Paid. AE D(3)
1.f Medical debt for \$69.	Paid May 2016	Paid. AE D(5)
1.g Mortgage past due for \$27,651.	Debt sold to mortgagee in SOR 1.a. No balance owed.	Resolved. AE D(6)
1.h Medical collection for \$75.	Paid October 2015.	Paid. AE D(7)
1.i Medical collection for \$496.	Paid to different medical company in May 2016.	Paid. AE D(8)
1.j Medical collection for \$2,543.	Duplicate of 1.b. Paid May 2016.	Paid. AE D(2)
1.k Medical collection for \$136.	Paid May 2016.	Paid. AE D(9)
1.l Failure to file federal income tax returns 2007-2011.	2010-2015 filed April 2016. 2007-2009 filed June 2016	AE D(10-13) AE E-N
1.m Failure to file state income tax returns 2007-2011.	2010-2015 filed April 2016. 2007-2009 filed June 2016	AE D(10-13) AE E-N

In the past, Applicant's spouse typically handled household finances. In 2007, she was in an auto accident and suffered fractured bones and a head injury which may have affected her ability to handle household finances at times.³ Applicant has a current gross income of approximately \$160,000. From 2003 to 2010, Applicant worked as an independent contractor in a subchapter "S" corporation with his spouse, providing

³ Tr. 42. No documentary evidence was submitted showing his spouse's medical condition or personality problems resulting from the accident.

technical expertise to corporate clients. He earned about \$65,000 per year during this period.⁴ They used an accountant to handle tax filings.⁵

Applicant claimed he first became aware of mismanagement of his finances when he pulled his credit bureau report (CBR) to complete his SF 86 for his current employer. He reported extensive debts, including federal and state tax delinquencies in his SF 86, completed in 2012. He estimated tax delinquencies dating back to 2007, and other debts dating back to 2008. He attributed his financial delinquencies to his spouse's accident⁶ and slow recovery, a poor business environment, and latent or irregular accounts receivable.⁷ He noted that the circumstances created by his personal issues, his extensive travel away from home, and business issues resulted in the delinquencies, but that he was working with an accountant to resolve them.

At the time of his Office of Personnel Management (OPM) interview in November 2012, Applicant was unable to pay several of his delinquent debts.⁸ He noted that his spouse's medical bills, slow-paying clients and an economic downturn contributed to his financial problems. He was unable to stay current on his taxes because of his spouse's inability to attend to them. He has not sought financial counseling or debt consolidation, but was working with an accountant to resolve his federal and state tax issues.⁹

In testimony, Applicant said his financial situation deteriorated between 2009 and 2014. He believes his spouse intentionally failed to pay medical bills so that she can file "medical" bankruptcy, and mismanaged other debts.¹⁰ With respect to his 2007 to 2009 tax returns, he was having difficulty recreating or locating business records. By July 2015, Applicant became more vigilant of his debts and payments, and no longer relies on his spouse.¹¹ He has now changed his address and contact information with creditors so that he is notified of bills when they occur.¹² His current CBR shows no new delinquencies.¹³

⁴ Tr. 37.

⁵ Tr. 58.

⁶ His spouse was the CEO of their company.

⁷ GE 1.

⁸ GE 2.

⁹ GE 2.

¹⁰ Tr. 39.

¹¹ Tr. 44-45.

¹² Tr. 44.

¹³ AE D (17).

Applicant provided excellent performance appraisals, student evaluations, awards, and a letter of appreciation. He also provided 11 character reference letters that generally attest to his professionalism, integrity, character, work ethic, reliability and trustworthiness, despite knowing of the matters listed in the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.¹⁴ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹⁶

¹⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁵ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁶ *Egan*, 484 U.S. at 531.

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 safeguard 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 EO 10865 provides that adverse 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

The security concern for financial considerations is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant incurred several delinquent debts and failed to file federal and state tax returns when due for tax years 2007 to 2011. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Security requirements include consideration of a person's judgment, reliability, and a sense of his legal obligations.¹⁷ Although Applicant has now resolved all of the SOR debts, they were largely paid in May 2016, one week before his security clearance hearing, despite knowledge of the debts since at least 2012.¹⁸ The delinquent 2010-2014 tax returns were filed in April 2015, one month before his hearing.¹⁹ His 2007-2009 tax returns were not filed until after his hearing. Failure to comply with federal and state tax laws suggests Applicant has a problem with abiding by well-established government rules and regulations.²⁰

Timing of resolution of financial problems is relevant in determining the extent to which an applicant has demonstrated mitigation. Although I accept Applicant's explanation for not knowing about delinquent household debts due to his wife's alleged mismanagement of finances and his extended absence from the home, he was put on notice in 2012 of the delinquent debts yet failed to address the majority of them until 2015 and 2016, just before his security clearance hearing. Taxes are another matter. He was operating a business from 2003 to 2010 and testified that he used an accountant for tax matters. Although his spouse's condition may have led to additional medical debts and quirky behavior with regard to paying bills, there is no credible evidence to suggest this behavior prevented Applicant from taking responsibility for the family finances earlier, filing taxes on time, and paying debts once her condition became apparent or when he became aware of financial anomalies.

¹⁷ ISCR Case No. 14-00221 at 3 (App. Bd. June 29, 2016); *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

¹⁸ The mortgage was resolved well before the hearing, and two debts were paid in the fall of 2015.

¹⁹ Applicant voluntarily submitted evidence of late-filed tax returns for 2012-2014. These tax returns were not alleged in the SOR and therefore not considered under the Guideline F analysis. The 2015 tax returns were filed on-time.

²⁰ ISCR Case No. 14-00221 at 4 (App. Bd. June 29, 2016).

Applicant showed a *laissez faire* attitude toward his financial responsibilities and exhibited little effort to resolve the debts and tax issues once it clearly became a security clearance issue in 2012. Since that time, Applicant's efforts to resolve these matters have been unreasonably delayed, and the evidence suggests he has exercised inadequate control over his finances. A person who fails repeatedly to fulfill his or her legal obligations, such as filing and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.²¹ Applicant's lack of financial responsibility toward his government tax obligations demonstrates the absence of that judgment.

Although the evidence shows that Applicant eventually filed his tax returns and paid the delinquent debts, I find that he failed to act reasonably under the circumstances or in good faith, and has not established a financial track record to show similar issues are unlikely to recur. His financial issues have been recent and ongoing, and he has not sought financial counseling or assistance in meeting his financial obligations outside of the use of accountants for his taxes. Mitigating conditions ¶¶ 20(b) and (c) partially apply because his spouse's accident and the economic downturn affecting his business were conditions outside of his control, and he eventually resolved the debts and tax delinquencies. However, Applicant clearly did not act responsibly or make a good-faith effort to stay aware of his finances, take charge when necessary, and resolve the debts and tax issues until his security clearance hearing was imminent. His overall financial responsibility and willingness to comply with rules and regulations remain a concern, and his actions cast doubt on his current reliability, trustworthiness, and good judgment. No mitigating condition is fully applicable.

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.

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. I considered all of the

²¹ See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Applicant's extreme delay in filing eight years of tax returns, and resolution of the majority of his debts coincident with his security clearance hearing despite receiving notice of these issues in 2012, does little to show a good-faith effort to resolve his financial problems once they became apparent. Overall, the record leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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
Subparagraph 1.a, 1.g and 1.j:	For Applicant
Subparagraph 1.b - 1.f, 1.h, 1.i, 1.k - 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.

Gregg A. Cervi
Administrative Judge