

Applicant answered the SOR (Answer) on June 21, 2016, and requested a hearing before an administrative judge. On September 28, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On November 15, 2016, DOHA issued a Notice of Hearing setting the case for December 7, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified, and offered Applicant Exhibits (AE) A through E into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on December 16, 2016. The record remained open until January 6, 2017, to give Applicant an opportunity to submit additional evidence. No post-hearing exhibits were submitted and the record closed.

Procedural Ruling

At the commencement of the hearing, Department Counsel moved to withdraw the allegation in SOR ¶ 1.i. Applicant had no objection and said motion was granted. (Tr. 7-10.)

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.h, and 1.k. He denied those in SOR ¶¶ 1.e, 1.f, 1.g, and 1.j. His admissions are incorporated into these findings of fact. (Tr. 8-10; Answer.)

Applicant is 59 years old and unmarried. He has a 24-year-old daughter from a previous relationship. He attended college for a year. He served four years in the Navy from 1975 to 1979, when he was honorably discharged. His rank was E-4. He began working for his current employer in 1981. He received a letter from a military service branch, with whom he works, complimenting his work performance. His employer is aware of this hearing and the underlying security concerns. He expressed dedication to his job. (Tr. 11, 20-23.)

In his February 25, 2015 SF-86, Applicant disclosed a previous child support debt that was resolved in October 2013. He also disclosed that he owed the Internal Revenue Service (IRS) \$25,000 for unpaid income taxes, and noted that he was on a payment plan. (GE 1.)

On April 20, 2015, a government investigator interviewed Applicant and discussed, among other things, finances and tax issues. He told the investigator that he did not file Federal income tax returns from 1997 to 2002, and that he did not pay taxes for those years.¹ He said he filed those returns in 2003. He timely filed Federal returns for 2003 to 2008, but did not pay all taxes owed for those years. He also stated he was trying to resolve outstanding medical bills and a debt owed to a telephone bill. (Tr. 27-

¹The SOR did not allege security concerns related to Applicant's failure to timely file and pay Federal income taxes for years 1997 through 2002. Hence, said information will not be considered in an analysis of disqualifying conditions, but may be considered in the analysis of mitigating conditions and the whole-person concept, in addition to an evaluation of his credibility.

28; GE 4.) He testified that he timely filed all Federal income tax returns subsequent to 2008, and paid all taxes owed for those years. (Tr. 28.) Applicant stated that he failed to pay taxes during the previous years because he did not have enough money withheld from his paychecks, as he needed money for child support payments and living expenses. He was earning \$27,000 annually from 1997 to 2008. (Tr. 28, 54.)

The SOR alleged that the Federal government (IRS) filed four separate tax liens against Applicant. They are as follows:

SOR ¶ 1.a: In September 2009, the IRS filed a \$2,019 lien for unpaid taxes for 2008. (Tr. 30, 32; GE 3.)

SOR ¶ 1.b: In May 2009, the IRS filed a \$6,440 lien for unpaid taxes for 2007. (Tr. 31, 32; GE 3.)

SOR ¶ 1.c: In May 2008, the IRS filed a \$5,704 lien for unpaid taxes for 2006. (Tr. 33; GE 3.)

SOR ¶ 1.d: In January 2007, the IRS filed a \$15,413 lien for unpaid taxes for 2003, 2004, and 2005. (Tr. 34; GE 3.)

In 2012, Applicant started making automatic monthly payments of \$800 to the IRS on the above years' tax debts through an installment agreement. He has continued to make payments since then. He submitted a summary of the tax years and amounts owed to the IRS from July 8, 2013 to July 7, 2014. Beginning in July 2013, Applicant owed a total of \$46,702 for unpaid taxes for the following years: 2004 (\$9,159); 2005 (\$10,440); 2006 (\$8,918); 2007 (\$9,378); 2008 (\$4,623); and 2009 (\$4,182).² As of July 2014, he owed \$37,693, having resolved the 2004 Federal taxes. (Tr. 34; AE C.) Prior to starting this agreement in July 2013, he owed the IRS a total of \$57,000 for the five years. (Tr. 52.)

Applicant did not have a more recent summary statement from the IRS detailing subsequent payments. He said he would obtain one from July 2014 forward, and submit it post-hearing. He believed the current balance is about \$25,000. He said he does not owe taxes for any years not covered by the installment agreement. (Tr. 36-39, 53)

Applicant testified that prior to entering into the above installment agreement, he owed about \$42,000 to the IRS for unpaid taxes for years 1997 to 2003. (Tr. 50.) He stated that he began making payments to the IRS for those outstanding taxes in 2003. (Tr. 34, 51.) He could not remember when he completed the payments. (Tr. 50.) He estimated that he owed the IRS about \$100,000 for all years from 1997 through 2009. (Tr. 53.)

²The SOR did not allege that Applicant was indebted to the Federal government for unpaid taxes in the amount of \$4,182 for 2009. Hence, said information will not be considered in an analysis of disqualifying conditions, but may be considered in the analysis of mitigating conditions and the whole-person concept, in addition to an evaluation of his credibility.

In addition to alleging tax liens, the SOR alleged four delinquent medical debts that arose between April 2012 and July 2013, when Applicant experienced cardiac problems. Applicant stated that his insurance company did not pay the bills, and that he resubmitted them for payment. The status of each medical debt is as follows:

SOR ¶ 1.e for \$1,098 is unresolved. (Tr. 40-41.)

SOR ¶ 1.f for \$743 is unresolved. (Tr. 40-41.)

SOR ¶ 1.g for \$420 is unresolved. (Tr. 40-41.)

SOR ¶ 1.j for \$1,084 was paid by Applicant's insurance company in November 2016, after the resubmission of the bill. (Tr. 40-42; AE E.³)

The SOR also alleged two other delinquent accounts. The status of each debt is as follows:

SOR ¶ 1.h for \$192 is owed to a telephone company. Applicant said he disputed the amount of this debt with the company, but did not present evidence that the matter was successfully resolved. (Tr. 45.)

SOR ¶ 1.k for \$1,620 is owed to a bank credit card. Applicant has made three payments of \$150 on this debt. It is being resolved. (Tr. 44-47, 56.)

Applicant's annual salary is between \$69,000 and \$80,000, depending on overtime. (Tr. 25-26.) After paying living expenses and the IRS, he has about \$500 to \$600 remaining at the end of the month. He said his finances are stable and he has not fallen behind in paying his debts, including the IRS. He has not participated in financial or credit counseling. (Tr. 47-50; AE B.)

Applicant acknowledged that he made a serious mistake by ignoring his tax problems. His actions have caused him financial and physical stress. He expressed remorse. (Tr. 57-58.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

³ While testifying, Applicant offered AE F, which was a letter from the insurance company documenting the resubmission of said bill. Applicant did not have a copy of the exhibit, and agreed to provide it post-hearing, which he did not do. (Tr. 42-43.)

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(a), describing 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." 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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."

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 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 Executive Order 10865 provides that an adverse decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

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.⁴

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Applicant has a long history of unwillingness to satisfy Federal tax obligations. He failed to timely pay Federal income taxes from 2003 to 2008. He also has been unwilling to resolve his delinquent debts. The evidence is sufficient to raise the above disqualifying condition.

After the Government produced substantial evidence of the disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate financial security concerns under this guideline:

- (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;

⁴ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 failure to resolve unpaid Federal taxes on a timely basis has been ongoing from approximately 1997 to 2009, as to date he continues to make payments on old tax debts. His repeated failure to comply with legal obligations for those years casts doubt on his current judgment. The evidence does not establish mitigation under AG ¶ 20(a). Applicant failed to establish mitigation under AG ¶ 20(b), because there is insufficient evidence to conclude that circumstances beyond his control prevented him from timely filing Federal income tax returns from 1997 to 2002, or paying federal taxes from 1997 to 2008. In fact, he admitted that he chose not to pay taxes in order to manage other financial obligations. The evidence does not establish mitigation under AG ¶ 20(c), as he has not participated in financial or credit counseling, or demonstrated that his taxes are under control. He did not produce documentation verifying his assertion that he has continued to pay his outstanding 2005 through 2009 taxes since July 2014.

Applicant did not make a good-faith effort to timely address tax problems and pay delinquent debts between 1997 and 2009. He did not timely pay Federal taxes from 1997 to 2003, and did not start making payments on taxes owed for years 2004 to 2009, until sometime in 2012 and after the IRS filed liens. He resolved a medical debt in November 2016, and recently started making payments on a bankcard. Those actions also occurred after he received the SOR. AG ¶ 20(d) has limited application.

Although Applicant asserted that he disputed a telephone debt, he failed to present evidence that he had a reasonable basis to dispute the bill and that it had been resolved. 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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is an intelligent, articulate 59-year-old man, who has successfully worked for his employer since 1981. He honorably served in the Navy for four years. He is dedicated to his job. While testifying, he displayed candor and remorse about his past financial issues and decisions. These are positive factors in this case.

However, Applicant's long history of deliberately failing to timely file or pay Federal income taxes precludes him from obtaining a security clearance, as it has demonstrated a pattern of poor judgment and a consistent disregard of legal obligations. He acknowledged that he intentionally failed to file Federal income tax returns from 1997 to 2002, and timely pay taxes from 1997 to 2009, resulting in a total tax liability of over \$100,000, some of which remain unpaid. He stated that he paid all taxes for years 1997 through 2003, and paid 2004 taxes through the installment agreement he started in 2012. He testified that he is making payments on the unpaid taxes for 2005, 2006, 2007, 2008, and 2009, but did not document any payments since July 2014, more than two years ago, or confirm the balance. Within the past year, he paid or resolved two old delinquent debts, despite having notice of the Government's concerns since an interview in April 2015.

Applicant has not established a record of complying with tax laws and managing financial obligations. His actions to date are not sufficient to outweigh a long history of non-compliance with a fundamental legal obligation to file and pay taxes. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).⁵

⁵ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

The record evidence leaves me with serious questions as to Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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

Subparagraphs 1.a through 1.h:

Against Applicant

Subparagraph 1.i:

Withdrawn

Subparagraphs 1.j and 1.k:

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

SHARI DAM
Administrative Judge