



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-01285
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

10/07/2016

Decision

HOGAN, Erin C., Administrative Judge:

On October 19, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under 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) effective within the Department of Defense after September 1, 2006.

On November 10, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on January 27, 2016. Applicant received the FORM on February 4, 2016. Applicant had 30 days to submit a response to the FORM. He timely submitted a response to the FORM. (Item 8) Department Counsel did not object to Applicant's response to the FORM. On August 3, 2016, the FORM was forwarded to the Hearing Office and assigned to me on August 5, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant admits the SOR allegations. (Item 1)

Applicant is being sponsored by a DOD contractor and is applying for a security clearance. He has been sponsored by the DOD contractor since April 2014. If he receives a security clearance, he will be hired. He has a high school diploma. He is divorced and has two sons, ages 18 and 20. (Item 3)

On May 8, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 3) A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$62,145 child support account that was placed for collection (SOR ¶ 1.a: Item 6 at 6); a \$59,424 child support account that was placed for collection (SOR ¶ 1.b: Item 7 at 1-2); a \$405 charged off account. (SOR ¶ 1.c: Item 6 at 11; Item 7 at 2; Item 8 at 3); and a deficiency balance for a repossessed automobile in the amount of \$11,777 which was charged off. (SOR ¶ 1.d: Item 6 at 9; Item 7 at 2; Item 8 at 3)

Additional delinquent accounts include: a federal tax lien for tax year 2012 in the amount of \$2,075 (SOR ¶ 1.e: Item 6 at 4; Item 7 at 3); a federal tax lien for tax year 2014 in the amount of \$1,486 (SOR ¶ 1.f: Item 6 at 4; Item 7 at 3); a state tax lien for tax year 2011 in the amount of \$2,363 (SOR ¶ 1.g: Item 6 at 4; Item 7 at 3); a \$10,103 judgment entered against Applicant on behalf of a bank (SOR ¶ 1.h: Item 5 at 10; Item 6 at 5, 9, 11; Item 7 at 3); and a \$434 cell phone account that was placed for collection. (SOR ¶ 1.i: Item 6 at 8, 10; Item 7 at 2, 3)

In his response to the SOR, Applicant claims the child support arrearages were added during his divorce proceedings in 2007. They were not the result of his refusal to pay child support. Applicant claims that he paid maximum amounts of child support and mortgage arrearages during the two years he and his wife were separated before the divorce. The family court judge did not accept Applicant's documentation proving he provided support for two years. The judge concluded the payments were "a gift since they were not court-ordered." The judge concluded that Applicant was past due on his child support obligations for two years. (Item 2 at 1). Applicant provided a copy of his child support payment history for State A. (Item 2 at 5-9) He also provided a statement from State B's Division of Child Support Enforcement which released the lien filed against him for arrearages. (Item 2 at 10) State B's child support enforcement was erroneous because his children resided in State A. SOR ¶ 1.b is concluded for Applicant.

Applicant admits the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.h. However, he is disputing the deficiency balance from the repossessed automobile alleged in SOR ¶ 1.h. He disputes the cell phone debt alleged in SOR ¶ 1.i. He claims the cell phone company overcharged him, and that the debt has since been forgiven.

Applicant admits the tax debts alleged in SOR ¶¶ 1.e, 1.f, and 1.g. Although not alleged in the SOR, he admits that he did not file his federal and state tax returns in 2011, 2012, and 2014. He mentions in his response to the SOR that he was in the process of filing his tax returns. (Item 2 at 2) In his response to the FORM, Applicant provided proof that a tax preparer completed his tax returns for tax years 2011, 2012, 2013, and 2014. The tax returns indicate Applicant owed \$154 for tax year 2014, and \$758 for tax year 2012. He was to receive a refund in tax years 2011 and 2013. It is unclear whether the tax returns were filed with the Internal Revenue Service (IRS) based on the documentation provided. It also unclear whether the IRS assessed any penalties for Applicant's late tax filings. (Item 9 at 5-8)

In his response to the SOR, Applicant claims he was making payments towards his state income taxes for tax year 2011. He did not provide proof that the state tax return for 2001 was filed or proof of payments made.

The status of the delinquent debts alleged in the SOR are as follows:

SOR ¶ 1.a: \$62,145 child support arrearages that was placed for collection in State A. A credit report dated, September 24, 2015, lists the balance of the child support arrearages as \$62,145. Applicant provided proof of his child support payments to State A from late 2007 to April 22, 2014. It is noted that between January 2012 to April 2014, Applicant did not always make regular monthly payments. Applicant did not provide information about the status of his child support payments since April 2014. The status of Applicant's child support arrearages remains uncertain. (Item, 2 at 6-9; Item 8 at 3)

SOR ¶ 1.b: \$59,424 child support arrearage account placed for collection in State B. State B Division of Child Support Enforcement released a lien filed against Applicant. Applicant is paying child support to State A, the state where his sons reside. SOR ¶ 1.b is found for Applicant.

SOR ¶ 1.c: \$405 debt owed to a bank: Applicant claims he entered into a payment agreement with this creditor. He provided copies of a proposed settlement agreement. However, he did not provide proof that he was making payments towards this debt, such as receipts or bank records. (Item 2 at 11) The debt remains listed on his credit report. (Item 8 at 3)

SOR ¶ 1.d: automobile repossession debt, charged off in the amount of \$11,177. Applicant admits his automobile was repossessed, but disputes the amount of the deficiency judgment. He has not described what steps he has taken to dispute the debt. The status of the account is unknown. (Item 2 at 2; Item 8 at 3)

SOR ¶ 1.e: \$2,075 federal income tax lien filed against Applicant for tax year 2012. Applicant admits this debt. Although not alleged in the SOR, Applicant admits that he did not file his federal taxes for tax year 2012. On March 8, 2016, an income tax preparation firm prepared Applicant's 2012 federal income tax returns. Applicant owes

\$758 for tax year 2012. It is not clear from the record whether he sent a check to the IRS for this debt. It is also not clear whether Applicant will be assessed a penalty by the IRS for failure to timely file his income taxes. (Item 9 at 7)

SOR ¶ 1.f: \$1,486 federal income tax lien filed against Applicant for tax year 2014. Applicant admits this debt. Although not alleged in the SOR, Applicant admits that he did not file his federal taxes for tax year 2014. On March 8, 2016, an income tax preparation firm prepared Applicant's 2014 federal income tax return. Applicant owes \$154 for tax year 2014. It is not clear from the record whether he filed the return and whether he sent a check to the IRS for this debt. It is also not clear whether Applicant will be assessed a penalty by the IRS for failure to timely file his income taxes. (Item 9 at 5)

SOR ¶ 1.g: \$2,363 owed for state income taxes for tax year 2011. Applicant admits that he owes this debt. He provided no documentation about the status of this debt. It is unresolved.

SOR ¶ 1.h: \$10,103 judgment entered against Applicant in 2011 on behalf of a bank. Applicant claims that he made payment arrangements and that the balance is only \$921.44. (Item 2 at 12) He provided proof that he made a payment in the amount of \$230.36 on March 2, 2016. (Item 9 at 4) It is noted while the creditor is the same, the account numbers are different for the \$921.44 debt and the \$10,103 judgment. These are two different accounts. (See Item 2 at 12; Item 8 at 1) No information was provided about the current balance of the judgment. It remains unresolved.

SOR ¶ 1.i: \$434 cell phone account placed for collection. Applicant disputes this debt. He believes it was resolved because Verizon opened another account with him. The debt is no longer on his credit report. (Item 2 at 13; Item 8)

Applicant has been unemployed since October 2011. He has supported himself with unemployment and income from odd jobs. Applicant also has his own company, but it is unclear how much income he receives from the company. (Item 4)

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 must be considered when determining 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, 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. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 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.

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

The security concern relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant has encountered financial problems for many years, beginning with a delinquent child support obligation and several delinquent accounts. He also had outstanding tax obligations for 2012 and 2014 and a state tax obligation for 2011.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) does not apply because Applicant's financial obligations are recent and ongoing. Applicant made payments towards his child support obligations, but the record evidence only establishes payments between November 2007 to April 2014. Applicant's child support arrearages are still above \$50,000. While Applicant claims he entered into payment agreements towards the debts alleged in SOR ¶¶ 1.c and 1.h, he did not provide documented proof of consistent payments or what the current balance is on each debt. He has made no payments towards the debts alleged in SOR ¶ 1.d. While Applicant consulted a tax preparation firm to prepare his tax returns, he did not provide proof that he filed the forms with the IRS. He also did not provide proof that he paid the taxes owed. While Applicant states that he disputed the debt alleged in SOR ¶ 1.d, he did not provide documentation of his efforts to dispute the balance of the automobile repossession. Applicant's financial issues are ongoing and raise questions about his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies. Applicant has been unemployed since 2011 after a contract ended from his previous employer. However, I cannot conclude Applicant behaved responsibly under the circumstances. While the loss of his job affected Applicant's ability to pay his debts, several of his debts became delinquent before he became unemployed. Applicant does not explain why he was unable to find another job within the past five years. For this reason, AG ¶ 20(b) is given less weight.

Not only does Applicant owe federal and state income taxes, he admits that he did not file his income tax returns in 2011, 2012, 2013, and 2014. Applicant did not file his tax returns until March 2016, after receiving the Government's FORM in February 2016. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the DOHA Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

(*citing* ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR derogatory information accordingly. While the failure to file his tax returns was not alleged in the SOR, it can and will be considered under matters of mitigation.

AG ¶ 20(c) does not apply because Applicant did not attend financial counseling. The status of most of his delinquent accounts remain unresolved. His financial situation remains uncertain.

AG ¶ 20(d) does not apply, because Applicant did not demonstrate that he made a good-faith effort to resolve his delinquent accounts. While Applicant consulted a tax preparer in order to complete his tax returns, there is no proof that the tax returns were actually filed or that he paid the debt owed to the IRS. He provided proof that he made a payment towards the debt alleged in SOR ¶ 1.h in March 2016. However, he provided no information regarding the status of this debt or the debts alleged in SOR ¶¶ 1.c and 1.d. Furthermore, Applicant provided his child support payment history up to April 2014. There is nothing in the record indicating his payment history since April 2014. Applicant took steps towards resolving his delinquent accounts after he received the FORM in January 2016. Applicant's efforts to resolve his delinquent accounts were minimal and did not demonstrate a good-faith effort to resolve his delinquent accounts.

AG ¶ 20(e) applies with respect to the child support debt alleged in SOR ¶ 1.b. Two different states (State A and State B) were attempting to collect child support. Neither Applicant or his children resided in the State B which was alleged in SOR ¶ 1.b. State B released their lien. The delinquent cell phone account alleged in SOR ¶ 1.i is found for Applicant because the account no longer appears on his credit report and the cell phone company in question allowed Applicant to open up a new account.

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 guidelines and the whole-person concept.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts that would mitigate financial

considerations security concerns. While the debts alleged in SOR ¶¶ 1.b and 1.i were successfully disputed, the status of the remaining accounts remain uncertain. Because Applicant remains unemployed, it is unlikely that he has sufficient income to meet his financial obligations. Applicant did not mitigate the concerns arising from financial considerations.

Although Applicant took steps to resolve his federal tax debts when he hired a tax preparer to prepare his federal income tax returns for 2011 – 2014, he did not take action until after he received the FORM. A recent DOHA Appeal Board case states:

Security requirements include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. *Cafeteria & Restaurant Worker's Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960); *aff'd* 367 U.S. 886 (1961) Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Applicant's repeated failure to file his Federal income tax returns in a timely manner does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)

ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016)

While Applicant appears to have filed the federal tax returns. He provided no evidence regarding the status of the 2011 state tax debt alleged in SOR ¶ 1.g. He provided no proof that he paid the IRS the taxes owed for tax years 2012 and 2014 (SOR ¶¶ 1.e, and 1.f) Furthermore, his failure to file his federal income tax returns over a period of several years raises questions about his ability to follow rules and regulations which raises additional questions about his ability to handle classified information.

Under Applicant's current circumstances, the granting of a security clearance is not warranted. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. It is too soon to conclude that Applicant's financial matters are not of security significance. The security concerns raised under financial considerations are not mitigated.

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 - 1.g:	Against Applicant
Subparagraphs 1.b and 1.i:	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.

ERIN C. HOGAN
Administrative Judge