



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



In the matter of:

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) ISCR Case No. 15-02692
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Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

August 23, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to have failed to file his Federal and state income tax returns for tax years 2007 through 2012. He failed to present sufficient evidence that all those tax returns have subsequently been filed. Additionally, he had \$4,327 in delinquent debt. He resolved two of his five delinquent debts. He failed to show he has taken responsible actions on his remaining financial obligations. Eligibility for access to classified information is denied.

Statement of the Case

On July 14, 2013, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On January 16, 2016, 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 (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 February 19, 2016, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on April 20, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 20, 2016, scheduling the hearing for May 12, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documents until June 27, 2016. Applicant submitted 33 pages, marked AE A through AE D. Department Counsel had no objections to AE A through AE D, and they were admitted into evidence. Department Counsel also offered five Appeal Decisions for review. They were marked as HE II. The record then closed. DOHA received the transcript of the hearing (Tr.) on May 26, 2016.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. He is married and has four minor children. He is a high school graduate. He has worked for his current employer since December 2012. (GE 1, Tr. 28.)

As listed in the SOR, Applicant was alleged to have failed to file his Federal and state income tax returns for tax years 2007 through 2012. Additionally, he was alleged to be delinquent on five debts, totaling \$4,327. Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c, and 1.g. (Answer.) He denied SOR ¶¶ 1.d through 1.f. His debts are identified in the credit reports entered into evidence. (GE 3; GE 4; GE 5; GE 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant admitted that he failed to file his Federal and state income tax returns for tax years 2007 through 2012, as alleged in SOR ¶¶ 1.a and 1.b. He attributed his failure to file to “irresponsible” behavior. He stated, “I knew it wasn’t the right thing to do and I know it would catch up to me.” (Tr. 21-22.) He testified that he filed his Federal and state tax returns for 2007 through 2012 in 2013. (Tr. 33.) Applicant provided no documentation to show he filed his 2007 or 2008 Federal or state income tax returns. His 2009 Federal Income tax return was dated in April 2011, although his tax preparer told him in an undated cover letter that it was due by April 15, 2010. His 2009 state income tax return was also prepared by a tax professional, however there is no documentation establishing if or when it was filed. (AE B at 1-6.) His 2010 Federal Income tax return was submitted to Applicant by his tax preparer on April 11, 2011, to be filed after Applicant signed and returned a form. There is no documentation to show he signed and returned the form, which was required to file the 2010 tax return electronically. His 2010 state income tax return was filed electronically by the tax preparer. (AE B at 11.) The 2011 Federal and state income tax returns were prepared and submitted to Applicant for signature and submission. However, no documentation substantiates that Applicant filed those document. (AE B at 7-10.) His 2012 Federal and state Income tax return was prepared, as evidenced by a letter from his tax professional, but he did not present documentation to show it was filed. (AE B at 12-17.) His 2013 through 2015 Federal and state income tax returns were prepared by a tax professional and filed electronically. (AE B at 18-30.)

Applicant testified that as a result of his failure to file his income tax returns, his wages were garnished by his state to repay a state tax debt. Additionally, a tax levy was filed against him by the Federal Government to repay his delinquent IRS tax. The garnishment has been satisfied, and the IRS tax levy has been removed and is satisfied. (GE 2; GE 6; Tr. 27, 38-41.)

Applicant was indebted on a delinquent medical debt in the approximate amount of \$125, as identified in SOR ¶ 1.c. This debt has been delinquent since 2011. Applicant testified that this debt was for medical care after he sustained an injury at work. He thought his employer would pay for the medical bills, but the employer did not. Applicant presented a copy of his bank account statement showing that a payment of \$128.81 was made to this creditor on May 17, 2016. This debt is resolved. (GE 4; AE C; Tr. 23-24, 41-42, 61.)

Applicant is indebted on a delinquent collection account in the approximate amount of \$1,982, as identified in SOR ¶ 1.d. This debt has been delinquent since at least March 2015. It is for cellular telephone service. Applicant claimed that this debt was for equipment that he returned. He believes it was satisfied when he returned the equipment. However, he did not offer documentation to support his claim. This debt is unresolved. (GE 5; AE D; Tr. 24, 43-45.)

Applicant was indebted on a delinquent electricity account in the approximate amount of \$201, as identified in SOR ¶ 1.e. This debt has been delinquent since July 2014. Applicant presented a letter dated May 14, 2016, which stated this debt is now paid in full. It is resolved. (GE 5; AE A; Tr. 24, 45.)

Applicant is indebted on a delinquent collection account in the approximate amount of \$1,009, as identified in SOR ¶ 1.f. This debt has been delinquent since 2013. It is for cellular telephone service. Applicant denied this debt because he does not believe he should be liable for the charges he incurred while overseas. He claimed to have sent the company a dispute letter that was not resolved in his favor. He is still liable for this debt. It is unresolved. (GE 3; GE 4; Tr. 24-25, 46.)

Applicant is indebted on a delinquent collection account in the approximate amount of \$1,010, as identified in SOR ¶ 1.g. This debt has been delinquent since 2013. Applicant testified that he signed a contract with this cell phone carrier, but then stopped using the carrier because of bad reception. He admitted liability for this debt, but produced no documentation to show he has taken any actions to resolve it. (GE 3; Tr. 25-26, 47.)

Applicant testified that he is able to meet his monthly expenses. He claimed to have money left over at the end of the month. He testified he has approximately \$1,100 in his checking account and \$12,000 in a 401K savings plan. (Tr. 50-53.)

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
- (f) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has not filed his Federal or state income tax returns for 2007 or 2008. Further, his documentation fails to establish he filed Federal income tax returns in 2009-2012, or his state income tax returns for 2010 through 2012, in a timely manner as required by law. He admitted he was irresponsible. Additionally, Applicant has a history of financial indebtedness documented by the credit reports, which substantiate all of the alleged delinquent debts. His debts remained delinquent for several years, despite Applicant's testimony that he had money left over at the end of each month. The evidence raises security concerns under all three of these 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. He has resolved only two of the five delinquent debts and failed to submit sufficient documentation to show he has filed his delinquent Federal and state income tax returns. Given his lack of effective action on the remaining debts and tax return filings, he has not demonstrated that future financial problems are unlikely. Further, the Appeal Board has stated:

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) . . . By failing to file those tax returns in a timely manner, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, e.g., ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014).¹

Mitigation under AG ¶ 20(a) was not established.

Applicant accepted responsibility for his behavior in failing to file his Federal and state tax returns in a timely manner. He did not attribute his inaction on his delinquencies to any circumstance beyond his control. Mitigation under AG ¶ 20(b) was not established.

Applicant presented no documentation that he has sought counseling for his financial problems. Further, he failed to show clear indications that his financial problems are being resolved or are under control. Only two debts have been addressed in a meaningful manner. Applicant failed to establish mitigation under AG ¶¶ 20(c) or 20(d).

Applicant provided no documented proof of any disputes with the SOR-listed creditors. AG ¶ 20(e) has not been established.

¹ ISCR Case No. 14-00221 (App. Bd. June 29, 2016).

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 is a mature adult and responsible for his choices and financial obligations. Since 2008, he has not acted responsibly with respect to his finances. His irresponsibility in failing to file his Federal and state income taxes shows he lacks the judgment and maturity to hold a security clearance at this time. Overall, the record evidence leaves me with significant 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 section 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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.

Jennifer I. Goldstein
Administrative Judge