



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



In the matter of:)
)
) ISCR Case No. 15-01411
)
Applicant for Security Clearance)

Appearances

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

10/26/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On October 30, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 7, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) and it was mailed to Applicant. It was received on March 8, 2016. Applicant was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government evidence, which is identified as Items 2 through 6. Applicant provided documents that are marked as Applicant Exhibits (AE) A through D.¹ The Government and Applicant's documents are admitted into evidence without objection. The case was assigned to me on September 28, 2016.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. He denied the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He graduated from high school in 1995. He married in 1998 and divorced in 2000. He has an 18-year-old child from the marriage. He has worked for his present employer, a federal contractor, since 2008.

The delinquent debts, judgments, and tax lien alleged in the SOR are supported by credit reports from May 2014 and September 2015. Applicant was put on notice about the debts and judgments alleged in the SOR when he was interviewed by a government investigator in June 2014.²

Applicant admitted SOR ¶ 1.a, which alleged he failed to file Federal and state income tax returns for tax years 2007, 2008, 2009, 2010, and 2011. He also admitted that he had a federal tax lien filed against him in November 2014 in the amount of \$13,403. (SOR ¶ 1.b) In his answer to the SOR, he stated he was not aware his taxes were not filed until the end of 2011. He was working with a tax service to complete his tax returns and sent them money every year believing the returns were handled. At some point, he stated he received a letter that the tax service was being sued and was going out of business. Applicant stated he contacted the Internal Revenue Service (IRS) to determine if his tax returns had been filed and was advised they had not. Applicant further stated that in 2012 he contacted a certified public accountant to help him resolve the issue. He indicated that the IRS did not have his new address, so it was unable to contact him earlier. Once he provided the address, the IRS was able to contact him. He stated he owed back taxes and learned there was a tax lien. He indicated that in the past he had claimed too many exemptions, which caused him problems, but in 2012 he began claiming zero and his subsequent refunds have been applied to his unpaid taxes.³

Applicant provided a letter from the accountant he hired in 2012 stating that Applicant's individual tax returns have been filed through tax year 2015. It did not indicate when the tax returns were filed. The letter stated that Applicant had a

¹ AE D includes copies of the documents the Government provided to Applicant.

² Items 4, 5, 6.

³ Item 2.

discrepancy in reported income for tax years prior to 2011, which resulted in the tax lien. The accountant indicated that the matter is still being resolved.⁴

Applicant indicated in his security clearance application (SCA) that he did not file his tax returns on time for the last ten years. He began working with the tax service around 2008, when he estimated he was already five years behind in filing his tax returns. He indicated he would periodically check with the tax preparers on the status of his returns, until he received a letter that the service had gone out of business.⁵ In reference to his Federal and state income tax returns for tax years 2007 through 2013, Applicant stated the following:

I was taking more exemptions out of my paycheck to try and get myself out of the financial bind I was in and I was irresponsible and in a lot of debt and not aware of the trouble I could get into by not getting this taken care of in a timely fashion. I'm by no means trying to avoid paying taxes and once I get out of this mess, I won't put myself back in this predicament.⁶

Applicant's answer to the SOR and his statements in his SCA are inconsistent. In his response to the FORM, Applicant stated the reason he was "so behind was not being aware of the seriousness and my not being as responsible as I should have been."⁷ He stated that he owed \$31,711 for those years he did not file his tax returns. He stated that his tax refunds have been applied to his tax debt and the debt has been reduced by about \$9,190. He is hoping to secure an offer and compromise settlement from the IRS for the remaining \$22,521 owed.

Applicant disputed the judgment in SOR ¶ 1.b (\$893) stating that last year he saw the debt was listed on his credit report and contacted the creditor to dispute it. He indicated he is working to have the debt removed from his credit report and has sought the assistance from a law firm. He claimed he was never served notice, and if it was a legitimate debt he would pay it.⁸ In his response to the FORM, he stated that he has not received additional information after he disputed the debt.⁹ He did not provide evidence or documents of actions he has taken to have the judgment reversed. This debt is unresolved.

⁴ AE B.

⁵ Item 3 page 38.

⁶ Item 3 page 38. The SOR does not allege tax years 2012 and 2013. I will not consider this information for disqualifying purposes, but will consider it when applying the mitigating conditions and when analyzing Applicant's credibility and the whole person.

⁷ Item 2.

⁸ Item 2.

⁹ AE A.

Applicant also disputed the judgment in SOR ¶ 1.c (\$1,250) for medical services. He claimed he was never served notice, but indicated he paid \$400 toward the debt and is working to pay the remainder. In his response to the FORM, he provided an email from the creditor indicating his current balance was \$620. Applicant stated he had agreed to pay \$150 for the next three months and \$170 the last month.¹⁰ He did not provide documentary proof of his assertions.¹¹

Applicant admitted the debt for child support arrearages in SOR ¶ 1.e (\$2,900). He indicated that he and his ex-wife had their own child support agreement before it was enforced by the child support services. He stated he and his ex-wife were bad with finances. He stated he would help her out when she needed money, in addition to the child support payments he would provide. He did not keep good records. At some point, she sought assistance from the state's child support services. Applicant stated he was ordered by a court to pay an extra \$100 a month towards the arrearages and it has been automatically withdrawn from his paycheck since the order. In his response to the FORM, Applicant indicated that he reduced the arrearage to \$2,200. Applicant did not provide any documents to show consistent payments or the current balance of the arrearage.¹²

Applicant disputed the debts in SOR ¶ 1.f through 1.n, which were collection accounts associated with his failure to pay for the use of an electronic pass permitting him to use express lanes on a highway. He stated that he had used his girlfriend's pass, and it did not work properly. He stated he never received any letters stating he owed money for the toll. Eventually he received a bill for \$6,500 for unpaid tolls that were in collection. He contacted the original creditor and the department of motor vehicle (DMV) and learned that the DMV had his old address attached to the vehicle he had at the time of the infractions. He claimed he did not own the car until after he moved from his old residence on file. He stated he worked with the creditor and had the amount owed reduced to \$1,670. He stated the debt was completely paid in January 2015. He provided a letter from the creditor dated March 2016 that indicated there is a zero balance owed.¹³ In his response to the FORM, Applicant indicated that the toll violations were the result of a broken transponder and the company did not have Applicant's correct address. He did not provide an explanation for why he failed to timely update his address with the DMV.¹⁴

Applicant explained that he made some mistakes and was not very responsible, but he is attempting to rectify his mistakes. He admitted he was not very good with his

¹⁰ AE A, C.

¹¹ Item 2.

¹² Item 2; AE A.

¹³ Item 2, AE D.

¹⁴ AE A.

finances. He stated he began trying to fix his problems before the security clearance process started.¹⁵

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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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 that an applicant may deliberately or inadvertently fail to 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.

¹⁵ Item 2; AE A.

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.

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,¹⁶ unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) 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 failed to file his Federal and state income tax returns for tax years 2007 through 2011. He has an unpaid tax lien that was entered against him. He has judgments against him and delinquent debts that are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

¹⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (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 debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. He failed to timely file his Federal and state income tax returns and has an unresolved tax lien. He has judgments that were filed in 2008 and 2010 that are unresolved. He continues to have an account in collection for child support arrearages. AG ¶ 20(a) does not apply.

Applicant explained in his SCA that his repeated failure to file his Federal and state tax returns was because he was having financial problems and apparently claimed exemptions so he could have more money available to address those problems. He later claimed that his tax preparer went out of business, but he also admitted his tax returns were already delinquent for a period of five years. He did not provide explanations regarding his other delinquent debts. There is insufficient evidence to conclude his financial problems were beyond his control, and he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant is working with an accountant to resolve his tax issues. He did not provide evidence that he has made any independent payments toward his tax delinquency, but has only had his tax refunds applied to the debt. He did not provide any documents, other than a letter from his accountant, to show the amount of his current tax liability. He did not provide documents from the IRS to substantiate his

claims. He has not provided evidence of actions taken to resolve the judgment in SOR ¶ 1.b. He did provide an email showing he has reduced the balance owed on the judgment entered in 2008 (SOR ¶ 1.c). He failed to provide documentary evidence that he is paying his child support arrearages. There is no evidence Applicant has had financial counseling, and I am unable to conclude that there are clear indications his financial problems are under control. AG ¶ 20(c) does not apply.

Applicant provided evidence that he has resolved the toll violation collection accounts in SOR ¶¶ 1.f through 1.n. AG ¶ 20(d) applies to these allegations. Applicant did not provide supporting evidence that he is making payments towards his child support arrearage or the judgment in SOR ¶ 1.b. Although there is some evidence he has reduced the balance owed in SOR ¶ 1.c, it is not sufficient to rise to the level of a good-faith effort to pay the overdue creditor. This judgment was entered eight years ago in 2008. Applicant was put on notice of the debt during his interview in 2014. Minimal progress has been made in resolving it. AG ¶ 20(d) does not apply to the remainder of the debts.

Applicant disputes the judgments entered against him, but failed to provide a reasonable basis for his dispute or documentary evidence of his actions to resolve the issues. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 38 years old. He has worked for a federal contractor since 2008. He did not provide an explanation for his financial difficulties that could overcome the judgment concerns raised by his demonstrated financial irresponsibility. His repeated failure to timely file his Federal and state tax returns is a serious concern. He owes a substantial tax lien and has two judgments that were entered in 2008 and 2010 that are not resolved. He failed to provide proof that he is addressing his child support arrearages. He has not established a reliable financial track record. Applicant has failed to meet his burden of persuasion. 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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraphs 1.f-1.n:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge