



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



In the matter of:)
)
) ISCR Case No. 15-03522
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to file his federal tax returns for tax years 2010, 2011, and 2013. He also has delinquent debts he has ignored for many years. His evidence is insufficient to show that he has good judgment and is a law-abiding person. He knew of his legal obligation to file his returns and to pay his debts and he failed to do so. He failed to establish a track record of financial responsibility and an ability to abide by rules and regulations. The financial considerations security concerns are not mitigated. Clearance is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on July 11, 2014. On March 24, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹

¹ DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant answered the SOR on April 25, 2016, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM), adducing the evidence supporting the security concerns, was provided to Applicant by transmittal letter dated June 29, 2016. Applicant received the FORM on July 7, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM or submit any additional evidence. The case was assigned to me on May 9, 2017.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from November 19, 2014. Applicant was informed he could object to the summary of his interview and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, submitted no documents, and raised no objections. I admitted the document and considered it.

Findings of Fact

In his answer, Applicant admitted the SOR factual allegations: four delinquent accounts totaling about \$17,000, and his failure to file his federal income tax returns for tax years 2010, 2011, and 2013. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 60-year-old mechanical engineer employed with a defense contractor. He received his bachelor's degree in 1980. He has been married and divorced three times. His most recent divorce was in 2006. Applicant has three children, ages 21, 19, and 17.

Applicant's work history shows that he worked for a federal contractor from 1999 to 2007. He then worked for a private company from 2007 to 2013. He has been working for his current employer, a federal contractor, since April 2013. Applicant was granted a secret clearance in 1980, which has been continued to present. There is no evidence of security violations or issues of concern, except for those in the SOR.

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had failed to file his federal income tax returns for tax years 2010, 2011, and 2013. Applicant explained that he "haven't taken the time to file." He believed that he paid any taxes due through his withholdings and that he owed no taxes. (FORM, Item 3, Section 26.) Applicant also disclosed that because of his 2006 divorce and a period of

unemployment in 2007, his timeshare was foreclosed in 2013. He disclosed no other delinquent debts, claiming he forgot about them.

During his November 2014 interview with a Government investigator, Applicant was made aware of the security concerns raised by his failure to file his tax returns and by his delinquent debts. Applicant explained that his debts resulted from a contentious divorce in 2006, being laid off from his job in 2007, and being underemployed until about 2013. When he found employment in 2008, it was either part-time work or his salary was lower than that of his prior job. He implied that he did not have the income to pay his living expenses and his delinquent debts.

After his delinquent debts went into collection, Applicant ignored them. He made no further attempts to contact the creditors or to pay them because the creditors wanted payment in full and he did not have the income. He has been employed full time since 2013. He stated that he currently has the income to pay his delinquent debts. He promised the investigator that he was going to get a credit report to identify his delinquent debts and try to resolve them.

Applicant failed to file his income tax returns because he procrastinated in gathering the information needed to file. He guessed he had sufficient income withheld to pay any tax owed, but he was not sure whether he owed taxes. Applicant stated he intends to file his delinquent tax returns, but he did not provide a timeframe.

In his SOR response, Applicant stated that he intended to take care of some of his delinquent debts immediately, and others within 30, 60, and 120 days. He also promised to file his delinquent income tax returns within 120 days. As of April 2016, his 2010, 2011, and 2013 income tax returns had not been filed.

Applicant did not respond to the FORM and failed to provide any documentary evidence of any SOR debts paid, settled, under payment agreements, disputed, or otherwise resolved. He presented no documentary evidence to show that he filed any of his delinquent income tax returns. There is no information to indicate whether he has participated in financial counseling or hired an accountant or a tax professional to assist him with preparing and filing the overdue tax returns.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition

is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's failure to file his 2010, 2011, and 2013 income tax returns, and his delinquent debts are established by his 2014 SCA, SOR response, his 2014 statement, and his 2014 credit report.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” “(c) a history of not meeting financial obligations;” and “(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” The Government established the above disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;
- (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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See Directive ¶ E3.1.15*. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” *Directive, Enclosure 2 ¶ 2(b)*.

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are recent and ongoing. He presented no evidence to show that he filed any of his delinquent tax returns or that he made any efforts to contact his creditors, or to pay or resolve his delinquent debts. He presented insufficient evidence to show that his financial problems are under control. Applicant alleged that his 2006 divorce and 2007 period of unemployment contributed to or aggravated his financial problems. Notwithstanding, he presented insufficient information to establish that he was financially responsible under the circumstances.

Applicant was made aware of the Government's financial considerations security concerns when he completed his 2014 SCA. The Government's security concerns were reinforced during his November 2014 interview, when he received the SOR, and when he was provided the FORM. He was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. He failed to provide any documentary evidence to show he has been in contact with his creditors, or that he attempted to settle, pay, dispute or otherwise resolve any of his delinquent debts since he acquired them. He failed to provide any documentary evidence to show that he is a law abiding, diligent, and financially responsible person.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

I considered that Applicant has worked for federal contractors for many years while possessing a security clearance without concerns, except for those in the SOR. Notwithstanding, Applicant did not submit sufficient evidence to show his financial responsibility. He knew of his legal obligation to file his tax returns, and he failed to do so. Questions remain about his reliability, trustworthiness, and ability to abide by rules and regulations and to protect classified information.

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. The financial considerations security concerns are not mitigated.

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.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge