



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



In the matter of:)
)
) ISCR Case No. 15-06525
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 17, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 27, 2016, and requested a hearing before an administrative judge. The case was assigned to me on September 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2016, and the hearing was convened as scheduled on January 12, 2017. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, and offered exhibits (AE) A through E, which were admitted without objection. The record was kept open and Applicant submitted AE F through H, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 24, 2017.

Evidentiary Ruling

Department Counsel moved to amend the SOR based upon evidence adduced at hearing. Applicant testified that he owed federal income taxes in the approximate amount of \$26,000. Department Counsel moved to amend the SOR by adding ¶ 1.i, which would contain the following language: "You owe the IRS approximately \$26,000 in delinquent taxes for tax years 2013 to 2015. As of the date of the SOR, these taxes remain unpaid." I provided Applicant an opportunity to object to the amendment or request additional time to respond to it, but he affirmatively declined to do either. The motion was granted and the SOR was so amended.¹

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He has worked for this employer as an engineer since 1985. He has a high school education and has taken some college courses. He is divorced. He has two adult children from the marriage and one step-child. He has no military service. He has held a security clearance for 31 years.²

The SOR alleged Applicant failed to file his federal and state income tax returns for tax years 2013 and 2014, and that he is indebted to the IRS in the amount of approximately \$26,000 for tax years 2013-2015. It also alleged that Applicant was delinquent on five collection accounts and one charged-off account. Applicant's admissions in his SOR answer support the tax-related allegations and two credit reports support the delinquent collection and charged-off accounts.³

Applicant's financial difficulties arose because of a contentious divorce with his ex-wife. He claimed she failed to cooperate with him so that he could not timely file his federal and state tax returns. He and his ex-wife separated in March 2014, but the divorce was not finalized until sometime in 2016 (although the record is not clear as to the exact date of divorce). In the summer of 2016, Applicant claimed he filed his 2013

¹ Tr. at 39-42; GE 1.

² Tr. at 6, 17, 19-20; GE 1.

³ Answer; GE 2-3.

and 2014 federal and state tax returns. He testified he could provide copies of those returns, was given an opportunity to do so when the record was left open, but failed to produce any returns. In addition to his admitted federal tax liability of \$26,000 for tax years 2013 to 2015, Applicant provided a letter from his tax professional, whom he retained in October 2016, stating that the IRS has filed a tax lien for unpaid federal taxes for tax years 2007, 2009, 2010, and 2011. He also has federal tax debt for tax years 2012 to 2015. Applicant estimated this total debt at approximately \$59,000.⁴ His tax professional contacted the IRS about a payment arrangement, but no specific details or documentation was provided about a payment plan. The tax professional made no mention of whether Applicant's 2013 and 2014 tax returns were filed. Applicant's tax issues are unresolved.⁵

Applicant provided documentation showing that the collection debts listed in SOR ¶¶ 1.c, 1.d, 1.f, 1.g, and 1.h were all paid. These debts are resolved.⁶

Applicant and his ex-wife were co-borrowers on a timeshare loan. They stopped making payments and the property was foreclosed. A deficiency debt remained and under the terms of the couple's divorce settlement, they were equally responsible for this debt in the amount of approximately \$10,947 (SOR ¶ 1.e). Applicant testified that he thought he received an IRS form 1099-C (cancellation of debt) regarding this debt, but failed to supply a copy of it. This debt remains unresolved.⁷

Applicant produced evidence showing that he will receive a substantial retirement pension valued at over \$1 million. He is eligible to retire in five years. He has \$30,000 in a 401K retirement account. His monthly income is approximately \$3,500. In 2014 and 2015, he paid his ex-wife approximately \$22,959 per year in spousal support payments. He claimed to have a written budget that he could provide, but which he failed to submit. He has not sought financial counseling.⁸

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 list potentially disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information.

⁴ The tax debt, other than stated in SOR ¶ 1.i will only be used as it might relate to accessing Applicant's credibility, and the application of mitigating and whole-person factors.

⁵ Tr. at 21-25, 32, 44, 46-48; AE F-G.

⁶ Tr. at 26-27, 30-32; AE A-B.

⁷ Tr. at 28-29; AE F.

⁸ Tr. at 37, 51-52, 54-55; AE C-E.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 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 adverse 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).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

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

Applicant has been delinquent paying his federal taxes over an extended period and he failed to timely file his 2013 and 2014 federal and state income tax returns. The record also establishes Applicant accrued other delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's tax debt and failure to file his tax returns are recent events and cast doubt on his reliability, trustworthiness, and good judgment. Although he claimed to recently file these tax returns, he failed to provide documentation of such filings. He has not provided evidence of a plan to pay his delinquent federal taxes. AG ¶ 20(a) is not applicable.

Applicant's family circumstances (divorce, ex-wife's refusal to cooperate with tax filings), were events beyond his control. However, these events took place a number of years ago. Applicant's tax issues go back as far as 2007, long before his divorce. He

also failed to engage professional tax assistance until October 2016, months after the SOR was issued. His delayed response to his tax problems was not responsible. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling. Given Applicant's delayed reaction to dealing with his tax problems and his current tax debt that remains unaddressed, there are not clear indications that Applicant's financial problems are under control. The evidence does not show that Applicant put forth good-faith efforts to file his federal and state income tax returns and pay the resulting income tax debt. He also has not resolved SOR ¶ 1.e. Applicant has otherwise resolved the debts listed in SOR ¶¶ 1.c, 1.d, 1.f, 1.g, and 1.h. AG ¶ 20(c) does not apply and AG ¶ 20(d) partially applies.

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.

Under 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant's tax situation came to be an issue and his lengthy contractor service. However, I also considered that he failed to timely resolve his tax obligations. He has not established a meaningful track record of financial responsibility when addressing his federal income tax issues.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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.b:	Against Applicant
Subparagraphs: 1.c – 1.d:	For Applicant
Subparagraph: 1.e:	Against Applicant
Subparagraphs: 1.f – 1.h:	For Applicant
Subparagraph: 1.i:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

Robert E. Coacher
Administrative Judge