



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



In the matter of:)
)
) ISCR Case No. 15-02884
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 22, 2012. On June 29, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹

Applicant responded to the SOR on July 26, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on June 19, 2017, and the hearing was convened on July 11, 2017. Government

¹ The DOD CAF acted 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 (AG) implemented by the DOD on September 1, 2006.

Exhibits (GE) 1 through 4 were admitted in evidence. Applicant testified and submitted Applicant's Exhibits (AE) A through E. The record was held open so that Applicant could submit additional evidence. He submitted additional documents marked together as AE F, and they were admitted without objection. DOHA received the hearing transcript (Tr.) on July 20, 2017.

Findings of Fact

Applicant is a 55-year-old operational and space systems engineer employed by a defense contractor since 2009. He previously worked for another government contractor from 1999 to 2009 before he was terminated for performance issues. When he departed his last position in 2009, he incurred a tax penalty when he withdrew the proceeds of various retirement plans and used the funds to pay credit cards and other debts. He remained unemployed for about eight months until about December 2009, when he obtained a job with his current employer, and worked part-time as a census enumerator for a short time.

Applicant graduated from a military service academy in 1983 and completed some work toward a master's degree. He served in the U.S. Air Force from 1983 to 1996, when he was honorably discharged as a Captain (O-3). Applicant was previously married in 1987 and divorced in 1988, and again married in 1991 and divorced in 1992. He was last married in 1995. His spouse was medically retired from her job in 2013, which reduced the family income by \$25,000. She suffered from diabetic blindness and passed away in October 2015. He has three adult children and step-children.

The SOR alleges that the IRS filed a Federal tax lien for approximately \$57,366, and Applicant failed to file and pay Federal and state income tax returns for two states for tax years 2009 and 2010 when due. In addition, the SOR alleges Applicant owes approximately \$19,000 on a delinquent line of credit account and a charged-off credit card debt.

Applicant did not file his 2009 and 2010 Federal and state tax income returns or pay taxes owed when they were due. In his personal subject interview (PSI) with a security clearance investigator, Applicant also noted that he failed to file and pay his 2011 Federal and state taxes on time. He noted in the interview that he was unsure of how to account for the 2009 retirement account penalty, and did not have the funds to pay his taxes when due. The following two years snowballed into inaction with his taxes until he consulted a tax relief company. He filed extensions, but did not pay taxes owed. Applicant's 2009 adjusted gross income was approximately \$150,000, and his 2010 adjusted gross income was approximately \$138,000.

In May 2013, the tax relief company filed the 2009 and 2010 Federal tax returns after Applicant was interviewed during his security clearance investigation. He paid \$7,000 to the tax relief company to negotiate a settlement with the IRS, but the tax debt was never reduced. Applicant claimed to have started a repayment plan with the IRS in

2012, but did not provide documentary evidence showing past payments made to the IRS or the regularity of claimed payments.

At the time of the hearing, Applicant claimed that he had been making installment payments of \$990 per month through the tax relief company to the IRS, but he stopped using that particular tax relief company and hired another company in September 2015, to negotiate a new payment plan with the IRS. He claimed in his post-hearing submission dated July 10, 2017, that the new company was in the process of negotiating a new payment plan. He provided a letter dated October 6, 2016 from the IRS, attesting to the establishment of a new payment plan to pay \$235 per month for taxes owed from 2009 to 2014, beginning October 28, 2016. He noted that he has not completed payments for his 2009 and 2010 income taxes. No documentation of payments on delinquent tax debts was submitted. Likewise, Applicant claimed to have paid-off his delinquent state tax obligations for two states through installment payments and application of tax refunds from subsequent tax years to eliminate the debts.

Applicant hired a new debt management company in October 2013, but was unsatisfied and replaced them with another debt repair law group in September 2015, to negotiate settlements for several debts, including his delinquent line-of-credit and charged-off credit card accounts alleged in the SOR. In an e-mail dated May 31, 2017, his debt repair law group confirmed it negotiated a reduced settlement on the line-of-credit account, where Applicant is to pay \$8,200. Applicant testified that he began payments on this account, and expected it to be paid-off by March 2018. Applicant noted that the law group is in the process of negotiating the charged-off credit card account, but is was not yet resolved. No documentation of payments on either of these debts was submitted. Applicant's summary from the law group shows eight other debts not alleged in the SOR as "unsettled."² He testified that several of these debts were in a delinquent status.

In his post-hearing submission, Applicant noted that he is not making excuses, but that his family has suffered some "extremely rough times" in the past ten years, including job losses, family separation, health problems, a runaway teenager, death of in-laws and his spouse's sister, sibling family drama, an out-of-state custody battle for his grandson, and his spouse's death. They "lost control" of their finances. He also noted his 30-plus years of work experience and his military service. Applicant claimed to have had financial counseling and submitted a budget. Applicant's friend and church pastor testified to his honesty and excellent personal character.

Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

² (AE E).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” Egan, 484 U.S. at 531; see AG ¶ 1(d).

Analysis

Financial Considerations

The security concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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; and

(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.

Applicant's delinquent debts are recent and numerous, however, there is insufficient evidence to determine that they were incurred under circumstances making them unlikely to recur. Applicant lost a job due to performance issues, and withdrew funds from retirement accounts for his personal use without setting aside a portion to pay taxes and penalties. His financial issues snowballed from there, as he knowingly failed to file the next three years of Federal and state income tax returns when due, and pay taxes owed. Applicant's 2009 and 2010 tax returns, as alleged in the SOR, were not finally filed until May 2013.

Applicant delayed repayment of taxes owed until two tax relief companies negotiated settlements with the IRS, the last in October 2016. Federal taxes and penalties owed have not been fully repaid, and no record of payments to date or resolution of the Federal tax lien have been provided. Applicant claimed to have settled and paid his delinquent tax obligations to two states, but did so primarily through relinquishing several subsequent tax-year refunds. Although Applicant submitted insufficient and confusing evidence of resolution of the state tax obligations, the relative amounts owed are too small to invoke security concerns.

Applicant has not shown sufficient evidence that he has satisfactorily resolved the remaining line-of-credit and credit-card debts alleged in the SOR. Despite an opportunity to provide additional documentary evidence after the hearing, Applicant failed to provide records of payments on debts. Although he may have made payments toward resolution of his tax and credit accounts, I am unable to verify the amount and regularity of such payments. This coincided with Applicant's unconvincing testimony at the hearing where he was unable to articulate specific actions with regard to his debts to convince me that he has reasonable knowledge and control of his finances.

Applicant has a long history of financial irresponsibility. Despite relatively steady employment, he did not responsibly address his taxes and delinquent debts in a good faith or timely manner. He obtained financial advice from four different debt and tax management companies in an attempt to resolve his financial problems, but insufficient progress has been made, given the time elapsed since incurring the debts and the number of years he has been pursuing professional assistance. He claimed to have received credit counseling and provided a budget, but he did not show in his testimony that he fully understands his debt status or that he has regained control over his finances.

I find no mitigating condition fully applies except that Applicant filed his Federal tax returns and his state tax debts appear to have been recently resolved and are otherwise a manageable amount, and he is credited with receiving some financial counseling and preparing a budget.

Overall, Applicant's unresolved debts, both alleged and not alleged in the SOR, and his prolonged delinquent Federal tax obligations, reflect poorly on his financial management decisions and personal financial responsibility. His financial stability, decisions, and financial integrity raise significant concerns. Given his maturity, experience, and education level, I am not convinced Applicant is financially responsible, makes good financial decisions, or is currently financially stable. These factors do not demonstrate the high degree of judgment and reliability expected and required for access to classified information.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant has not shown that he is now financially stable and able to adequately address his past financial and tax delinquencies in a timely manner. Despite his steady employment in his current position since 2009, he has not shown adequate effort, due diligence, or financial responsibility in addressing his debts and resolving his Federal tax issues. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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.d, 1.e, and 1.f:	Against Applicant
Subparagraphs 1.a, 1.b, and 1.c:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge