



ISCR Case No: 15-02463

Applicant for Security Clearance

Appearances

For Government: Ross Hyams, Esquire, Department Counsel

For Applicant: *Pro se*

10/31/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to file Federal income tax returns for 2003, 2004, 2005, 2006, 2011, and 2012, and owes at least \$9,000 in outstanding taxes. He has six delinquent debts that he has not resolved. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On March 12, 2014, Applicant submitted a security clearance application. (Item 4.) On December 16, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (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 for*

Determining Eligibility for Access to Classified Information (AG), effective within the DOD after September 1, 2006.¹

Applicant answered the SOR on January 21, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On April 11, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on April 12, 2016, and received by him on April 15, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, and did not file any objection to its contents; hence, Items 1 through 7 are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on July 6, 2017.

Findings of Fact

Applicant is 47 years old and married since 2001. He served in the Navy Reserve from 1988 to 1992. He received an honorable discharge. He held a security clearance while serving in the Navy, and subsequent to his discharge while working for defense contractors. He began his current position with a defense contractor in 2011. In March 2014, he submitted an application for re-investigation for a security clearance. (Item 4.)

In his answer to the SOR, Applicant denied responsibility for the allegations in SOR ¶¶ 1.a through 1.g, and offered explanations. He admitted the tax allegations in SOR ¶¶ 1.h and 1.i. (Item 3.)

Applicant reported on his security clearance application that he failed to file a 2011 Federal income tax return and pay all taxes as required. (Item 4.) In his answer to the SOR, he admitted that he failed to timely file Federal income tax returns for years 2003, 2004, 2005, 2006, 2011, and 2012. (Item 3.) During a background interview with a government investigator in April 2014, he acknowledged that he owed the Internal Revenue Service (IRS) about \$9,000 for tax years from 2003 through 2012. He said he was unable to pay 2011 and 2012 taxes because he had medical expenses related to his daughter's illness and death in 2011. He acknowledged that the earlier tax-year problems resulted from his negligence. (Item 5.) He stated he made a "stupid mistake." (Item 3.)

The SOR alleged seven debts that became delinquent between 2009 and 2013, and two allegations related to unfiled and unpaid Federal income taxes for specific years. The delinquencies totaled more than \$16,000. Applicant provided documentation showing that he has title to the automobile referenced in SOR ¶ 1.a as a charged-off auto loan. The title was issued to him in October 2010. This debt is resolved. (Item 3.) Applicant did not provide documentation to prove that any of the other six delinquent debts are

¹I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

resolved, being resolved, or have been removed from his credit reports after being successfully disputed as his debts.

Applicant did not submit any documentation confirming that he filed, albeit late, Federal tax returns for 2003, 2004, 2005, 2006, 2011, or 2012, as alleged in SOR ¶ 1.h. He submitted a letter from the IRS from July 2015 referencing unpaid taxes for tax years 2005, 2012, and 2014.² It proposed an installment plan to resolve those taxes, beginning in August 2015. (Item 3.) Applicant did not provide evidence that he made payments on that installment plan or resolved his 2003, 2004, 2006, or 2011 Federal taxes, as also alleged in SOR ¶ 1.i. Applicant did not document any financial counseling or provide budget information from which to predict his future solvency.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

² The SOR did not allege unpaid taxes for 2014. That derogatory information will not be considered in the analysis of disqualifying conditions, but may be considered in the discussion of mitigating conditions and the evaluation of Applicant's credibility.

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) 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 incurred what he estimated to be \$9,000 in delinquent Federal income tax debts for tax years 2003 through 2012, and failed to file required Federal income tax returns for years 2003, 2004, 2005, 2006, 2011, and 2012. He did not provide proof of any payments to the IRS on its 2015 proposed installment agreement to address unpaid taxes. He has six delinquent debts that are unresolved. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (g)) the individual has made arrangements with the appropriate tax authority to file and pay the amount owed and is in compliance with those arrangements.

Applicant's Federal tax issues and six delinquent debts are ongoing. He offered no reasonable basis to conclude that such problems will not recur, so mitigation was not established under AG ¶ 20(a).

Applicant asserted that his 2011 and 2012 tax problems arose as a result of his daughter's illness and death in 2011 and were conditions beyond his control. He acknowledged that other tax year issues, and seemingly delinquent debts, resulted from

his negligence. There is no evidence that he acted responsibly while the debts and tax issues were arising, as required for full mitigation under AG ¶ 20(b). He failed to provide evidence of financial counseling or good-faith efforts to resolve all financial allegations that could demonstrate that his financial problems are under control, and establish mitigation under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant did not document a legitimate basis to dispute any of the delinquent debts alleged in the SOR, or submit evidence of compliance with an installment agreement with the IRS. Mitigation of security concerns under AG ¶¶ 20(e) and 20(g) were not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is responsible for his decisions. He failed to demonstrate that he has paid, resolved, or is resolving outstanding Federal tax issues or delinquent debts. There is no evidence of rehabilitation or permanent behavioral changes. The potential for pressure, exploitation, or duress from his financial situation remains undiminished. Applicant's actions to date are not sufficient to outweigh a history of non-compliance with a fundamental legal obligation to file and pay taxes. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone 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).³

Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for 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:	For Applicant
Subparagraphs 1.b through 1.i:	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 a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge

³ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).