



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03978

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

01/04/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 12, 2016, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 10, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 19, 2016, scheduling the hearing for October 5, 2016. The hearing was postponed and convened as rescheduled on November 15, 2016. Government Exhibits (GE) 1 through

5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A, B, D-F, H-K, and M-S, which were admitted without objection. DOHA received the hearing transcripts (Tr.) on November 29, 2016.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2001 until he was discharged with a general under honorable conditions discharge in 2004. Except for a three-month period of unemployment after his discharge, Applicant has worked consistently for defense contractors since 2004. He seeks to retain a security clearance. He attended college for a period, but he has not earned a degree. He married in 2001 and divorced in 2005. He married again in 2014. He has two children with his wife, three other children, and a stepchild.¹

Applicant has had financial problems for years. He filed a Chapter 7 bankruptcy case in 2005, and his debts were discharged in 2006. He accumulated additional delinquent debts after the bankruptcy, and he did not file his 2012 and 2013 federal income tax returns when they were due. He attributed the bankruptcy to his divorce, and his more recent financial problems to the costs associated with a large family living on one income.²

The SOR alleges the Chapter 7 bankruptcy case (SOR ¶ 1.c); Applicant's failure to file his federal income tax returns for tax years 2012 and 2013 (SOR ¶ 1.a); and 13 miscellaneous delinquent debts totaling about \$9,645 (SOR ¶¶ 1.d-1.p).³ Applicant admitted owing the 13 delinquent debts at one time, but he established that 11 of the debts were paid or settled in March 2016. He was attempting to make payment arrangements for the last 2 debts.⁴

Applicant reported his delinquent debts on his June 2014 Questionnaire for National Security Positions (SF 86). When he was interviewed for his background investigation in September 2014, he stated that he was on a five-year payment plan with the IRS for his 2008 taxes. The payments were being garnished from his paycheck. He stated that he did not file his 2012 and 2013 federal income tax returns because he did not have the money to pay a tax preparer. He stated that he planned to file his tax returns by November 2014, and if he owed money, he would set up another payment plan.⁵

¹ Tr. at 21, 23-30, 59; GE 1, 2.

² Tr. at 21-22, 30-32; Applicant's response to SOR; GE 1, 2, 5.

³ There is no evidence to support SOR ¶ 1.b.

⁴ Tr. at 48-49; Applicant's response to SOR; GE 1-6; AE D-F, H-K, and M-P.

⁵ GE 1, 2.

Applicant filed his 2012 and 2013 federal income tax returns in April 2015. His December 2015 pay statement showed that the IRS levied \$2,922 from his wages during 2015. Paperwork from his January 2016 installment agreement with the IRS indicated that his monthly payment is \$311, which is levied from his paycheck. The agreement showed that he owed \$17,246 in taxes, penalties, and interest for tax years 2010, 2012, 2013, and 2014. Applicant stated that he owes the IRS about \$2,000 for tax year 2015.⁶ He stated that the amount was added to another installment agreement.⁷

Applicant has received financial counseling. He does not believe that he will owe the IRS for tax year 2016. He stated that he is committed to paying his taxes and keeping his finances in order.⁸

Applicant submitted letters attesting to his excellent job performance. He is praised for his work ethic, dependability, trustworthiness, honesty, loyalty, reliability, and integrity.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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."

⁶ The SOR only alleged that Applicant did not file tax returns for tax years 2012 and 2013. It did not allege delinquent federal taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

⁷ Tr. at 32-45, 53-54, 57; Applicant's response to SOR; AE A, B.

⁸ Tr. at 22, 38, 42, 49-52, 55-58; Applicant's response to SOR; AE S.

⁹ AE Q, R.

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 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.

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. The following 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 Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant had delinquent debts that he was unable or unwilling to pay. He did not file his 2012 and 2013 federal income tax returns when they were due. The above disqualifying conditions are applicable.

There is no evidence to support SOR ¶ 1.b. That allegation is concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

Applicant's Chapter 7 bankruptcy resulted from his divorce. SOR ¶ 1.c is mitigated. He attributed his more recent financial problems to the costs associated with a large family living on one income. He established that 11 of the 13 delinquent debts alleged in the SOR were paid or settled in March 2016. He was attempting to make payment arrangements for the last 2 debts. Those 13 debts are mitigated.

Applicant's failure to file his tax returns when they were due is more problematic. "Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Applicant filed his 2012 and 2013 federal income tax returns in April 2015, and he has had installment agreements with the IRS for several years. However, his tax issues are not under control. In January 2016, he owed \$17,246 in taxes, penalties, and interest for tax years 2010, 2012, 2013, and 2014; and he admitted that he owes the IRS about \$2,000 for tax year 2015. Applicant's failure to file his tax returns when they were due is not fully mitigated under any of the mitigating conditions.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's military service, his steady employment with a defense contractor, and his favorable character evidence. However, his ongoing tax issues raise doubts about his judgment, trustworthiness, and willingness to abide by rules and regulations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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:	Against Applicant
Subparagraphs 1.b-1.p:	For 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.

Edward W. Loughran
Administrative Judge