



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



In the matter of:

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) ISCR Case No. 15-08558
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Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

09/01/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On June 13, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.¹

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017. My decision and Formal Findings under the revised Guidelines F and E would not be different under the 2006 Guidelines.

Applicant timely answered the SOR² and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM) dated August 12, 2016.³ Applicant received the FORM on September 9, 2016. He did not submit an additional response to the FORM. The case was assigned to me on July 1, 2017. Based on a review of the case file, submissions, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in the SOR under Guideline F, with explanations for each item. He denied the allegation under Guideline E. (Item 2)

Applicant is 55 years old. He is divorced with two children. He obtained his undergraduate degree in 1984. Applicant has held a security clearance since 1984. Since 1984, he has worked as a defense contractor. He completed his security clearance application (SCA) in 2015. (Item 3)

The original SOR alleged only state tax liens. The amended SOR alleges that Applicant is indebted to the Federal Government for a 2012 tax lien in the amount of \$19,614; an indebtedness to the Federal Government for a 2010 tax lien in the amount of \$43,308; and a 2012 and a 2010 state tax lien in the same amounts; two collection accounts; and a 2011 Chapter 7 bankruptcy that was discharged. (Item 1)

The SOR also alleged that Applicant falsified material facts on his 2015 SCA due to his response to Section 26 - Financial Record, because he did not list the two state tax liens against his property for failing to pay taxes or other debts in the past seven years.

Applicant answered the original SOR and admitted the state tax liens for 2012 and 2010. He explained that at the time he was in the final process with his divorce and that a settlement would satisfy the state tax liens. He submitted a Certificate of Tax Release of a Federal Tax lien for \$43,308, dated June 2016. However, there was no information concerning the state tax liens, despite the fact that he admitted that when addressing SOR allegation 1.a and 1.b.

As to SOR allegation 1.c, a collection account in the amount of \$641, Applicant stated that it was not paid, but he would resolve the issue in 60 days. He also stated that he thought it was resolved in the 2011 bankruptcy. He did not provide any information in response to the FORM to show that the account has been paid.

² The SOR was amended in the FORM to conform to the evidence that was provided with Applicant's answer. SOR allegations 1.a and 1.b added the Federal Government in addition to the state government.

³The Government submitted five items for the record.

As to SOR allegation 1.d, a collection account in the amount of \$86, Applicant stated that he was in the process of resolving medical debts, and he would resolve the issue by July 2016. He did not provide any documentation to support his statement.

As to SOR allegation 1.e, Applicant acknowledged his Chapter 7 bankruptcy filing and discharge of debts in 2011. He stated that the bankruptcy was a result of his wife's loss of income as a realtor, two major vehicle accidents, and the loss of his wife's job. He was reluctant to file for bankruptcy, but was advised by his lawyer that the Chapter 7 was the best option at the time. In addition, at that time he and his wife separated and he liquidated his wife's 401(k) to pay bills, and as a result incurred a significant tax bill.

During his April 2015, investigative interview, Applicant emphasized that he lives within his means. (Item 5) The 2011 Chapter 7 bankruptcy debts were discharged in the approximate amount of \$500,000. He stressed that since the bankruptcy, his financial status is good. He acknowledged that he did not list that he owed and failed to pay some taxes. He elaborated that he did not know how to list the correct information concerning the taxes owed, but he filed his tax returns. He acknowledged that he was behind on his taxes for 2012, 2013, and 2014. (Item 5) Concerning the 2012 and 2010 state tax liens, he told the investigator that he was not certain how much he owed. He also stated that he has not taken any action to resolve the issue. He stated that he knew he owed taxes but was not certain that he had a tax lien. Originally, he was going to work with the IRS and arrange a payment plan, but decided that he would take money from a 401(k) and pay the IRS. He stated that course of action affected the next year with regard to taxes owed. He believes he owed \$80,000. He did not submit any information about a payment plan to the IRS. (Item 5)

The 2015 credit report confirmed his 2011 bankruptcy discharge. (Item 4) It also reflects that Applicant's current accounts are "pays as agreed." These accounts are non-SOR accounts.

Applicant did not submit any documentation to support his claim that he had a payment plan with the IRS or the state. He did not submit a response to the FORM. There is no information in the record to confirm that the SOR debts were tied to his bankruptcy or any plans to resolve the debts. Applicant did not meet his burden of proof in this case to mitigate the security concerns under the financial considerations guideline.

Personal Conduct

The SOR also alleges that Applicant falsified his 2015 SCA because he answered "No" to Section 26 concerning state tax liens. Applicant denied any intentional falsification because he was not aware of tax liens, although he knew he owed taxes. He also provided with his answer to the SOR, the marital settlement agreement which discusses the federal taxes that are owed. It does not state anything about tax liens. He put the Government on notice that he owed taxes, but there is no mention of any liens. Thus, he did not answer "Yes" to Section 26. He did not

intentionally falsify his 2015 SCA. Omission alone does not establish an intentional falsification. Applicant's credit bureau report from 2015 reflects accounts as "pays as agrees". (Item 4) None of the SOR alleged accounts are on those reports. I do not find that the Government established a case for falsification. I find for Applicant under the personal conduct guideline.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(a), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 national security eligibility 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ⁴ The burden of proof is something less than a preponderance of evidence. ⁵ The ultimate burden of persuasion is on the applicant. ⁶

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁷ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁹ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individuals’ reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus be a possible indicator of, other issues of personnel security concerns such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government provided credible evidence that Applicant has delinquent debt and has unsatisfied tax liens. He filed for Chapter 7 bankruptcy in 2011. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a), (c) and (g) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Financial Considerations Mitigating Condition (FC MC) 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) partially applies. Applicant provided no information

⁷ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁹ *Id.*

that would allow any other MCs to fully apply. There is an explanation from Applicant concerning the delinquent debt that would be paid soon, but he produced no documentation to confirm his assertion. None of the other mitigating conditions apply in this case.

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(d):

(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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 55 years old. He has worked for his current employer since 1984. He has held a security clearance for many years. He has no history of criminal activity, alcohol abuse, or drug involvement.

Applicant filed for bankruptcy in 2011, due to his wife's loss of income and an accident. He states that the taxes owed and delinquent debts stem from taking money from his wife's 401(k) to pay debts. Applicant stated that he owed about \$80,000 in federal taxes. He also stated that he would use money from a divorce settlement to pay any amounts owed, but he did not provide any evidence to support this assertion. He has not met his burden of proof in this case under the financial considerations guideline. I do not find that there is sufficient evidence to prove an intentional falsification under the personal conduct guideline. He did not mitigate the security concerns under the financial considerations guideline.

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.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge