



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-03498

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated December 5, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated April 28, 2016.¹ Applicant received the FORM on June 5, 2016. Applicant responded to the FORM. The case was assigned to me on March 21, 2017,

¹The Government submitted seven items for the record.

2017. Based on a review of the case file, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted four of five SOR allegations, and provided explanations for the allegations under Guideline F (Financial Considerations). He denied SOR allegation 1.d. (Item 3)

Applicant is a 65-year-old who has a trucking company for a defense contractor. He served on active duty in the military (U.S. Army) from 1971 to 1994, when he retired, receiving an honorable discharge. He is married and has five children. Applicant has worked for his current employer since 2010. He completed a security clearance application in 2014. He has held a security clearance since the beginning of his military service. (Item 4)

Financial Considerations

The SOR alleges five delinquent debts, all of which are 2009, 2014, and 2015 federal tax liens totaling approximately \$263,000.00. (Item 1)

In his answer to the SOR, Applicant stated that he and his wife encountered slow employment over the years, which impacted their income. They helped various family members who had no resources for funerals, lost jobs during the economic crash, and taking care of grandchildren due to their son's problems. He noted that his wife spent 20 years in the U.S. Army and they have never had debt problems prior to the tax liens. (Item 3) They have bills associated with their truck, which is the means of their livelihood.

Applicant disclosed in his 2014 security clearance application that he thought his accountant had electronically filed his tax returns for 2010, 2011, and 2012. During the investigative interview, Applicant told the interviewer that they had used the same accountant for many years. (Item 5) His wife mailed all tax documents to the accountant each year. He acknowledged that he may have filed late a time or two, but that he always asked for an extension of time. Applicant and his wife are on the road working all the time, and he did not know about the tax liens until he received letters from various attorneys offering to represent him. Applicant also disclosed in his 2014 security clearance application that he was paying the IRS \$1,700 a month until the debt is paid. (Item 4)

The IRS garnished Applicant's military retirement pay and his pay for driving the truck. He stated that he had no knowledge of the 2009 tax lien for \$108,422. (Item 5)

In response to the FORM, Applicant submitted two documents, which are marked as AX A and AX B. AX A shows that Applicant hired a company to resolve all outstanding debts with the IRS. Applicant submitted an account statement of his military retirement, dated August 2013, that showed an amount of \$1,087 for "tax levies". He

submitted another part of a pay statement, dated tax levy January 22, 2010 with a monthly amount of \$1,087. The pay statement reflected a balance of \$54,314.07. (AX B)

As to SOR allegation 1.a, Applicant's federal tax lien was issued in 2015 in the amount of \$6,825. He is working with a company and is paying a monthly amount to pay the IRS debt.

As to SOR allegation 1.b, Applicant's federal tax lien was issued in 2014 in the amount of \$32,102.00. He is working with a company and is paying a monthly amount to pay the IRS debt.

As to SOR allegation 1.c, Applicant's federal tax lien was issued in 2014 in the amount of \$8,364. He is working with a company and is paying a monthly amount to pay the IRS amount.

As to SOR allegation 1.d, Applicant's federal tax lien was issued in November 2009 in the amount of \$108,000. He denied this allegation as it appears to be the same as SOR allegation 1.e.

As to SOR allegation 1.e, it appears that it is the same lien as listed in 1.d. It has the same account number and the same date and same amount of \$108,000.

Applicant's credit report, dated 2014, provided information on four November 2009 federal tax liens all in the amount of \$108,000 for two different counties. (Item 6) The remainder of the credit report reflected other accounts as "pays as agreed."

The 2015 credit bureau report showed the five federal tax liens that are alleged on the SOR with the same amounts reflected on the SOR. All other accounts are either paid and closed or show zero balance. (Item 7)

Applicant's net monthly income is \$15,000 and his bills are approximately \$12,000 to \$13,000 a month.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

The Government produced credible evidence to establish that Applicant had federal tax liens. Applicant admits all allegation except one, which appears to be a duplicate. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c), and 19(g)

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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;

(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 has been employed as a truck driver with his company. A reduction in business contracts occurred during the slow economic times of 2008 and his income was affected. He also helped family members. He paid his bills timely as reflected on his credit reports. The federal tax liens occurred when he thought the tax information sent to his accountant was filed electronically. He did not know of the federal tax liens until later. His military pay was garnished by the IRS, and he has been paying a monthly amount to them since at least 2013 to pay the tax debts. He is also working with a company to resolve all tax issues. He has no new delinquent 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. I have noted Applicant's service in the military. He has had a clearance since the beginning of his military career. He and his wife raised five children. He had no financial

problems before the federal tax liens. The tax information was sent to the accountant and Applicant believed there was no issue.

Applicant is 65 years old. He served in the U.S. Army and retired with an honorable discharge. He has worked as a contractor for many years. He is repaying the federal tax liens and has been since at least 2013. He provided sufficient information to carry his burden of proof.

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: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge