



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



In the matter of:

ISCR Case No. 15-03160

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

February 16, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On September 16, 2014, Applicant submitted a security clearance application (e-QIP). On March 24, 2016, 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.

Applicant answered the SOR on April 16, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 15, 2016, scheduling the hearing for July 13, 2016. The hearing was convened as scheduled. Applicant testified on his own behalf. The Government offered Exhibits (GXs) 1 through 8, which were admitted without objection. Applicant offered Exhibits

(AppXs) A through I, which were admitted without objection. Pursuant to Applicant's requests, I left the record open until September 12, 2016, so that he could offer additional Exhibits. On July 31, 2016, he offered AppX J, and on September 9, 2016, he offered AppX K; both of which we admitted without objection into evidence. The record then closed on September 12, 2016. On January 2, 2017, Applicant offered an additional Exhibit, marked as Appellate Exhibit 1. Department Counsel objected to this submission, which was nearly four months after the record was closed. This objection was sustained. DOHA received the transcript of the hearing (TR.) on July 22, 2016.

Findings of Fact

Applicant is 47 years old. (GX 1 at page 5.) He has been employed with a Government contractor for 7 years. (GX 1 at page 12.) He has held a security clearance since August of 2000. (GX 1 at page 42.) He is not married and has no children. (GE 1; Tr. 19-22, 75.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleges a failure to file state income tax returns from 2009~2013, identified tax liens totaling more than \$3,000 (allegations 1.b. and 1.d. being one and the same lien), and a past-due debt of \$355. In his Answer, Applicant neither admitted nor denied the allegations; and as such, I consider them denied. The alleged liens and debts were listed on credit reports dated April of 2001, November of 2004, September of 2014, and May of 2016. (GXs 5~8.)

Guideline F - Financial Considerations

1.e. It is alleged that Applicant failed to file his state income tax returns for tax years 2009, 2010, 2011, 2012, and 2013. He was not required to file in this state for tax year 2009; and he has filed for tax year 2010, as established by evidence that corroborates his testimony. (TR at page 38 line 10 to page 46 line 14, TR at page 54 lines 13~20, and AppXs F and G.) As for tax years 2011, 2012 and 2013, Applicant has yet to file those state income tax returns.¹ (TR at page 38 line 10 to page 46 line 14, and at page 54 line 21 to page 55 line 1.) This allegation is found against Applicant.

1.a., 1.b., and 1.d. Applicant has satisfied his state tax liens by having his wages garnished. (TR at page 46 line 15 to page 53 line 24, at page 55 lines 3~10; and AppXs C, D and H.) These allegations are found for Applicant.

1.c. Applicant has yet to satisfy a past-due medical debt for about \$355. This allegation is found against Applicant.

¹ Appellant Exhibit 1 refers to tax year 2014; and as such, is not relevant to these filings.

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 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(a) 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 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. 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, 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 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:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual . . . state . . . income tax returns as required.

From 2011~2013, Applicant accumulated a significant amount of delinquent tax debt, as he failed to file state income tax returns for those tax years. His actions demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

Two Financial Considerations 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

These are not applicable here. Applicant continues to be delinquent in his state tax filings, and has failed to address a medical debt.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Although Applicant does have the support of his friends (AppX J, and K at page 5), 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 has not mitigated 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.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge