



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08410

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

01/17/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On March 10, 2016, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on April 19, 2016, and requested a hearing. The case was assigned to me on August 12, 2016, and was scheduled for hearing on October 26, 2016. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and eight exhibits (AEs A-G). The transcript (Tr.) was received on November 3, 2016.

Procedural Issues

Before the commencement of the evidentiary phase of the scheduled hearing, jurisdictional issues were addressed regarding Applicant's current employment status. In the furnished Joint Personnel Adjudication System (JPAS) employment status summary of October 2016, Applicant was documented to be separated as of May 31, 2016, and no longer sponsored by his employer. (HE 1) An updated JPAS employment summary confirmed Applicant's employment by his new employer who is sponsoring him for a security clearance, effective May 24, 2016. (HE 2) Jurisdiction over Applicant's security clearance application is established.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with copies of his 2007 and 2011 installment agreements with the Internal Revenue Service (IRS) covering tax years 2007-2011. (Tr. 55-56) For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant furnished a copy of an IRS installment agreement (updated as to the date of entry) covering tax years 1999 and 2001-2003. Applicant's submission was admitted without objection as AE H.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred federal tax liens against him: one entered in 2011 for \$9,731 and another in 2007 for \$39,262; and (b) incurred a state lien entered against him in 2006 for \$2,622. Allegedly, each of these tax liens remains outstanding.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed to have entered into an installment agreement in 2012 that covers Applicant's consolidated federal tax debts (years unspecified) for which he is paying \$250 a month as agreed for the past five years. He claimed he received inadequate tax help from a non-professional. He claimed he first became aware of the state tax lien covered by SOR ¶ 1.c when he received the SOR. He assured he will promptly address the state tax lien.

Findings of Fact

Applicant is a 60-year-old woodworker/material expeditor for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant has never been married and has co-habitated with another person since September 1985, a period of over 30 years. (GEs 1 and 5; Tr. 43, 53-54) He has no children. Applicant earned a high school diploma in May 1974 and has no reported higher education credits. (GE 1; Tr. 54) He has never served in the military. (GE 1; Tr. 54)

Applicant has been employed by his current employer since August 2013. (GE 1) Previously, he was employed by another federal contractor (between August 2012 and August 2013). He was unemployed between January 2010 and July 2011, after being laid off by his non-government construction firm. He worked for another non-government construction firm between May 2008 and December 2009 before being laid off. (GE 1) And, between July 2005 and early 2008, he worked for another non-government construction firm as a field representative before being laid off due to the recession. (GE 1) He estimated to have been employed for a number of months in early 2008 before relocating to his current state and finding full-time employment with the non-government firm noted above for the period of May 2008 to December 2009. (GE 1; Tr. 42)

Applicant's finances

Applicant incurred two federal tax liens: one in 2011 for \$9,731 and another in 2007 for \$39,262. (GEs 2-5 and AEs B and H; Tr. 34-36) The 2007 tax lien covered tax year 1999 and tax years 2001-2003. (AEs A-B and H) Because Applicant filed his 2003 federal tax return late in 2007, he accrued penalties and interest of over \$6,000 that were folded into the 2007 tax lien. (AEs A-B) He attributed his tax problems to filing mistakes and relying on the advice of non-professionals. (Tr. 52) He was not notified by the IRS of tax errors in his older returns until 2007. (GE 5) By this time, his tax obligations for the previous tax years of 1999 and tax years 2001-2003 had climbed to almost \$50,000, inclusive of imposed penalties and interest. (GE 5)

In 2007, Applicant entered into an installment agreement with the IRS, but quit making his required monthly payments in 2009 after he was laid off and could not find work for over 18 months. (Tr. 47-49) Out of work between January 2010 and July 2011, he did not make his agreed monthly payments for two to three years (Tr. 42), and his installment agreement with the IRS lapsed. (AE B)

After returning to gainful employment in July 2011, Applicant entered into a new installment agreement with monthly payments of \$250. (AEs C and H) Applicant has made his monthly payments consistently over the past five years in accordance with the terms of his 2012 installment agreement and is in good standing with the IRS. (AE H; Tr. 52) Because the accruing monthly interest on the running consolidated balance continues to compound, Applicant's credited \$2,000 payments between February 2016 and October 2016 reflect only a modestly declining balance, enhanced by IRS removal of some penalties in 2016. (i.e., from \$48,620 in February 2016 to \$44,011 in October 2016). (AEs C and E; Tr. 51)

Records show that Applicant paid \$3,000 to the IRS in December 2001 and \$3,485 in monthly payments between December 2011 and May 2012. (AEs B-D) According to the payment balance provided Applicant by the IRS in October 2016, Applicant still owes \$44,011 in back taxes for the cumulative tax years of 1999 and 2001-2003. (AEs C and E) To assist him with addressing his back taxes for these years, Applicant engaged a tax specialist in July 2011 and assigned her a power of attorney to deal directly with the IRS in addressing his taxes owed for tax years 1999-2010 and establish an installment agreement with the Service. (AE F) Attached to the power of attorney are November 2011 correspondence from Applicant along with supporting documentation in connection with his revised 433-A application for an installment agreement with requested monthly payments of \$250. (AE F) Applicant reported cash on hand of \$337.41, personal assets of \$6,200, and monthly expenses in excess of \$1,200. (AE F)

Besides his federal tax liens, Applicant incurred a state lien. (GEs 2-5 and AE G) Records document that a state taxing authority filed a state tax lien against Applicant in October 2006. (GEs 2-5; AE G) Applicant satisfied the state tax debt accrued in tax year 2006 in the amount of \$2,622. (AE G) He documented the state's release of its tax lien in April 2016. (AE G) Applicant also satisfied the 2011 federal tax lien in full in January 2013. (GE 5) Applicant has not accrued any additional delinquent taxes from either the state in issue or from the IRS, either for past tax years or future ones.

Asked whether he could estimate the number of years it will take him to pay off the owed federal taxes covered by his 2011 installment agreement with the IRS, Applicant could confirm only the advice he received from the IRS to "just keep paying \$250" to avoid any defaults in his installment agreement. (AE E; Tr. 42) To the best of his knowledge, the IRS has not applied any entitled refunds for subsequent tax years to the running balance of the back taxes he owes. (Tr. 39) Applicant presently earns good money with his current employer and is confident about his ability to make his \$250 monthly payments to the IRS until the tax debt is satisfied. (GE 5) He did not provide any character references or evidence of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's accrual of federal and state tax liens covering delinquent taxes, penalties, and interest for past tax years spanning 1999 and 2003. Applicant's accumulated tax delinquencies for these years warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also implicit in financial cases.

Applicant has made considerable progress in addressing his federal and state liens since his return to full time employment in July 2011. Records document his satisfaction of his state tax lien in 2013 and his compliance with the installment agreement his tax preparer negotiated with the IRS in November 2011. Although his progress in paying off the 2007 federal lien covered by his 2011 installment agreement is slow, he has consistently met his monthly payment requirements and is in full compliance with his IRS installment agreement.

Applicant's addressing of his federal and state tax liens of record reflects substantial progress in paying off the liens of record and merit full application of MC ¶ 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." Financial hardships associated with his loss of income during recurrent periods of unemployment and underemployment between 2008 and 2011 are extenuating and sufficient to absolve him of any recurrent risks of accumulated tax delinquencies at the federal and state level.

Applicant's documented repayment efforts enable him to take advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Prospects for his continued compliance with the monthly payment conditions of his 2011 installment agreement are excellent and leave no doubts about his ability to maintain his finances in good working order.

With his presented documentation of addressing his incurred federal and state tax liens, Applicant is able to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's repayment initiatives enable him to meet the Appeal Board's stringent requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant's demonstrated efforts to date in addressing the federal and state tax returns covered in the SOR are enough to overcome security concerns associated with his history of accruing delinquent taxes at both the federal and state levels. Whole-person assessment is sufficient on the facts developed in this record, even without endorsements and evidence of community and civic contributions.

Considering all of the circumstances surrounding Applicant's tax accrual of federal and state tax liens and his documented efforts in addressing them are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.c of Guideline F.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a-1.c:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

