



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



In the matter of:)
)
) ISCR Case No. 15-03098
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

05/26/2017

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On August 20, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on October 22, 2014. Applicant responded to interrogatories from the Defense Office of Hearings and Appeals (DOHA) on October 28, 2015, and acknowledged that the OPM investigation accurately reflected the information provided to the investigator. (Item 3) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On December 11, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on January 22, 2016, admitting the ten financial allegations with explanation. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on March 25, 2016. (Item 7) Applicant received a complete file of relevant material (FORM) on March 28, 2016. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on February 15, 2017.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 50 years old. He received a bachelor's degree in 1990. He was granted an interim eligibility for access to classified information in 2003 while employed as a DOD consultant. Applicant never married and has no children. He has worked for DOD contractors or has been a military analyst consultant to DOD contractors since at least 2003. He had various periods of unemployment while waiting for new contracts. (Item 2, e-QIP, dated August 20, 2014; item 3, Response to Interrogatories, dated October 28, 2015, with PSI, dated October 27, 2014)

The SOR alleges, and credit reports (Item 4, dated August 30, 2014; Item 5, dated March 12, 2015; Item 6, dated October 5, 2015) confirm the following financial allegations against Applicant: failure to timely file 2010 Federal income tax return (SOR 1.a); a debt of \$41,631 for 2010 Federal income taxes (SOR 1.b); failure to timely file 2011 federal income tax return (SOR 1.c); a debt of \$2,150 for 2011 federal taxes (SOR 1.d); failure to timely file 2012 federal income tax return (SOR 1.e); debt of \$32,280 for 2012 federal income taxes (SOR 1.f); failure to timely file 2013 federal tax return (SOR 1.g); a debt of \$2,159 for 2013 federal tax debt (SOR 1.h); failure to timely file state tax returns for 2010-2013 (SOR 1.i); and filing a Chapter 7 bankruptcy petition in July 2014 converted to a Chapter 13 in October 2014 (SOR 1. j).

Applicant was a contract employee so his employer did not withhold funds from his pay for income tax purposes. Applicant was responsible for ensuring he had sufficient funds set aside to pay income taxes. Applicant admitted in his PSI that he did not set funds aside for tax purposes, because he used all of his income to pay his mortgage and other debts. He did not timely file his 2010 to 2013 tax returns, because he did not have the funds at the time to resolve his tax issues. He filed the returns late but still has not paid all of the taxes he owes. He stated that he is now employed, working on his financial issues, and he intends to pay his delinquent taxes. (Case File, Response to SOR, dated January 22, 2016; GX 3; Response to Interrogatories and PSI, dated October 27, 2014)

IRS tax transcripts provided by Applicant in response to interrogatories show that Applicant filed his federal income tax return for tax year 2010 on November 19, 2014; for tax year 2011 on October 15, 2012; for tax year 2012 on November 17, 2014; for tax year 2013 on October 14, 2014; and for tax year 2014 on April 15, 2015. The only year Applicant filed his federal income tax return on time was in 2014. The transcripts show a tax balance in excess of \$40,000 owed by Applicant as of November 2015. Applicant did not provide any other information on payments made to resolve his tax debt.

Applicant admits he filed a Chapter 7 bankruptcy petition in July 2014 to resolve his tax problems and to stop his residence from being foreclosed. The Chapter 7 bankruptcy was converted to a Chapter 13 bankruptcy in October 2014. The bankruptcy is still pending. A bankruptcy discharge does not eliminate a tax liability under Chapter 7. A Chapter 13 payment plan can pay a federal tax debt. Applicant did not provide any information on the payment status of the Chapter 13 bankruptcy.

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 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.

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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or 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 meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal, and Applicant admitted, that he did not timely file his federal income tax returns for tax years 2010 to 2013. He admitted that he did not timely file and pay his state income taxes for tax years 2010 to 2013. He has significant federal and state tax liability based on his failure to file returns for 2010 to 2013. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19 (g) (failure to file annual Federal, state, or local tax returns as required or the fraudulent filing of the same). The information raises an issue about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions do not apply. Applicant was employed as a contract employee, so his employer did not withhold income taxes from his pay. Applicant was required to set aside funds to pay his taxes when due. Applicant decided not to keep funds aside to pay taxes for tax years 2010 to 2013. He used the funds to pay his mortgage and other debts. Applicant acted voluntarily to not save funds for tax purposes for three tax years, so his actions were frequent, not beyond his control, and can recur. Applicant also had periods of unemployment between contracts, but this did not affect his ability to set aside funds for taxes. Applicant may have received financial counseling to file his bankruptcy petition, but he has not shown that his financial problems are being resolved. Applicant also did not present a plan to pay his tax debt. Accordingly, he has not established a good-faith effort to pay his debts.

The circumstance that caused Applicant to have delinquent debts was his own action in not setting aside funds to pay income taxes. The conditions causing the problem were within his control, and Applicant has not acted responsibly by developing plans to pay his tax debts. There is no clear evidence that his tax problems have been resolved, so his finances are not under control. He has not acted with reason and responsibility towards his finances. His actions are a strong indication that he will not protect and safeguard classified information. Applicant did not present sufficient information to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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 considered that Applicant worked for 15 years for a defense contractor and was eligible for access to classified information. Applicant's failure to file annual federal and state income tax returns was voluntary. The conditions causing the problem was not beyond his control. Applicant still has a significant tax debt, so he has not taken reasonable and responsible action to resolve his financial obligations. Applicant's failure to appropriately manage his finances and his lack of action to resolve financial issues are firm indications that he may not adequately safeguard classified information. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant did not mitigated the security concerns arising from his financial situation.

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.j: 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge