



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03621

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On November 25, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.¹

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM)

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017. My decision and Formal Findings under the revised Guideline F would not be different under the 2006 Guidelines.

dated May 4, 2016.² Applicant received the FORM on July 8, 2016. He did not submit an additional response to the FORM. The case was assigned to me on July 1, 2017. Based on a review of the case file, submissions, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted allegation 1.c and denied the other allegations in the SOR under Guideline F, with explanations for each item. His denials were based on a disagreement with the amount of the tax owed. (Item 1)

Applicant is 62 years old. He obtained an undergraduate degree in 1976. He is married and has one child. Since 2002, he has worked as a defense contractor. Applicant has held a security clearance since 2002. He completed his security clearance application (SCA) in 2014. (Item 2)

The SOR alleges that Applicant has four unreleased tax liens filed against him, three from his state of residence and one is a Federal tax lien, for a combined total of \$244,314. In addition, the SOR alleges that Applicant was delinquent with his mortgage loan in the amount of \$20,260 with a total loan balance of \$331,561. The total amount of delinquent debt cited in the SOR totals \$264,574. (Items 1 and 4)

Applicant denied all SOR allegations except the Federal tax lien in the amount of \$138,000 (SOR 1.c) as noted in his answer. He failed to list any tax liens or delinquent mortgage account on his security clearance application that he completed in 2014. (Item 2)

During his January 2015, investigative interview, Applicant also denied that he had any current delinquent debt. (Item 5) The investigator confronted Applicant with information from a credit report obtained after Applicant completed his SCA. (Items 3 and 4)

The credit report disclosed the four tax liens, an unpaid medical debt in the amount of \$51, and at that time, a delinquent mortgage account in the amount of \$9,279, for a combined total of \$253,644. Applicant claimed that he had no idea about the tax liens that had been filed against him from October 2011 through November 2013, and although he knew that he had paid his mortgage loan late on numerous occasions, Applicant stated that he had no idea that he was delinquent for \$9,279. He explained that was the reason that he did not list this information on his 2014 SCA. (Items 1, 2, 3, and 5)

Applicant did not submit any documentation to support his denials to the SOR debts. He did not submit a response to the FORM. There is no information in the record

²The Government submitted five items for the record.

as to how Applicant developed the state and Federal tax liens, and if he has a plan to resolve them. Applicant did not meet his burden of proof in this case to mitigate the security concerns under the financial considerations guideline.

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(a), 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 national security eligibility 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.

The U.S. 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. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

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 Executive Order 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

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ 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.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individuals’ reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus be a possible indicator of, other issues of personnel security concerns such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government provided credible evidence that Applicant has three state tax liens and a Federal tax lien from 2011 to 2013. Applicant also has a delinquent mortgage account debt. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a), (c), and (f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state or local income tax as required) applies. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Financial Considerations Mitigating Condition (FC MC) 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) does not apply. Applicant provided no information

⁶ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

that would allow this MC. There is no explanation from Applicant concerning the delinquent debt. None of the mitigating conditions apply in this case.

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(d):

(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. Applicant is 62 years old. He has worked for his current employer since 2002. He is an educated man. He has held a security clearance for many years. Applicant reports no difficulty with his income.

Applicant's overall delinquent debt has increased from 2014 to 2015. He provided no explanation for the security issues. He has not met his burden of proof in this case. He has not complied with rules and regulations. I have doubts about his judgment and reliability. Any doubts must be resolved in favor of the Government. Applicant failed to meet his burden in this case. He did not mitigate the security concerns under the financial considerations guideline.

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 grant Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge