



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-06534

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

03/24/2017

Decision

HOWE, Philip S., Administrative Judge:

On March 18, 2015, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 30, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 8, 2016. He answered the SOR in writing on April 27, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 23, 2016, and I received the case assignment on August 29, 2016. DOHA issued a Notice of Hearing on August 29, 2016 and I convened the hearing as scheduled on September 13, 2016. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified

and submitted Exhibits A and B without objection. DOHA received the transcript of the hearing (Tr.) on September 23, 2016. I granted Applicant's request to keep the record open until September 30, 2016, to submit additional matters. He did not submit any additional exhibits. The record closed September 30, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.i, 1.j, 1.n, 1.o, 1.p, and 1.r of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a to 1.h, 1.k to 1.m, 1.q, and 1.s of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 56 years old. He is divorced and has two children living. He works for a defense contractor. He has a master's degree and earns \$135,000 annually. He became unemployed in 2013 because a government contract ended. He started a consulting business that was not successful. Then he obtained another job with a defense contractor. He has had a security clearance since 1983. (Tr. 14-25; Exhibit 1)

Applicant has 19 delinquent debts totaling \$119,952 listed in the SOR. Applicant is responsible for these debts being delinquent and unresolved at the time the SOR was written.. Applicant submitted an exhibit showing his net worth is over \$100,000. His bank statement for August 2016 shows he has about \$55,000 in savings and \$5,000 in his checking account. (Tr. 39; Exhibits A and B)

Applicant paid the telephone bill listed in SOR Subparagraph 1.g for \$580. The debt for \$86 listed in Subparagraph 1.n owed to a cable television provider was paid. These two debts are resolved. (Tr. 31, 34; Exhibit 5)

Applicant has \$116,475 of state tax liens from 2009 to 2012 that are unreleased and remain in effect as of the latest credit report dated September 6, 2016. They are listed in SOR Subparagraphs 1.a to 1.f (six tax liens). Applicant testified he worked with a representative of the state tax authority to recalculate and pay his state tax debts but was unsuccessful. He has not taken any action to resolve them after those efforts. He claimed he disputed the tax amounts, but did not submit any documents to show a legitimate basis for any dispute of the taxes. An unalleged \$172,798 Federal tax lien was released in August 2010. The state tax liens are unresolved. (Tr. 27-53; Exhibits 2-5)

Applicant has not paid his delinquent debts because his former wife was to pay some of them and the divorce was not final until April 2016. Applicant did not take any action after that date or the date of the SOR to resolve the debts before his hearing. The debts unpaid are medical debts, energy bills, cable television, and telephone bills, in addition to the unpaid state tax debts. (Tr. 27-53; Exhibits 2-5)

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 and mitigating conditions, which are useful 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 (AG ¶ 2(a)). 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.

Under 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 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 relating to the guideline for Financial Considerations is 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$119,952 in delinquent debt from 2009 to the present time that remains unpaid. Applicant has 19 delinquent debts listed in the SOR. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No conditions are established:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's behavior is recent and has continued since 2009. His accumulation of significant state tax debts casts doubts on his current reliability, trustworthiness, and good judgment. He has not taken any action to resolve his 19 debts except pay two of them totaling \$666. AG ¶ 20(a) is not established.

Applicant's financial situation was not beyond his control. He earns \$135,000 annually, he has significant net worth, and money in his credit union accounts. He could have paid the 13 debts listed in Subparagraphs 1.g to 1.s. He only paid two of them. He did not resolve the tax liens listed in Subparagraphs 1.a to 1.f. AG ¶ 20(b) is not established.

Applicant has not had any financial counseling and there are no indications that his financial problems are under control or being resolved. AG ¶ 20(c) is not established.

Applicant did not demonstrate any good-faith effort to resolve his delinquent debts. AG ¶ 20(d) is not established.

Applicant did not establish any legitimate basis for a dispute of any debts. He did not provide any documents to show he filed any disputes. AG ¶ 20(e) is not established.

Affluence, the final mitigating condition, is not an issue in this hearing.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 the facts and circumstances surrounding this case. Applicant resolved two small debts. The six state tax liens remain unresolved. Applicant has the assets with which to pay his remaining 11 delinquent debts involving medical debts, utility bills, and telecommunications services. He had sufficient time in the past four years to negotiate and resolve all of these delinquent debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

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 to 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h to 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o to 1.s:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge