



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



In the matter of:)
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 [NAME REDACTED]) ISCR Case No. 15-06009
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 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Jon Levin, Esq.
W. Brad English, Esq.

04/03/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has paid or resolved some of his past-due debts. Nonetheless, available information is not sufficient to mitigate the security concerns about his other unresolved debts and by his failure to comply with his federal and state income tax obligations. Applicant's request for a security clearance is denied.

Statement of the Case

On November 18, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On March 9, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received this case on September 26, 2016, and convened the requested hearing on November 15, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified in his own behalf and submitted Applicant's Exhibits (Ax.) A - J. Two witnesses also appeared for Applicant. I held the record open after the hearing to allow Applicant to submit additional relevant information. The record closed on December 5, 2016, when I received, as Ax. K Applicant's timely post-hearing submission.⁴ All exhibits were admitted without objection. DOHA received a transcript of the hearing (Tr.) on November 22, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant failed to timely file his federal income tax returns for the tax years 2009 through 2014 (SOR 1.a); that he failed to timely file his state income tax returns for the tax years 2009 through 2014 (SOR 1.b); that he failed to timely file his state income tax return in a second state for the tax year 2009 (SOR 1.c); and that he owes \$14,084 for 15 delinquent or past-due debts (SOR 1.d – 1.r).

In response to the SOR, Applicant admitted all of the allegations, and he provided information showing he had paid the debts alleged at SOR 1.d – 1.l. He also provided remarks and explanations along with his answers. At hearing, Applicant provided information that refuted the allegation at SOR 1.c, and Department Counsel withdrew that allegation. SOR 1.c, and 1.d – 1.l are resolved for Applicant. (Ax. J)

Additionally, Department Counsel moved to amend the SOR to conform to the information produced at hearing.⁵ I granted that motion. The amendments are as follows: SOR 1.a and 1.b now address the tax years 2009 through 2015. Two new SOR allegations have been added. The Government alleged as SOR 1.s, "You [Applicant] are indebted to the Internal Revenue Service for income taxes due, for tax years 2009 – 2015, in the approximate amount of \$25,375." The Government also alleged, as SOR 1.t, "You [Applicant] are indebted to the State of Alabama for income taxes due, for tax years 2009,

² The Department of Defense implemented the adjudicative guidelines on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ A copy of Department Counsel's letter forwarding Gx. 1- 4 to Applicant in advance of hearing is included as Hearing Exhibit (Hx.) 1.

⁴ Ax. K consists of updated information pertaining to Applicant's IRS and state tax obligations, as well as an updated and signed copy of the student loan repayment agreement contained in Ax. J. Department Counsel's email forwarding Ax. K and waiving objection thereto is included as Hx. 2.

⁵ See Directive E3.1.17.

2011, 2013, and 2014, in the approximate amount of \$1,531.” Applicant, through counsel, did not object to the motion and I amended the SOR accordingly. Applicant admitted the amended allegations and the new allegations. (Answer; Hx. 2; Tr. 61 - 64) In addition to the facts established by the pleadings, I make the following additional findings of fact.

Applicant is 47 years old. He twice has been married and divorced, his more recent marriage ending in May 2013. After graduating from high school, Applicant served on active duty for two years in the United States Army, then served on inactive duty with the Army Reserve until 1994, when he was honorably discharged. Between 2006 and 2007, Applicant attended a technical training school where, although he did not earn a degree, he earned various information technology (IT) certifications. Applicant was unemployed between June and October 2014, but otherwise has been steadily employed in IT positions with several companies since at least December 2006. He has been with his current company, first as a temporary employee, then as a permanent hire, since October 2014. (Gx. 1)

When Applicant was interviewed by a government investigator on April 13, 2015, he was confronted with several, previously undisclosed, delinquent student loans that were listed in a December 2014 credit report. Those debts are alleged at SOR 1.o – 1.r and total \$9,657. Applicant thought he only owed about \$5,000. He was paying the loans as required while still in school, but he stopped paying after he left school in 2007. In the summer of 2016, Applicant contacted the firm to whom the debts had been referred for collection. On November 16, 2016, Applicant enrolled in a student loan rehabilitation program that requires him to pay \$184 each month on a balance due of \$7,005.45 for two of his delinquent student loans. His first payment was due in mid-December 2016. (Gx. 2 – 4; Ax. J; Ax. K; Tr. 30 – 31, 45 – 46, 57 - 58)

In his e-QIP, Applicant disclosed that he did not file his federal or state income tax returns for 2009, 2012, 2013, and 2014. During his April 2015 interview, Applicant disclosed that, in addition to not filing for those years he listed in his e-QIP, he also had not filed his federal and state tax returns for 2010 and 2011. As of the interview, the deadline for filing his tax year 2014 returns had not arrived. In his April 2016 response to the SOR, Applicant stated that he was about to file his returns for the 2015 tax year. Applicant did not, as it turns out, timely file his federal or state income tax returns for 2014 and 2015, as shown by the tax returns he presented at his hearing. Applicant filed those returns in September 2016. (Answer; Gx. 1; Gx. 2; Ax. A – H; Tr. 20 – 23, 53 - 58)

Applicant’s stated reason, in his e-QIP and during his interview, for not filing his tax returns was that he had always received a refund of overpaid taxes each year. In his e-QIP, he stated his concern that refunds would be diverted to satisfy an unspecified past-due debt. However, the tax returns he presented at his hearing show that, as alleged in SOR 1.s and 1.t, he owes in excess of \$25,000 in unpaid federal income tax for 2009 through 2015, and about \$1,500 as alleged in SOR 1.t. On November 10, 2016, he paid the IRS \$485 toward the \$3,529 he owed for 2010. On November 18, 2016, the IRS agreed to accept \$600 monthly payments from Applicant to satisfy a total debt of \$25,480.61 for the 2009 through 2015 tax years. Penalties and interest will continue to

accrue until the debt is satisfied. Applicant's first payment was due in late December 2016. (Answer; Gx. 1; Gx. 2; Ax. K)

Applicant also suffers from a neurological autoimmune disorder that requires frequent medical treatments and evaluations. The debts alleged at SOR 1.d – 1.l represent past-due co-payments and bills for recurring services not covered by his medical insurance. Applicant established that he paid those debts between April 2014 and September 2016. (Answer; Ax. J; Tr. 36 – 39, 43 - 44)

The debt at SOR 1.m is for an unpaid utility bill from late 2008, when Applicant briefly lived in a different state. Applicant let a friend open the account using Applicant's information. During his April 2014 interview, he acknowledges responsibility for the debt. He has the means to pay the debt but has not done so. (Answer; Gx. 2; Tr. 42)

Applicant disputes the debt at SOR 1.n. The creditor is a landlord from whom Applicant rented an apartment in 2007. The landlord has since died and his son made a claim against Applicant for \$3,346 in unpaid rent. Applicant denies owing the debt and has not heard from the landlord's son since 2009. This debt does not appear on the most recent credit report produced by the Government. (Answer; Gx. 2 – 4; Tr. 41 - 49)

Applicant has not received any financial counseling or other professional assistance with his finances. He claims his current finances are sound, but he did not provide any detailed information about his current income and expenses. Applicant's security manager and his second wife testified that Applicant is trustworthy and a valued employee, who loves his work and has worked consistently despite his medical problems. Applicant is active in his community and serves as a youth mentor. (Tr. 39 – 40, 45, 65 - 83)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

⁶ See Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁹

Analysis

Financial Considerations

The Government presented sufficient information to support the SOR allegations, as amended, under this guideline. The facts thus established reasonably raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). Applicant stopped filing his federal and state income taxes as required in 2009. As a result, he owes more than \$26,000 in unpaid federal and state income taxes. He also accrued delinquent student loans debts when he left school and stopped paying his loans in 2007. None of his tax debts or his student loans have been paid or resolved.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

- (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 paid the medical debts at SOR 1.e – 1.l shortly after receiving the SOR. He had already paid the medical debt at SOR 1.d in 2014. These debts are modest recurring expenses attributable to his ongoing medical treatment for his autoimmune condition. AG ¶¶ 20(a) and 20(d) apply to these debts. However, he has not sufficiently addressed his remaining delinquent debts. Although he disputes the debt for past-due rent at SOR 1.n, he has not supported his dispute with any corroborating documents. The debt at SOR 1.m has gone unpaid for over eight years despite Applicant's apparent ability to pay it. Applicant did not address his delinquent student loans until after he received the SOR, and he has not yet established a reliable record of payments through a recently executed rehabilitation plan. Further, Applicant only recently decided he should file and pay his federal and state income taxes, which he largely has ignored since 2009. He did

not provide a cogent explanation for not filing his tax returns. Anticipation of a tax refund is not an acceptable excuse for not meeting such a fundamental financial and civic obligation. As it happens, Applicant now owes a significant debt for his past-due taxes. As of the close of this record, he had not established a reliable record of payments through a recently executed repayment plan with the IRS, and has made only one payment on his state tax debt.

Finally, Applicant has not sought financial counseling or other professional assistance to resolve his financial problems. Applicant did not present sufficient information about his current personal finances from which to conclude that his financial problems are under control. In summary, none of the pertinent mitigating conditions under this guideline apply. The security concerns about Applicant's finances remaining unresolved.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has an excellent record in the workplace. He also is active in his community as a youth mentor and as a volunteer in important charitable work. However, his failure to file his income tax returns over a prolonged period, and the absence of a meaningful record of actions to address his financial obligations, despite having the means to do so, underscore the doubts about his suitability for access to classified information raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant

Formal Findings

Formal findings 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.b, 1.m – 1.r:	Against Applicant
Subparagraphs 1.c – 1.l:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge