



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



In the matter of:

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) ISCR Case No. 15-05862
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Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

03/31/2017

Decision

WHITE, David M., Administrative Judge:

Applicant has a lengthy history of failure to properly file or 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 December 5, 2014. On March 2, 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 March 30, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 22, 2016. The case was assigned to me on August 30, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 17, 2016, setting the hearing date for December 5, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through E, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 15, 2016.

Findings of Fact

Applicant is a 37-year-old employee of a Federal contractor, where he has worked as a truck driver since July 2014. He is a high school graduate. He has no military service, and has never held a security clearance. He has never married, and has no children. (GE 1; Tr. 6-7, 31.)

In his Answer, Applicant denied the allegations in SOR ¶¶ 1.a through 1.c. These allegations were based on admissions Applicant made in his e-QIP, and confirmed during an interview with an investigator from the Office of Personnel Management (OPM), concerning his failure to file and pay his 2011 and 2012 Federal income taxes as required. (Answer; GE 1; GE 4.)

During his hearing, Applicant testified that he had not filed his Federal income tax returns for 2011 or 2012 when they were due because it was difficult. He said he had lost documents that were needed to justify what he later claimed to be \$119,785 and \$136,322 in business expenses to offset his \$137,951 and \$154,305 in gross receipts for those two years. He testified that he did not file returns for any of the years from 2009 through 2014 until hiring a tax assistance company that he thought filed them in late 2015. The copies of returns that he submitted were unsigned, undated, and stamped, "Self-Prepared." He said that he had no documentary evidence showing the returns had ever been filed or received by the IRS, although he had been earlier informed how to obtain such documents from either the tax assistance company or the IRS itself. (Answer – attached tax returns; Tr. 32-41, 46-47.)

As alleged in SOR ¶¶ 1.b and 1.c, Applicant owes the Federal Government unpaid income taxes for tax years 2011 and 2012. He estimated the delinquent amounts to be about \$9,000 for each year in his e-QIP and during his OPM interview. Applicant estimated during his hearing that he currently owes the IRS about \$22,000. He said that he entered into an IRS repayment agreement in April 2016, and started paying \$377 per month toward his tax debt in June 2016. He provided no documentation concerning the terms of the repayment agreement, which years it covers, or the total amount of IRS debt involved. He submitted printed web-site pages that documented monthly electronic payments made in August, September, October, and November 2016, and indicated that

those payments were applied to his delinquency from tax year 2014. (Answer; GE 1; GE 4; AE D; AE E; Tr. 43-46, 52-53, 63-64.)

Applicant provided no evidence of financial counseling, or of budgetary actions to improve his financial responsibility. He provided nothing to show how much he paid the tax assistance company that he hired in June 2014, or what results, if any, they had achieved for him. The Federal Government filed tax liens against him totaling more than \$90,000 in August and November 2015, which remain in effect. A county and state, in which he has many indicia of residence, have also filed tax liens against him totaling more than \$52,000. He claims that his rental of a room from a friend, who has an apartment in a different state that has no income tax, establishes that he is not a resident of the taxing state where his parents live and he receives his mail. He has not taken effective measures to dispute that state's tax claims. (GE 2; GE 3; Tr. 36-37, 41, 45, 48-63.)

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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same.

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

Applicant has a history of financial irresponsibility dating back at least to his failure to file returns or pay income taxes for 2011 and 2012, and continuing to date with respect to his substantial delinquent Federal tax debt. He failed to file his 2011 and 2012 Federal returns until late 2015, at best, based on testimony he gave without providing corroboration. He remains without apparent means to repay his substantial delinquent debt. His irresponsible financial history and ongoing pattern of inability or unwillingness to comply with tax laws or pay debts raise security concerns under the above 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 his voluntary choices to disregard his lawful 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 entry into an electronic fund transfer payment agreement with the IRS, covering an unknown quantity of tax debt for undetermined years, did not occur until April 2016. This action, which came a month after issuance of the SOR in this case, did not demonstrate good faith or establish mitigation under AG ¶ 20(d). Applicant did not dispute the legitimacy of his delinquent 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 multiple and recent instances of failure to file and pay required income taxes. The incidents supporting the unmitigated financial concerns started in 2009 and remain ongoing. He did not present an effective current plan for addressing his substantial remaining debt, or establish a record of recent compliance with tax laws and regulations, 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:	Against Applicant
Subparagraph 1.c:	Against 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