



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 15-02634

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

June 30, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant incurred more than \$50,000 in delinquent taxes that he has not repaid. He also did not file a Federal tax return for one year, or state tax returns for seven years. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On June 27, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On December 13, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on January 23, 2016,¹ and requested that his case be decided by an administrative judge on the written record without a hearing. (Answer.) On March 1, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items,² was mailed to Applicant on March 1, 2016, and received by him on March 8, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions³ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

Findings of Fact

Applicant is 38 years old. His marriage was annulled. He has held his present employment with a defense contractor since 2014. Applicant received a bachelor's degree in 2013. He served in the U.S. Navy from 2000 to 2004, and was honorably discharged. (Item 3.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

¹ The answer is dated January 23, 2015, but that appears to be in error.

² Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on November 24, 2014. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

³ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

In his answer to the SOR, Applicant admitted allegations 1.a and 1.f without reservation. He admitted in part, and denied in part, allegation 1.e. Those admissions are findings of fact. He denied allegations 1.b, 1.c, and 1.d. (Item 2.) Subparagraphs 1.e and 1.f regard unfiled tax returns. The debts set forth in allegations 1.a, 1.b, 1.c, and 1.d are documented in one or more of the three credit bureau reports in the record dated July 4, 2014; March 5, 2015; and October 1, 2015. (Items 7, 6, and 5.) The status of the debts and tax returns is as follows:

1.a. Applicant admits that he owes the Internal Revenue Service (IRS) at least \$52,597 in unpaid back taxes. This debt is for tax years 2006, 2008, and 2009. A tax lien was filed against Applicant in 2011 concerning this debt. Applicant was a contractor in Iraq during those periods and did not save enough money to pay his taxes from those years. He states in his Answer that he had a payment agreement with the IRS until November 2015, which was in the process of being reexamined. No further information was provided. This debt is not resolved.

1.b. Applicant denied owing \$70 for a past-due medical debt. He stated in his Answer, "I do not remember owing anyone this amount and I have tried to contact [the creditor] with no luck. I found that they are closed and can't get ahold of anyone. I've not been contacted by anyone for this amount and do not know what this would be for."

This debt is reflected in the July 4, 2014 credit report. (Government Exhibit 7.) It does not appear on the two most recent credit reports. (Government Exhibits 5 and 6.) Based on the available evidence, I find the Government has not proven that this is a currently existing debt. This allegation is found for Applicant.

1.c. Applicant denied owing \$175 for a past-due medical debt. He stated in his Answer, "I did owe this money and after I started at [his current employer], I downloaded 'Credit Karma' and found 2 places I was in collections for. I called them immediately and paid them in full. This debt was paid in October 2014." Applicant also supplied the transaction number.

This debt is reflected in the July 4, 2014 credit report. (Government Exhibit 7.) It does not appear on the two most recent credit reports. (Government Exhibits 5 and 6.) Based on the available evidence, I find the Government has not proven that this is a currently existing debt. This allegation is found for Applicant.

1.d. Applicant denied owing \$366 for past-due court fees. He stated in his Answer, "I did owe this money and after I started at [his current employer], I downloaded 'Credit Karma' and found 2 places I was in collections for. I called them immediately and paid them in full. This debt was paid in October 2014." Applicant also supplied the transaction number.

This debt is reflected in the July 4, 2014 credit report. (Government Exhibit 7.) It does not appear on the two most recent credit reports. (Government Exhibits 5 and 6.)

Based on the available evidence, I find the Government has not proven that this is a currently existing debt. This allegation is found for Applicant.

1.e. This subparagraph alleges that Applicant did not file state tax returns for the years 2006, 2008, 2009, 2010, 2011, 2012, and 2013. He admitted not filing tax returns for tax years 2006, 2008, and 2009. He stated in his Answer that the state tax authority prepared substitute tax returns for him for those three years, and that he had paid off any back taxes in full. He further stated that for tax years 2010 through 2013 he was a full-time student and did not make enough money to be required to file tax returns. However, Applicant did not provide any documentary evidence to support his statements, such as copies of tax returns, applicable state laws, or any financial statements. This allegation is found against Applicant.

1.f. Applicant admitted that it appears he did not file a Federal tax return for tax year 2006. He stated in his Answer that a paid preparer had done his tax return and that he remembers sending them in to the IRS. He further stated that he would address this issue in the near future. No further information was provided. This allegation is found against Applicant.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant has been continuously employed since 2014. His tax issues have been in existence since at least 2006. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant continues to owe the tax debt alleged in the SOR. He offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that his tax problems were caused by his not saving enough money to pay his taxes while working overseas. This situation appears to have been voluntary on his part, and therefore not sufficient for mitigation under AG ¶ 20(b).

No evidence of financial counseling from a legitimate and credible source or budget information establishing solvency going forward was provided. Further, there are no clear indications that Applicant's financial problems are under control. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Finally, Applicant did not supply any documentation to show that he has filed his missing tax returns, that he did not have to file said returns, or that he entered into a payment arrangement with the IRS, and is in compliance with such an arrangement. AG ¶ 20(g) does not apply.

Applicant did not sufficiently mitigate his tax issues. Guideline F is found against Applicant.

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(d):

(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant honorably served in the U.S. Navy for four years, and has worked as a contractor in Iraq. Applicant is a mature adult, who is accountable for his choices. He continues to owe more than \$50,000 in back taxes. He also failed to show either that he has filed all of his tax returns, or that he was statutorily exempt from filing such returns. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge