



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-07039
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

04/12/2017

Decision

HOGAN, Erin C., Administrative Judge:

On May 9, 2016, the Department of Defense (DOD) 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 (AG) effective within the Department of Defense after September 1, 2006.

On May 24, 2016, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on June 27, 2016. Applicant received the FORM on July 17, 2016. He timely responded to the FORM on July 27, 2016. (Item 8) Department Counsel did not object to Applicant's response to the FORM. (Item 9) On March 3, 2017, Applicant requested to supplement his response to the FORM and his request was granted. (Item 10). His supplemental response to the FORM was admitted. (Item 11) Department Counsel had no objection to his supplemental response to the FORM. (Item 12) On March 3, 2017, I was assigned the case. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant admits the SOR allegations. (Item 2)

Applicant is being sponsored by a DOD contractor seeking to maintain a security clearance. He has a bachelor's degree. He is married and has one adult son. (Item 3)

On November 13, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). A subsequent background investigation revealed he was indebted to the Federal Government in the approximate amount of \$63,487 in delinquent federal taxes for tax years 2010, 2011, and 2013. (Item 3, Section 26; Item 6 at 23-35) The SOR also alleges Applicant failed to file his federal income tax returns for tax year 2014. (Item 6 at 36-37)

In his response to the SOR, Applicant indicated that he had been working with a tax relief business to resolve his tax issues. He was fully aware of the severity of his situation and was aggressively seeking to resolve the matter as soon as possible. He admits to filing his 2014 and 2015 tax returns late. The tax relief business assisted him and his wife with filing the returns. They filed the returns on May 23, 2016, the day before he answered the SOR. (Item 2). Applicant and his wife have been working with the tax relief business since October 2014 to assist with resolving his tax debts and issues. (Item 6 at 8, 53-107)

Applicant made several payments towards his 2010 taxes in 2015. As of April 15, 2016, he only owed \$559.14 in interest. (Item 6 at 24-25) His federal tax debt for tax year 2011 was paid on January 27, 2014. (Item 6 at 28-29) His federal tax debt for tax year 2013 had a balance of \$31,762.28 as of April 8, 2016. (Item 6 at 34-35)

In his supplemental response to the FORM, Applicant provided proof that all federal taxes owed were resolved. (Item 11 at 11-27). The tax debts were paid in full as a result of Applicant and his wife refinancing their home in November 2016. They paid all unpaid taxes and penalties to the IRS in December 2016. The total amount was \$128,167.43. In November 2016, the tax relief business informed Applicant that the IRS was offering to place a lien on their home for a period of 84 months, during which time Applicant and his wife would make monthly payments of \$3,800 beginning in December 2016. While Applicant and his wife were waiting to hear from the IRS, they decided in the summer 2016 to refinance their home and pay-off the IRS in one lump payment. (Item 11)

Applicant began to have trouble with paying his taxes when he was required to file a 1099 for his income when he filed as a small business/self-employed taxpayer. He admits that "I was just not smart in this area and did not do all I could at the time to become smarter." He did not save enough money during tax years 2009 and 2010 and ended up owing over \$30,000. The deaths of his mother in 2010, and his brother, uncle, and mother-in-law in 2011, were additional setbacks. Applicant and his wife paid the funeral expenses for his relatives. (Item 11 at 2)

In 2012, Applicant and his wife paid \$27,000 towards the 2010 taxes. They paid \$20,000 for 2011 and were making \$3,000 monthly payments for tax year 2009. He failed to file timely for 2012 and 2013. In 2014, he hired the tax relief business to assist him with resolving his tax debts. The tax relief business also filed Applicant's tax returns for 2014 and 2015. (Item 11)

Applicant understands the severity of this matter and has much remorse for his mistake. He requests that his humble apology be accepted and that he be given a second chance. (Item 11 at 2-3)

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 must be considered when determining 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); AG ¶19(c) (a history of not meeting financial obligations); and AG ¶19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) apply to Applicant's case. Applicant encountered tax problems between 2010 and 2015. His tax problems related to delinquent tax debts and failing to file his annual federal tax returns for tax year 2014.

The SOR alleges and the record establishes that Applicant failed to timely file his federal income tax return for tax year 2014. (Although not alleged in the SOR, Applicant also admits to not timely filing his 2015 federal tax return. This will be considered when weighing the mitigating factors.) The DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person 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).

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(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

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

AG ¶ 20(a) does not apply because Applicant's tax problems were relatively recent. He is given credit for starting to work on resolving his tax problems in October 2014. Yet he failed to timely file his federal tax returns in 2015. While Applicant has resolved his outstanding tax debt, his tax problems were recent.

AG ¶ 20(b) partially applies because several deaths in Applicant's family created additional expenses related to travel and funeral expenses. It is not clear how much of an impact this had on Applicant's ability to pay his federal income tax debts. For this reason, AG ¶ 20(b) is given less weight.

AG ¶ 20(c) applies because Applicant was working with a tax relief firm since October 2014 to resolve his tax debts. He has made various payments towards his taxes while resolving his federal tax debt. Although the IRS offered a payment agreement, Applicant opted to refinance his mortgage and has paid off the federal tax debt in full. Applicant's tax debts are resolved and under control.

AG ¶ 20(d) applies because Applicant initiated a good-faith effort to resolve his federal tax debts since October 2014. Resolving tax issues with the IRS takes time and once the IRS offered a repayment agreement, Applicant had already decided the better option would be to refinance his mortgage and to pay off the tax debt balance in full.

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 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.

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.

Applicant admits that he did not understand how to properly file his 1099 forms during the years he was required to file them. He incurred a tax debt that he could not afford to pay. In 2014, he began working with a tax relief services firm who helped file his 2014 and 2015 tax returns and helped with resolving his tax debt. While Applicant neglected his taxes for several years, he now understands the importance of timely

filing his income tax returns and paying his tax debts. He began to resolve his tax issues over two and half years ago and finally decided the best option for him was to pay off the federal tax debt in full from the funds received from refinancing his mortgage.

I find Applicant's actions to resolve his tax debts were made in good faith. He has resolved all of the federal taxes owed. He is aware that any future tax issues may result in the revocation of his security clearance. The security concerns raised under financial considerations are mitigated.

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:	FOR APPLICANT
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Subparagraphs 1.a – 1.b:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge