



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



In the matter of:)
)
) ISCR Case No. 15-07190
)
Applicant for Security Clearance)

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations, about his unfiled tax returns, unpaid past-due taxes, and other delinquent debts. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On June 8, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (Exec Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). The AGs

became effective on June 8, 2017, for all adjudicative decisions on or after that date. Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Applicant answered the SOR on July 1, 2016, and elected to have his case decided on the written record, in lieu of a hearing. On August 18, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on August 31, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's undated response was received by the Defense Office of Hearings & Appeals (DOHA) on September 30, 2016. It was marked as Applicant Exhibit (AE) A and admitted without objection. Applicant did not object to the government's evidence. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection.

The case was assigned to me on June 6, 2017. On June 8, 2017, I reopened the record to enable Applicant the opportunity to submit additional documents.¹ On June 19, 2017, Applicant sought and received additional time to respond.² On June 21, 2017, I provided him a copy of the new AGs.³ He submitted additional documentation by e-mail on July 21, 2017, and July 27, 2017. Applicant's e-mails and documents were marked AE B through AE J and admitted without objection.⁴

Findings of Fact

Applicant admitted all the allegations in the SOR, with explanations. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He was married from 1989-2010, and he remarried in 2015. He has three children from his first marriage (ages 19, 21 and 25) and two stepchildren (ages 11 and 15).⁵ He earned an associate's degree in 2001 through the military. He retired from the U.S. Air Force in 2009 as a master sergeant after 20 years of honorable service. He was granted a secret clearance in 2005.⁶

¹ Hearing Exhibit (HE) I.

² HE II

³ HE III.

⁴ Applicant's July 21, 2017 e-mails (AE B & AE F) included two recommendation letters (AE C & AE D) and two pages of a July 21, 2017 letter from the IRS. (AE E). AE E was not a complete document, so I reopened the record to enable Applicant the opportunity to submit a complete exhibit, as well as other documentation. (HE IV) Applicant did so on July 27, 2017. (AE G – AE J).

⁵ AE A.

⁶ Item 3.

Since retiring from the Air Force, he has worked as an air traffic controller for his current employer in the defense industry. He submitted a security clearance application (SCA) in April 2015. He disclosed unfiled tax returns and delinquent debts, including consumer accounts, taxes and a mortgage.⁷

In the SOR, the Government alleged that Applicant: failed to file his state and federal tax returns for tax years 2012 -2014 (SOR ¶ 1.a);⁸ owed unpaid federal taxes to the IRS for 2010 and 2011 (SOR ¶¶ 1.b and 1.c, totaling \$5,295); had a mortgage in foreclosure (SOR ¶ 1.f, for \$144,000); a delinquent home improvement loan (SOR ¶ 1.g, for \$24,391); and three other consumer debts (SOR ¶¶ 1.d, 1.e and 1.h, totaling \$1,835).

In addressing his tax returns and past-due taxes in his answer, Applicant acknowledged that he failed to file tax returns for tax years 2012-2014. He indicated that he was in the process of finding a CPA (certified public accountant) to complete his taxes and that he was coordinating with the Internal Revenue Service (IRS) on a repayment plan. He stated, "I have no valid reason for not filing other than money the last 5 years has been very tight."⁹ He indicated in his interview that he was living paycheck to paycheck and could not afford to pay or file his taxes. His former wife was granted half of his military retirement pay.¹⁰

For a time, Applicant was supporting two households: his own and his wife's, in a neighboring state. He also incurred unspecified legal expenses not only from the divorce proceedings, but also from two DWI charges she incurred around this time. After the divorce, he was unable to maintain his home after a foreclosure. (SOR ¶ 1.f) A home improvement loan was also charged off. (SOR ¶ 1.g) He indicated that he was required to count the charged-off amount as income and report it on his tax returns. However, he provided no documentation concerning the current status of either debt.¹¹

Applicant indicated that as of September 26, 2016, he had filed all of his past-due tax returns. He acknowledged owing back taxes and stated that beginning in October 2016, he would be paying \$297 a month until the debt was paid off. He had also adjusted his tax exemptions to zero. He provided no documentation with his FORM Response of any returns, and no documentation of any tax payments, towards either SOR ¶¶ 1.b, 1.c, or later, unalleged tax years. (AE A)

⁷ Item 3.

⁸ Applicant's answer to SOR ¶ 1.a did not address state taxes. Since 2009, he has lived in Texas, a state that has no income tax. The Government did not establish that Applicant had a duty to file state tax returns.

⁹ Item 2.

¹⁰ Item 4 at 3.

¹¹ Item 2; AE A.

On July 21, 2017, Applicant and his wife submitted an installment agreement to the IRS. (AE G) He indicated that this was “a new payment agreement to increase the amount I paid. With my 2016 taxes I was owed 3500 dollars and that went directly to my taxes. This will help me pay off my owed taxes more rapidly,” (AE F)

The installment agreement covers past-due taxes owed for tax years 2010 and 2011 (SOR ¶¶ 1.b & 1.c) as well as for tax years 2012-2016. Applicant acknowledged that he owed \$26,321 in past-due taxes. Applicant is to pay \$328 per month, by automatic withdrawal, beginning August 28, 2017. (AE H) The first payment includes a \$225 “user fee.” (AE E).

The IRS’s correspondence references Applicant’s federal tax filings for tax years 2010, 2011, 2012, 2013 and 2015. Tax year 2014 is not mentioned. (AE E, AE H) Applicant did not provide copies of his federal tax returns for tax years 2012-2014, though he indicated that he filed them by September 2016. (AE A).

SOR ¶ 1.d is a \$1,317 past-due credit card debt. Applicant made five monthly payments on the account between March and July 2017, totaling \$210. (AE I) This account is being resolved. SOR ¶ 1.h is a past-due energy bill for \$80. Applicant submitted screenshots showing that the account is closed or inactive with no balance owed. (AE J) This account is resolved.

Applicant provided no documentation about SOR ¶ 1.e, a \$438 consumer debt, or about the foreclosed mortgage or the charged-off home equity loan (SOR ¶¶ 1.f, 1.g). These accounts remain unresolved.

Applicant indicated that he joined a financial counseling program at work. It offers help with weekly and monthly budgeting and weekly “webinars” on various financial situations. (AE A). He provided no documentation about assets, or his monthly income or expenses.

Applicant’s manager has worked with him for the past three years. She noted that he was recently promoted. She considers Applicant to be responsible, task-driven, and detail oriented. Another co-worker and friend has known and worked with Applicant since 2009. He regards Applicant as competent, efficient and highly respected. He is a good leader. He is friendly and has good communication skills, so he relates well with others. He volunteers as a coach for young athletes in his community.¹²

¹² AE C, AE D. Applicant also relies on the following statement from his interview summary: “There is nothing in the subject’s background or regarding the subject’s character or conduct that could result on exploitation, blackmail, or coercion to include his financial issue.” AE A at 2; AE B (citing Item 4 at 4). He believes this is the conclusion of the investigator who interviewed him. That reliance is misplaced. The DOHA Appeal Board has repeatedly held that such statements represent the interviewer’s summary of Applicant’s statements during the interview, not the interviewer’s opinion of Applicant’s status as a security risk. ISCR Case No. 14-04124 at 3 (App. Bd. Feb. 19, 2016); ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015); ISCR Case No. 12-02859 at 3 (May 16, 2014); ISCR Case No. 11-08118 at 3 (App. Bd. Aug. 12, 2013).

Applicant described himself as a proud veteran and employee in the defense industry. He indicated that he understands the importance of living within his means and paying down his debts. He described himself as embarrassed and remorseful for finding himself in this position.¹³

Policies

It is well established that no one has a right to a security clearance.¹⁴ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”¹⁵

The adjudicative 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(a), 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 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. 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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.

¹³ Item 2, AE A, AE B.

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

¹⁵ 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 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 or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁶

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

(a) inability to satisfy debts;

(c) a history of not meeting financial obligations, and

(g) failure to file or fraudulently filing annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

Applicant accrued several delinquent debts after his retirement from the Air Force and his divorce. This included a foreclosed mortgage and a charged-off home equity loan, and several other debts. He also accrued unpaid federal income tax debt and for several years he failed to file his federal income tax returns as required. AG ¶¶ 19(a), 19(c) and 19(g) apply.

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 towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's*

¹⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant paid SOR ¶ 1.h and is making payments on SOR ¶¶ 1.d. SOR ¶ 1.e remains unpaid. He did not provide documentation of the current status of SOR ¶¶ 1.f or 1.g.

Applicant admitted that he failed to timely file his tax returns for 2012-2014 (SOR ¶ 1.a). He indicated in his FORM Response that that he had filed all his prior returns by September 26, 2016, and entered into an installment agreement to begin a month later. (AE A). He did not provide copies of any of his tax returns, and did not document any payments made. He did not document the September 2016 installment agreement.

The only documentary evidence that Applicant has filed his late tax returns is the IRS's July 2017 correspondence, which references tax years 2010, 2011, 2012, 2013 and 2015. (AE E, AE H). I therefore infer that Applicant did file those returns, and that the IRS used the information from them in calculating what he owed. I cannot make that inference as to the 2014 tax return, which is not mentioned in AE E or AE H, and is also not in the record.

Applicant's July 2017 installment agreement with the IRS covers \$26,321 in past-due taxes owed for tax years 2010 and 2011 (SOR ¶¶1.b and 1.c), as well as for subsequent years (2012, 2013, 2014 and 2015). (AE G, AE H) His first payment, of \$328, is to be made on August 28, 2017. (AE H).

Applicant's financial problems began in about 2010, after he retired from the Air Force. For a time, he maintained the expenses of two households, as he and his wife began living separate lives. He had unspecified legal expenses relating to the divorce, as well as for her two DWI charges. These were circumstances beyond his control which impacted his finances. His home was foreclosed, and a home equity loan was charged off. He also fell behind on his taxes and other debts. The first prong of AG ¶ 20(b) applies.

For full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He has not shown sufficient evidence that he acted responsibly. While he acknowledged that he could not afford to pay his taxes (or other debts), he also failed to file his federal tax returns as required for at least three years (2012-2014). These returns were due in April 2013, 2014, and 2015, respectively – three years or more after he was divorced. He also was gainfully employed at all times during this period. Even though his debts occurred as a result of his divorce, I cannot find that he has acted responsibly in resolving them. AG ¶ 20(b) does not fully apply.

Applicant indicated that he pursued financial counseling through his employer. However, he provided insufficient information to establish that his financial problems are being resolved or is under control. AG ¶ 20(c) does not fully apply.

Applicant provided no documents concerning his current financial situation, such as his assets or his monthly income or expenses. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His past-due tax debt is significant and remains ongoing. He has only recently begun making a serious effort to resolve it. These debts continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

I cannot find that either AG ¶ 20(d) or 20(g) fully applies. Applicant acknowledged that he failed to timely file his federal tax returns as required for tax years 2012, 2013, 2014 (as alleged) and 2015 (not alleged, but which he acknowledged filing late). (AE A) He owes approximately \$26,321 (covering tax years 2010-2011, which were alleged, and 2012, 2013 and 2015, which were not).

Applicant entered into an installment agreement with the IRS in July 2017, and is to begin paying \$328 a month in late August 2017. He referenced, but did not document, an earlier installment agreement, begun in September 2016. He provided no documentary evidence of any payments made towards his significant past-due tax debt. He provided no documents to show when he filed his past due returns.

Under AG ¶ 20(g), Applicant has an arrangement in place with the IRS, but did not provide sufficient evidence to show that he is in compliance with those arrangements, as required. Under AG ¶ 20(d), the steps he took to begin resolving his significant past-due federal tax debt are insufficient to establish that he “initiated and is adhering to a good-faith effort to repay” it.

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(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(a), 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. I have incorporated my comments under Guideline F in my whole-person analysis. Because Applicant requested a determination on the written record without a hearing, I had no opportunity to evaluate his credibility based on demeanor.¹⁷

Applicant is a 50-year-old Air Force veteran and long-time defense contractor. He experienced significant financial difficulties after retiring from the Air Force in 2009 and divorcing a year later. Most troubling is the fact that he failed to timely file his federal income tax returns for several years, from 2012 to at least 2014. He only recently began to address his significant tax issues. Applicant made recent efforts to resolve his debts, but he does not have a reliable financial track record at this time. His finances and taxes

¹⁷ ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul 23, 2003).

remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge