



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-02483
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file his federal and state income tax returns for nine years. He accumulated delinquent taxes for some of those tax years. He failed to demonstrate good judgment and reliability and he has a problem complying with well-established government rules. His evidence is insufficient to establish a track record of financial responsibility. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 19, 2013. He was interviewed by a government investigator On March 6, 2013. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on June 15, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on September 22, 2017, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), submitting the evidence supporting the security concerns, was provided to Applicant by letter dated

October 27, 2017. Applicant received the FORM on November 6, 2017. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM. The case was assigned to me on March 20, 2018. Lacking any objections, I admitted and considered the Government's proposed evidence.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 63-year-old engineer working for a large federal contractor. He graduated from high school in 1972, and earned a bachelor's degree in 1975. He married his late wife in 1980. She suffered from a serious medical condition for many years. She passed away in 2017. He has two grown children.

Applicant has been employed by the same federal contractor since 1979. He has possessed a clearance since 1980. Except for the security concerns raised in the SOR, there is no evidence of any other issues of concern.

In his response to Section 26 (Financial Record) of his 2013 SCA, Applicant disclosed financial problems related to his failure to timely file his federal and state income tax returns and pay his taxes. Applicant filed his federal and state income tax returns for tax year 2005 in 2009; for 2006 in 2010; for 2007 and 2008 in 2012; for 2009 and 2010 in 2013. He timely filed his 2011 and 2012 income tax returns. His 2013, 2014, and 2015 income tax returns were filed in 2017.

Applicant stated in his 2013 SCA that his delay in filing and paying his taxes was not due to any financial hardship. During his March 2013 interview, Applicant told the investigator that he had failed to timely file his income tax returns because of his procrastination and forgetfulness, difficulties taking care of his ill wife, and his heavy workload. He noted he was resolving his tax problems with the IRS and state authorities.

Applicant told the investigator that his current financial situation was good. He stated that he had the money to pay all of his delinquent taxes and debts; however, his procrastination and forgetfulness had caused him to get behind on his payments on other accounts too. Applicant stated his intent to be financially responsible in the future and to timely file and pay both his state and federal taxes. He failed to timely file his 2013 through 2015 federal and state income tax returns and acquired a tax debt.

Applicant's documentary evidence concerning his federal taxes shows that as of April 2017, he had tax credits for tax years 2014 (\$903) and 2015 (\$399). Thus, it would appear he had no delinquent taxes for prior tax years, otherwise the credit would have

been applied to those prior years. Additionally, Applicant's took all necessary steps to be in compliance with his state's tax obligations. (FORM, Item 6)

Except for his statement to the investigator that his "finances were good" in 2013, Applicant presented no evidence about his current financial situation (income, outstanding debts, whether his income is sufficient to pay for his living expenses, and whether his financial problems are resolved or under control). He gave no indication that he had participated in financial counseling.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment,

reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel 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

Applicant’s history of financial problems is documented in the record. He failed to timely file his federal and state income tax returns for tax years 2005 through 2010, and 2013 through 2016. He accumulated delinquent taxes for some of those tax years. However, he is now current or is making payments on both his federal and state taxes. AG ¶ 19 provides disqualifying conditions that could raise a security concern 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 income tax as required.” The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Six 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, 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;¹

(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 or pay the amount owed and is in compliance with those arrangements.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dormont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in

¹ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

Egan, supra. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2, ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant’s failure to timely file his federal and state income tax returns, and to pay his taxes, resulted primarily from his procrastination and forgetfulness. I considered that his late wife’s illness contributed to his tax issues and was a circumstance beyond his control.

Nevertheless, Applicant did not present sufficient evidence of a good-faith effort to pay his tax debts or that he has been financially responsible under his circumstances. He acknowledged that his failure to pay was not due to a financial hardship. During his 2013 interview, he was confronted about his failure to file his income tax returns and pay taxes. He promised to timely file his returns and pay his taxes in the future. Notwithstanding, he failed to file his returns and to pay taxes for tax years 2013 through 2015. Applicant neglected his legal obligation to timely file his income tax returns and to pay his taxes during extended periods. “Failure to comply with federal and state tax laws suggests that an applicant has a problem with abiding to well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information.” ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). This is true even if the returns have been filed. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

Applicant received credit for his recent income tax filings and payment arrangements with the IRS and his state tax authorities. Because of his recent efforts, mitigating condition AG ¶ 20(g) is raised by the facts and it applies. Notwithstanding, in light of the evidence as a whole, AG ¶ 20(g) does not mitigate the financial consideration security concerns.

Applicant’s repeated failure to file his federal and state income tax returns in a timely manner does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, ISCR Case No. 14-01894 at 5 (App. Bd. Sept. 27, 2016). In sum, Applicant failed to demonstrate financial responsibility. The financial considerations security concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 63, has been employed with federal contractors since 1979, and has held a clearance since 1980. Because of his close to 40 years holding a clearance, Applicant was aware he was required to maintain his financial responsibility to be eligible for a clearance. He failed to demonstrate good judgment and reliability, and he has a problem complying with well-established government rules. His evidence is insufficient to establish a track record of financial responsibility.

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 and 1.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge