



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



In the matter of:

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ISCR Case No. 15-04850

Applicant for Security Clearance

Appearances

For Government: Robert Blazewick, Esq., Department Counsel

For Applicant: *Pro se*

10/18/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On May 24, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant Applicant security clearance eligibility. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On June 28, 2016, Applicant answered the SOR, admitting subparagraphs 1.d through 1.g, and denying the remainder. The case was assigned to me on December 6, 2016, and on June 15, 2017, the Defense Office of Hearings and Appeals issued a notice

of hearing, scheduling Applicant's case for June 21, 2017. I considered Applicant's testimony, and I admitted six Government exhibits (GE 1 – GE 6), and 19 Applicant's exhibits (AE A – AE S). In addition, I incorporated a copy of Department Counsel's discovery letter to Applicant, marking it as Court Exhibit (CE) I. The transcript (Tr.) was received on June 29, 2017.

Approximately two weeks before the hearing, Security Executive Agent Directive 4 became effective, establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. I notified both parties that I would be adjudicating Applicant's security clearance eligibility under the new AG.¹

Findings of Fact

Applicant is a 52-year-old married man with four children. Two of the children are adults from a prior marriage that ended in divorce in December 2008, and the youngest two, ages 11 and 12, stem from his current marriage. He is a veteran of the U.S. Army, serving honorably from 1983 to 1992. Within six years after leaving the military, he earned an associate's degree, a bachelor's degree, and a master's degree, attending school at night. (Tr. 44) Each degree was in the computer science field. Currently, Applicant works as an information technology consultant. (Tr. 46) He supervises nine people. He held a security clearance from 1995 to 2008.

Between 2007 and 2012, Applicant incurred approximately \$270,000 of delinquent debt, as alleged in the SOR. He had no financial problems until 2006 when he experienced a marital separation, together with a relocation to an area with a much higher cost of living. (Tr. 16) As part of the terms of the divorce, Applicant withdrew \$133,000 from his thrift savings plan (TSP), agreeing to give half to his wife. (Tr. 16) In addition, the divorce court ordered Applicant to pay approximately 30 percent of his annual income, totaling \$1,500 per month, in spousal support for ten years, and to pay \$1,000 per month in child support for 30 months. (GE 1 at 49; Tr. 37)

Applicant drastically underestimated the penalties and increased tax burden from the TSP withdrawal. Consequently, in 2007, his federal income tax burden increased from \$4,000 the previous year, to \$40,000. (Tr. 21) Overwhelmed, Applicant did not file his federal or state income tax returns for fear that he would not be able to support his two children and his girlfriend, whom he had begun dating after he and his wife separated, and her two children. (GE 1 at 45) In addition, he feared that the federal government would garnish his pay. (GE 1 at 49) As the years passed, penalties and interest continued to accrue on Applicant's tax debt. By December 2015, he had yet to file any of his tax returns from tax years 2007 through 2013 and his federal income tax delinquency totaled approximately \$161,000. (GE 2 at 21).

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Between 2007 and 2013, Applicant also fell behind on several other debts, including his attorney fees related to the divorce, totaling \$70,000 (subparagraph 1.c), and miscellaneous debts totaling approximately \$26,000 (subparagraphs 1.d through 1.e, 1.g, and subparagraphs 1.f, as duplicated in 1.h). Since 2007, Applicant's salary has increased by 33 percent. (Answer at 2) In addition, he and his girlfriend whom he began dating after he separated from his wife are now married. She helps pay household expenses. (Answer at 2) Applicant's income, when totaled with his current wife's income, is double what he earned in 2007. (Answer at 2)

Applicant's increase in disposable income enabled him to begin resolving his delinquent debts. In early 2016, he contacted the IRS and filed his federal income tax returns. (Tr. 35; AE Q) In addition, he negotiated a \$50,000 reduction in the delinquent balance, and began making \$2,000 monthly payments. (AE L, AE P) By December 2016, he had satisfied the delinquencies stemming from tax years 2012 and 2014, totaling \$4,332. (AE M) Applicant's income tax delinquency is currently \$106,467. (AE P)

As for the delinquent attorney fees alleged in subparagraph 1.c, the law firm obtained a judgment in 2010, and Applicant has been satisfying it through a wage garnishment. (AE J; Tr. 59) As of March 2017, he had satisfied \$32,000 of the debt. (AE J at 1)

Subparagraph 1.d, totaling \$12,623, is a credit card delinquency that Applicant incurred at or about the time of his marital separation and subsequent divorce. (Tr. 41) His efforts at contacting the creditor to arrange a payment plan have been unsuccessful.

