



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



In the matter of:)
)
) ISCR Case No. 15-08740
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2017

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to mitigate personal conduct security concerns under Guideline E and financial considerations security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On May 15, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on August 8, 2015. He also provided answers to interrogatories from the Government on May 2, 2016. (Item 6) After reviewing the results of the OPM investigation and Applicant's responses to the interrogatories, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 24, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for personal conduct under Guideline E and financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 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 in the DOD on September 1, 2006.

Applicant answered the SOR on December 2, 2016. He admitted the five tax debt allegations and the two allegations of failing to timely file state and federal income tax returns under Guideline F. He denied the two allegations of falsification of his security clearance application under Guideline E. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on January 5, 2017. Applicant received a complete file of relevant material (FORM) on January 9, 2017, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide a response to the FORM. I was assigned the case on March 21, 2017.

Procedural Issues

Applicant was advised in the Interrogatory to authenticate the accuracy of the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 6). He was further advised that the PSI and his responses to the interrogatories could be admitted into evidence. Applicant made some corrections to the PSI and agreed that the corrected PSI could be admitted into evidence. Applicant waived any objection to the admissibility of the PSI by his response to the interrogatories. I will consider information in the PSI and Applicant's responses to the Interrogatories in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 43 years old. He received a bachelor's degree in 1997. Since April 2015, he has been employed by a defense contractor as a systems analyst. Prior to his employment with the defense contractor, he was self-employed as a technical writer. He previously worked for a company as a technical writer or reliability engineer. He married in May 1999 and has two young children. His security clearance application of May 12, 2015 was his first request for a security clearance. In the application, he did not list any delinquent debts. He noted that he had recently received a notice from the Internal Revenue Service (IRS) that he owed taxes. He stated he was investigating the issue. He answered "no" to the question asking if he failed to timely file any tax returns in the last seven years. (Item 3, e-QIP, dated May 15, 2015; Item 6, PSI, dated May 3, 2016)

The SOR alleges a state tax lien for state A entered in January 2016 for \$4,452 (SOR 1.a); a federal tax lien for \$57,557 entered in December 2015 (SOR 1.b); a state tax lien from state B for \$3,600 entered in December 2012 (SOR 1.c); a federal tax debt for delinquent taxes of approximately \$62,082 for tax years 2007, 2012, and 2013 (SOR 1.d); a tax debt for state A of \$4,453 for tax year 2007 (SOR 1.e); a tax debt for state B for \$14,109 for tax years 2007, 2012, 2013, and 2014 (SOR 1.f); failure to file federal

income tax returns for tax years 2007, 2012, 2013, and 2014 (SOR 1.g); and failure to file state income tax returns for tax years 2007, 2012, and 2013 (SOR 1.h). Under Guideline E, the SOR alleges that Applicant deliberately failed to report tax liens when he responded “no” to question 26 asking if in the last seven years he had a lien placed against his property for failure to pay taxes or other debts. (SOR 2.a). The SOR also alleges that he failed to report a mortgage more than 120 days delinquent by responding “no” to the part of question 26 asking if in the last seven years he defaulted on any loans or been delinquent more than 120 days on any debt. (SOR 2.b)

Applicant admits that he failed to timely file federal and state income tax returns for tax years 2007, 2012, and 2013. He also admitted to not timely filing his state income tax return for 2014. In the PSI, Applicant attributes his failure to timely file his federal and state tax returns for 2007 to his moving and his uncertainty as to how to file the returns. After completing the move, he just forgot to file his 2007 returns. He contacted the Internal Revenue Service (IRS), and was told that they sent him notices about filing his returns. Applicant denied receiving any notices concerning his taxes, and believes the notices were sent to the wrong address. He contacted a tax preparer to assist him in filing his 2012, 2013, and 2014 federal and state tax returns. He told the security investigator that he was waiting to hear from his tax preparer if he owed federal and/or state income taxes. (Item 6, PSI, at 4)

In his response to interrogatories, Applicant corrected the amount listed in the PSI that was owed for the federal and state taxes for tax year 2007. He also noted that he did not realize his tax situation would change after he became an independent contractor. He stated that it was his intention to pay all federal and state income taxes. (Item 6 at 41)

Applicant claims to have filed all federal and state tax returns except the tax returns for tax year 2015. He did not provide copies of the returns. However, the IRS notified him that a refund for tax year 2014 was applied to taxes due for tax year 2007. Even with this refund applied, he still owed a substantial tax debt for 2007. The IRS notified Applicant that he also owed substantial taxes for tax years 2012 and 2013. (Item 6 at 46-58) This information indicates that the federal tax returns were filed as reported by Applicant. The IRS notified Applicant in April 2016 that the collection of his taxes was closed because of a determination he does not have the ability to pay the taxes due at this time. The notice made it clear that the taxes were still owed to the IRS but the collection of the taxes would not be pursued. (Item 6 at 86)

State A notified Applicant in January 2016 that he still owed substantial income taxes for tax year 2007. Applicant was also advised that a lien was placed against him for the state taxes. (Item 6 at 62-66). There is no record of payment of these taxes. However, the state did issue Applicant a notice that the taxes due for tax year 2008 had been abated as not due. (Item 6 at 76)

State B notified Applicant that he owed state taxes for tax years 2007, 2012, 2013, and 2014 (Item 6 at 67-73) These notices indicated that the tax returns had been

filed and the taxes calculated to arrive at the amount that Applicant owed State B. There is no indication that the taxes have been paid.

The SOR alleges that Applicant on his May 15, 2015 e-QIP failed to report the taxes liens imposed by both state A and state B, and a mortgage on a rental property that was more than 120 days delinquent in May 2009. Applicant claimed in the alternative that he did not remember the debts, that they were beyond the seven-year limit required of the e-QIP for reporting, or that there were any taxes owed.

Applicant's response to the question in the interrogatories and the documents he provided show that he was aware of the taxes owed both states. In May 2015 when he completed the e-QIP, he was working with his tax adviser to resolve the state taxes.

The documents also show that Applicant took an active part in resolving the mortgage on the rental property. The mortgage was in default in September 2006. (Item 6 at 16) Applicant requested a temporary forbearance of the mortgage and participated in a short sale of the property in May 2009. It is clear from the documents submitted by Applicant in his response to the SOR that he knew in May 2015 when he completed his e-QIP that the mortgage payments were delinquent. (Item 6, 11-37)

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 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. 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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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 a person’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant failed to timely file federal and state income tax returns for tax years 2007, 2012, 2013, and 2014. As a result, he owes federal and state income taxes to two states. Applicant’s failure to timely file income tax returns and the resulting delinquent taxes are sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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.

The evidence indicates an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under 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, and 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 indication that the problem is being resolved or is under control; and
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

None of the mitigating conditions apply. Applicant's taxes are unpaid and thus a continuous course of conduct and a current debt. Applicant did not present any reasons that were beyond his control preventing him from filing his income tax returns and from paying the taxes due. He may have moved in 2007, but after moving he just forgot to file his returns. He claims to was waiting for the 2007 taxes to be resolved before filing his 2012 and 2013 tax returns. He eventually hired a tax accountant and filed the returns indicating that he could have filed his returns on time. He did not dispute any of the tax assessments or file a tax dispute. He presented no information on financial counseling except for the counseling he may have received from the tax accountant. He has not presented any information on affirmative steps he took to pay the taxes.

Applicant failed to file state and federal tax returns for 2007, 2012, 2013, and 2014. This amounts to 12 federal and state tax returns, three tax returns per year for four years. Filing of tax returns is both a financial and legal obligation. Applicant owes federal taxes, and state taxes to two states as a result of his failure to file tax returns. The SOR alleges both federal and two state tax debts and a lien imposed to cover the debts. Since these are the same debts expressed also as a lien, I find for Applicant as to the liens. Since filing tax returns and paying taxes is an annual requirement, the failure to file and pay taxes may likely recur. 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 a person granted access to classified information. A person who has a history of not fulfilling the legal obligation to file income tax returns does not exhibit the confidence required for that person to be granted access to classified information. His failure to follow the rules concerning filing of tax returns may show that he is unlikely to follow the rules and regulations governing the handling of classified

information. Applicant's action in not timely filing his tax returns is significant and disqualifying.

Applicant has not presented a plan to resolve and pay past-due taxes. He has not presented information on any affirmative actions he has taken to pay the taxes he owes. Accordingly, he has not established that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control, and that Applicant is not managing his personal financial obligations reasonably and responsibly. His financial problems are not behind him. Applicant's failure to act reasonably and responsibly towards his finances is an indication that he may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant failed to provide derogatory financial information on his e-QIP. As noted in the SOR and the credit reports, Applicant had failed to note a lien that had been placed against his property as well as a mortgage more than 120 days delinquent. The failure to report the lien and the delinquent mortgage raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentionally falsifying the financial part of his e-QIP. He stated he did not remember the state tax lien, and he believed the mortgage debt was beyond the seven-year reporting requirement of the e-QIP. While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance,

not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is knowingly and willfully done with intent to deceive.

The evidence presented by Applicant shows that he knew he had an income tax issue with state A. He had been working with his tax advisor to resolve the state and federal tax problems. The evidence clearly shows that he knew that about the delinquent mortgage and was fully engaged in attempting to resolve the mortgage issues just six years previously either by modification or short sale. Because of Applicant's knowledge of the mortgage deficiency, I find that he deliberately failed to provide adequate and truthful information on his e-QIP concerning his finances.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 knew of the delinquent state and federal taxes and the delinquent mortgage when he completed his e-QIP. He deliberately failed to provide full and accurate information concerning his finances. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. He repeatedly did not file his federal and state tax returns as required. He has tax debt to two states and the federal government, and he has not presented a plan to resolve the debts. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his personal conduct 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.c:	For Applicant
Subparagraphs 1.d–1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a – 2.b:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge