



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



In the matter of:

ISCR Case No. 15-01772

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

March 16, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to timely file his Federal and state income tax returns for tax years 2009 through 2012, and is alleged to be delinquent on seven debts, in a total exceeding \$24,347. Applicant recently filed his delinquent tax returns and has resolved a few of his delinquent accounts. However, concerns about his judgment and trustworthiness remain unmitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 4, 2013, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On September 22, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

On November 24, 2015, Applicant answered the SOR (Answer), and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 2, 2016. The Government's submission included Government Items 1 through 6. A complete copy of the file of relevant material (FORM) was received by Applicant on March 10, 2016. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. In his timely response to the FORM, Applicant submitted a set of documents, marked collectively as his Reply. Applicant noted no objections to Items 1 through 6 in his Reply, and they were admitted into the record. Department Counsel had no objections to the Reply and it was admitted. The case was assigned to me on November 1, 2016.

Findings of Fact

Applicant is 67 years old. He has been employed by his current employer, a defense contractor, since 1995. Applicant is legally separated from his wife. They separated in 2012. (Item 3; Answer; Reply.)

As alleged in the SOR, Applicant failed to file his Federal and state income tax returns for tax years 2009 through 2012 in a timely manner, and was delinquent on seven debts, in a total exceeding \$24,347. Applicant admitted all of the SOR allegations. His delinquent debts are identified in the credit reports entered into evidence. (Answer; Item 5; Item 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributes his financial delinquencies to his wife's addiction to prescription pain killers during the course of their marriage. She hid bills from him and did not pay them. Further, the amount of alimony he had to pay his wife as part of their legal separation agreement prohibited him from addressing the delinquent debts in an expedient manner. He worked two jobs to make ends meet, but has suffered cutbacks. (Answer; Reply.) Because he worked two jobs, he would let mail build up, unopened. He believes that his ex-wife threw out his tax documents. (Reply.)

As alleged in SOR subparagraphs 1.a and 1.b, Applicant failed to file his Federal and state income tax returns for tax years 2009 through 2012 in a timely manner. He explained that he "was trying to keep [the] office for [his] business going but things were always moved around. Several things turned up missing in [his] house, [his] business paperwork and tax papers were taken out [of his] filing cabinet, [he] think[s] in trying to find out [his] total income for divorce." (Reply.) Applicant produced e-file confirmations that show that his 2012, 2013, and 2014 Federal income tax returns were filed between February 26, 2015, and May 11, 2015. He presented an email from a certified public accountant that stated Applicant's "2011 tax return could not be e-filed, but it was mailed. [His] Federal and [state] tax filings are up to date through 2014 and the 2015 tax returns are on extension." (Reply.) Applicant failed to provide documentation specifically relating to his 2009 and 2010 Federal income tax returns and his state income tax returns for 2009 through 2012, other than this blanket statement from his CPA.

As alleged in SOR subparagraph 1.c, Applicant is delinquent on a medical account in the total amounts of \$115. This debt has been delinquent since 2013. In his Answer, Applicant indicated he was not aware of this debt, but had health insurance that should have covered all medical expenses. In his Reply, he indicated, "This Item I think was paid to credit agency[.] I am still working this one doctor's office won't accept payment . . . Did not open [two] bills I received." This debt is unresolved. (Item 5; Reply.)

As alleged in SOR subparagraph 1.d, Applicant is delinquent on a medical account in the total amount of \$66. This debt has been delinquent since 2011. Applicant claimed he paid this bill on December 1, 2016. However, the documentation provided does not appear to match up with this debt. This debt is unresolved. (Item 5; Reply.)

As alleged in SOR subparagraph 1.e, Applicant was indebted to a cable company in the amount of \$124. This debt became delinquent in 2011. Applicant presented an account statement from this creditor that shows a zero balance. This debt is resolved. (Item 5; Reply.)

As alleged in SOR subparagraph 1.f, Applicant was indebted to a collection agent in the amount of \$22,766. This debt became delinquent in 2014. Applicant claimed that this debt was for student loans, which he has rehabilitated. He presented an account statement from a subsequent collection agent, stating that his current balance on this debt is \$16,901.36. Applicant is resolving this debt. (Item 5; Reply.)

As alleged in SOR subparagraph 1.g, Applicant is indebted to a telecommunications company in the amount of \$341. This debt has been delinquent since 2010. Applicant claimed this debt was paid, but failed to present documentation to support his claim. It is unresolved. (Item 6; Reply.)

As alleged in SOR subparagraph 1.h, Applicant is indebted to a collection agent in the amount of \$785. This debt became delinquent in 2012. Applicant claimed to have disputed this debt, but failed to present documentation to support this claim. It is unresolved. (Item 6; Reply.)

As alleged in SOR subparagraph 1.i, Applicant was indebted on an unpaid speeding ticket in the amount of \$150. This debt became delinquent in 2010. Applicant presented a copy of a bank statement that shows he resolved this debt in full on December 2, 2015. (Item 6; Reply.)

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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, as follows:

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.

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 annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial indebtedness documented by the credit reports in evidence, which substantiate all of the allegations. While he has resolved the debts identified in subparagraphs 1.e and 1.i; and is making payments toward the debt in subparagraph 1.f, he remains indebted the creditors listed in subparagraphs 1.c, 1.d, 1.g, and 1.h. He has been unable or unwilling to address these remaining delinquencies. Moreover, Applicant failed to file his Federal and state income tax returns for tax years 2009 through 2012, as required by law. The evidence raises security concerns under the above disqualifying conditions, thereby shifting 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 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 ongoing. Four of Applicant's seven delinquent accounts remain unresolved. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant established that his delinquencies and failure to file his Federal and state tax returns were caused, in part, by events that were beyond his control including his wife's addiction and their separation. However, he failed to establish that he has acted responsibly under these circumstances. He has been separated from his wife since 2012, but did not address his debts or delinquent tax returns in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. There are no clear indications that his financial problems are being resolved or are under control. Further, while he provided a statement from his CPA that some of his delinquent Federal and state income tax returns were filed in 2015, he failed to demonstrate reasonable or responsible actions with respect to his annual tax filing obligations. As a general rule, "[f]ailure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information.¹ Further, Applicant's history of not fulfilling his legal obligation to file income tax returns demonstrates a lack of the judgment and reliability required for access to classified information.² The Appeal Board has noted: "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an Applicant's reliability, trustworthiness, and ability to protect classified information as reflected in the Guideline F concerns that were alleged."³ Mitigation under AG ¶¶ 20(c) and 20 (d) was not established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

¹ ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016.)

² ISCR Case No. 98-0608 at 4 (App. Bd. Jun. 27, 2000).

³ ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015).

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 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's financial problems remain largely unresolved. While he was given the opportunity to document the status of his debts, he failed to produce evidence of actions on his remaining delinquent accounts. 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 Financial Considerations security concerns.

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 |
|---------------------------|-------------------|
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 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.

Jennifer I. Goldstein
Administrative Judge