Applicant incurred the debt alleged in subparagraph 1.e, totaling \$6,052, when he purchased furniture shortly after relocating in 2007 after his divorce. (Tr. 42; Tr. 59) The store has since gone out of business, and Applicant has been unable to identify an assignee. (Tr. 42) The debt remains outstanding.

The debt alleged in subparagraph 1.f, as duplicated in subparagraph 1.h, totaling \$4,542, stems from a judgment entered against Applicant in August 2011. (AE H at 3) By January 2017, Applicant had satisfied it. (AE H at 2)

Applicant owes the debt alleged in subparagraph 1.g, totaling \$263, to a department store. It became delinquent at or about the time of his separation and divorce. It remains outstanding. (Tr. 43)

Applicant paid a \$50 doctor's bill that was not alleged. (AE I) He keeps a budget. He earns approximately \$165,000 per year, roughly the same amount as his wife. He has approximately \$3,300 of disposable monthly income, an amount that will increase by \$800 to \$1,000 over the next six months, as his responsibility to pay alimony to his ex-wife is scheduled to end. (GE 2 at 5; Tr. 49)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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 overall 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 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).²

² The factors under AG ¶ 2(d) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth 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 greater risk of having to engage in illegal acts to generate funds.

Between 2007 and 2012, Applicant incurred approximately \$270,000 of delinquent debt, consisting primarily of federal income taxes for multiple years when he failed to file his income tax returns. AG ¶ 19(a) "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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," apply.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

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.

Applicant had no financial problems before his divorce. The costs of his divorce sent his finances into a downward spiral. Over the past few years, his finances have stabilized. Per his budget, he has \$3,300 in monthly disposable income, an amount that will increase as he soon will no longer be responsible to pay alimony to his first wife. Applicant has satisfied the debt alleged in subparagraph 1.f, as duplicated in subparagraph 1.h, in its entirety. I resolve subparagraph 1.f in his favor. Applicant has paid approximately \$32,000 of the delinquency owed to his attorney. As for his federal income tax delinquency, Applicant has satisfied it for tax years 2012 and 2014, and negotiated a reduction of the remaining delinquency by approximately \$50,000. These efforts are sufficient to trigger the application of AG ¶¶ 20(c), 20(d), and 20(g).

The amount of the income tax delinquency that Applicant has satisfied is a small percentage of the outstanding balance. Moreover, failure to file income tax returns “suggests that an applicant has a problem with complying with well-established governmental rules and systems,” and raises a serious security concern. (ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). This security concern is not mitigated, absent further scrutiny, even in cases where the applicant subsequently files the delinquent tax returns and has satisfied the tax delinquency or otherwise corrected the tax problem. (ISCR Case No. 15-01031 at 3 and note 3 (App. Bd., June 15, 2016) Under these circumstances, AG ¶ 20(b) does not apply.

Whole-Person Concept

Applicant’s decision to shirk his legal obligation to file his federal income tax returns constitutes a serious transgression. The nature and seriousness of this failure was compounded by the number of years that he failed to file the income tax returns, and the amount of delinquent debt that he incurred. Since 2016, Applicant has filed his delinquent federal income tax returns, which, together with his progress in satisfying the other delinquencies, indicates a significant presence of rehabilitation. In addition, the length of time that Applicant has held a security clearance in the past merits favorable consideration. However, given the seriousness of the failure to file the federal income taxes, the recency of the steps that Applicant has taken to resolve them, and the significant amount of delinquent income tax debt that remains outstanding, I conclude that Applicant’s debt reduction efforts, thus far, are insufficient to mitigate the security concern.

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
Subparagraph 1.f:	For Applicant

Subparagraph 1.g

Against Applicant

Subparagraph 1.h:

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

Marc E. Curry
Administrative Judge