



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



In the matter of:

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) ISCR Case No. 15-04690
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Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

04/07/2017

Decision

WHITE, David M., Administrative Judge:

Applicant has a lengthy history of failure pay his Federal income taxes. Resulting security concerns were not mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 14, 2014. On May 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on July 12, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 2, 2016. The case was assigned to me on August 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 17, 2016, setting the hearing date for December 7, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on his own behalf, but offered no documentary evidence. I granted his request to leave the record open until January 10, 2017, to permit him to submit such evidence. He did not submit any additional evidence, and the record closed as scheduled. DOHA received the transcript of the hearing (Tr.) on December 17, 2016.

Findings of Fact

Applicant is a 57-year-old employee of a Federal contractor, where he has worked in various positions since 1979. He is a high school graduate. He has no military service, and has never held a security clearance. He is married, for the second time, and has two adult children. (GE 1; Tr. 6-8, 33-36.)

In his Answer, Applicant admitted the allegation in SOR ¶ 1.a, and denied the allegation in SOR ¶ 1.b. Applicant's admissions, including those made during two interviews with investigators from the Office of Personnel Management (OPM), are incorporated in the following findings. (Answer; GE 2; GE 3.)

Applicant has a long history of failing to pay required income taxes, which he attributed to earnings from working overtime and unpaid taxes on profits from his wife's hair salon business. Federal and state tax liens have been filed against him dating back to 2003. The SOR alleged two Federal income tax liens filed in December 2013 and February 2010. The 2013 lien involved \$49,350 in unpaid taxes for tax years 2010 and 2011. The 2010 lien involved \$41,255 in unpaid taxes for tax years 2003 to 2008. (GE 1 through GE 6; Tr. 39-49, 56.)

Applicant provided no documentary evidence concerning his tax payment history or the current status of his delinquent taxes. He testified that he took out a loan from his 401(k) retirement fund to make payments to the IRS for some of these debts. He said that he wrote two checks, for a total of \$56,755, to the IRS in March 2015, and has been making payments through monthly payroll deductions of \$740 since then. The most recent record credit report shows that the 2010 tax lien was released in April 2015, but the 2013 lien remains in effect. (GE 3; GE 6; Tr. 39-42.)

On September 17, 2010, Applicant told an OPM investigator that he was in the process of refinancing the home that he owns, to obtain funds to pay off his total tax debt. In 2012 he moved out of that home, which has since remained vacant while he and his wife live in a different house that is owned by her family. During his March 25, 2015 interview, he told another OPM investigator that he was in the process of selling the vacant home in order to pay his remaining Federal and state tax debts. During his

hearing, Applicant testified that he was unsure whether he would sell the home or keep it as a rental property after he completed necessary repairs and remodeling improvements. (GE 2; GE 3; Tr. 34, 44, 54-59.)

Applicant provided no evidence of financial counseling, or other actions to improve his financial responsibility or compliance with his income tax obligations. He submitted no evidence of good character or responsible conduct in his professional or personal capacities. Although he was given more than a month after the hearing to submit documentation concerning his current account payment status with the IRS, he failed to submit any evidence to corroborate his testimony. (Tr. 67-69.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

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.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial irresponsibility, dating back at least to the 2010 tax lien for his failure to pay income taxes that came due from 2003 through 2008, and continuing to date with respect to his recent delinquent Federal tax debt. His irresponsible financial history involving more than \$90,000 in unpaid Federal income taxes, and his inability or unwillingness to repay that debt, raise security concerns under the above

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

disqualifying conditions, and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's ongoing financial difficulties:

(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.

Applicant's financial problems are extensive, ongoing, and arose from years of disregard for his lawful income tax obligations to the Federal Government. They continue to reflect irresponsibility, unreliability, and poor judgment. AG ¶¶ 20(a) and (b) do not provide mitigation of the security concerns. There is insufficient evidence that he participated in effective financial counseling, or that his financial problems are under control. Thus, he failed to establish mitigation under AG ¶ 20(c). His undocumented assertion that he has entered into a payment agreement with the IRS, covering an unknown quantity of tax debt for undetermined years, did not occur until at least 2015. This action, which came after submission of his e-QIP and most recent OPM interview, did not demonstrate good faith or establish mitigation under AG ¶ 20(d). Applicant did not dispute the legitimacy of his delinquent tax debts, so AG ¶ 20(e) does not apply.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature adult. He is responsible for the choices and conduct that underlie the security concerns expressed in the SOR, including more than a decade of failure to pay required income taxes. He did not present an effective current plan for addressing his substantial remaining debt, or establish a record of recent compliance with income tax obligations, either of which could demonstrate rehabilitation and behavioral change. The likelihood that similar problems will recur remains a security issue, and the potential for untrustworthiness, pressure, coercion, or duress is undiminished. He has a lengthy history of financial irresponsibility, and there is insufficient evidence to suggest that his situation or conduct are likely to improve. Overall, the record evidence creates significant doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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 grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge