



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-04235
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Charles Hale, Esquire, Department Counsel
For Applicant: *Pro se*

09/28/2017

Decision

HOGAN, Erin C., Administrative Judge:

On February 29, 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; 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 within the Department of Defense after September 1, 2006. On June 8, 2017, the AGs were updated and replaced the AGs effective September 1, 2006. This decision will be decided based on the new AGs. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On April 18, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 19, 2016. The case was assigned to me on May 23, 2017. On August 23, 2017, a Notice of Hearing was issued, scheduling the hearing for September 5, 2017. The hearing was held as scheduled. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered 30 exhibits which were admitted as Applicant Exhibits (AE) A – DD. The transcript (Tr.) was

received on September 13, 2017. The record was held open until September 22, 2017, to allow Applicant to submit additional documents. Applicant submitted additional documents which were admitted as AE EE. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 37-year-old employee of a DOD contractor seeking a security clearance. This is his first time applying for a security clearance. He has a bachelor's degree and has taken some graduate classes. He is single and has no children. (Tr. 77; Gov 1)

On October 14, 2014, Applicant submitted an electronic questionnaires for investigations processing (e-QIP). Applicant's security clearance background investigation revealed that he had the following financial issues: a \$3,612 state tax lien entered in January 2012 (SOR ¶ 1.a: Gov 5 at 13); a state tax lien in the amount of \$8,356 entered in November 2011 (SOR ¶ 1.b: Gov 5 at 12); failure timely file federal income tax returns for 2007 and 2008 and failure to pay the Internal Revenue Service (IRS) \$7,500 for those tax years. (SOR ¶¶ 1.c and 1.e: Gov 1, section 26); and failure to timely file state tax returns and pay state taxes for tax years 2007, 2008, 2009, and 2010, resulting in a \$20,415 state tax debt (SOR ¶¶ 1.d and 1.f: Gov 1, section 26; Gov 2).

Additional delinquent accounts include: a \$3,100 student loan account that was placed for collection (SOR ¶ 1.g: Gov 3 at 7); a \$751 cell phone account that was placed for collection (SOR ¶ 1.h: Gov 3 at 7); and two traffic tickets that were placed for collection in the respective amounts of \$250 and \$55 (SOR ¶¶ 1.i and 1.j: Gov 3 at 7).

Applicant admits that he had financial issues after graduating college. He testified that he dug a financial hole in his twenties and has spent a large part of his thirties digging out of the hole. (Tr. 77) Some of Applicant's tax problems were the result of his former accountant not filing his income tax returns. (Tr. 48-49) Applicant took proactive steps to resolve his state and federal tax issues when he discovered the issue in 2015. He also hired a new accountant. (AE Q) He has resolved all of his debts, to include debts that were not alleged in the SOR.

The status of the SOR debts are:

SOR ¶ 1.a: \$3,612.69 state tax lien entered in 2012: Applicant entered into a payment plan and resolved this tax lien on March 11, 2016. (Tr. 28-29; AE E; Gov 5 at 14-15; Response to SOR, Tab D)

SOR ¶ 1.b: \$8,356.71 state tax lien entered in 2011: Applicant entered into a payment plan and resolved this tax lien on March 31, 2016. (Tr. 29; AE F; Gov 5 at 12-13; Response to SOR, Tab D)

SOR ¶ 1.c and ¶1.e: Failure to file 2007 and 2008 federal income tax returns and failure to pay the IRS \$7,500 for those tax years: Applicant filed the 2007 federal income tax return on May 26, 2008 and paid the tax debt on March 7, 2011. He filed the 2008 federal income tax return on January 4, 2010, and paid the tax debt on May 14, 2014. (Tr. 21; AE C; AE D; Response to SOR, Tabs A-B)

SOR ¶ 1.d and ¶1.f: Failure to file state income tax returns for tax years 2007, 2008, 2009 and 2010 resulting in a total state tax debt of \$20,415 for those years: Applicant's 2007, 2008, 2009, and 2010 state tax returns were filed on or before March 31, 2015. Applicant entered into a repayment agreement on October 15, 2015 and paid the taxes in full on March 31, 2016. (Tr. 21, 28-31; AE G; AE H; Gov 5; Response to SOR, Tabs C-D)

SOR ¶ 1.g: \$3,100 student loan account placed for collection: The credit report incorrectly listed this as a medical account. Applicant paid this debt on December 3, 2014. (Tr.25-26; AE A; Response to SOR, Tab E)

SOR ¶ 1.h: \$751 cell phone bill placed for collection: Applicant formally disputed this account in November 2014. Applicant claimed the credit reporting agency indicated it was an error on their part and the account was removed in December 2014. He has no documents to verify this, but the account is not listed on his most recent credit report, dated August 30, 2017. (Tr. 22, 25; Gov 4; Response to SOR)

SOR ¶ 1.i and ¶ 1.j: \$250 and \$55 speeding tickets: Applicant paid these tickets on November 25, 2014. (Tr. 22,26; AE B; Response to SOR, Tabs G-H)

Applicant also resolved several accounts that were not alleged in the SOR. He is current on federal and state taxes. (Tr. 32, AE I; AE J) As of August 31, 2017, Applicant had saved over \$159,100 in a 401(k) account. He is financially stable. (AE EE)

Applicant's current accountant verifies that Applicant hired him to prepare and file his federal and state income tax returns for tax year 2011 in 2012. He verifies that Applicant previously hired a tax professional to prepare and file his taxes, but the tax professional did not follow through with filing the taxes. He states Applicant's character and humanity make him a worthy to possess a security clearance. (AE Q)

Applicant's friends think highly of him. He volunteers in the community, to include serving as an assistant high school wrestling coach. He not only helped coach, but served as a counselor to the members of the team, encouraging them to study and better themselves. His friends, co-workers, and supervisors describe Applicant as a man of integrity. He is reliable and trustworthy. After moving to another state, he forged a partnership between his employer and the local intermediate school for a reading program initiative. The purpose was to bring positive male role models into the school to read to the students, many of whom did not have positive male role models at home. He also visits senior citizens on a regular basis. (AE Q – AE DD)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or 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 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 relating to the guideline 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; 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.

Applicant has encountered financial problems for several years. Most of the issues involved state and federal income taxes. He failed to timely file his state income taxes for tax years 2007, 2008, 2009 and 2010, resulting in delinquent state taxes totaling over \$20,415. He failed to timely file his 2007 and 2008 federal tax returns for 2007 and 2008, resulting in a delinquent federal taxes totaling over \$7,500. He also had a delinquent student loan and two speeding tickets. AG ¶¶ 19(a), 19(b), 19(c), and 19(d) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts

under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his or her finances in such a way as to meet his or her financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to 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 resolved the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) applies because Applicant resolved all of the debts alleged in the SOR over a period of several years. Applicant underwent a period of financial irresponsibility, but has matured and is now focused on being financially responsible.

AG ¶ 20(b) applies with regard to his income taxes because Applicant was not aware that his accountant did not file his tax returns. Once he discovered the issue, he

filed the returns and entered into repayment agreements with state and federal tax authorities. He acted responsibly under the circumstances.

AG ¶ 20(d) applies because Applicant demonstrated a good-faith effort to resolve his delinquent debts. He resolved all of the debts alleged in the SOR over a period of several years. He entered into repayment agreements. Applicant's financial situation has improved.

AG ¶ 20(e) applies with respect to the cell phone debt alleged in SOR ¶ 1.h. Applicant disputed this debt and the debt is no longer on his credit report.

AG ¶ 20(g) applies regarding Applicant's state and federal tax debts. Applicant filed all of his outstanding tax returns. He entered into repayment agreements with the state and federal tax authorities and resolved his tax debts. His attempts to resolve his federal and state tax debts began before the SOR was issued. He resolved the federal tax debts several years before the SOR was issued. He entered into a payment plan for his state tax debts before the SOR was issued and completed the payment plan approximately one month after the SOR was issued.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's favorable reference letters as well his active volunteer work in his local community. I considered that part of the tax issue resulted from an accountant who prepared, but did not file, Applicant's tax returns. It took Applicant several years, but all taxes were filed and paid. While Applicant's financial history is not perfect, he learned a valuable lesson and

worked to become more financially responsible. His financial situation is now stable. Security concerns under financial considerations are 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:	FOR APPLICANT
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Subparagraphs 1.a -1.j:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge