



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 15-04239

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

WHITE, David M., Administrative Judge:

Applicant failed to pay his Federal income taxes for 2006, 2007, and 2012. Resulting tax liens totaling \$36,150 remain unresolved. In 2008 he discharged \$13,928 in earlier unpaid taxes and \$11,229 in unsecured debts through a Chapter 13 bankruptcy. Financial security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On July 30, 2014, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 5.) On March 25, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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*, effective within the DoD after September 1, 2006.

Applicant submitted his Answer to the SOR on June 1, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On July 28, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 12 Items, was mailed to Applicant on July 29, 2016, and received by him on August 5, 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 provide any response to the FORM, file any objection to the FORM's contents, or request additional time to respond beyond the 30-day period he was afforded. The case was assigned to me on June 7, 2017. Items 1 through 12 are admitted in evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions¹ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as set forth in Appendix A of SEAD 4. I considered the 2006 adjudicative guidelines, as well as the SEAD 4 AG, in determining Applicant's national security eligibility. My decision would be the same under either set of guidelines, but this decision is issued pursuant to the SEAD 4 AG.

Findings of Fact

Applicant is 56 years old, married, and has two adult children. He has held his present position with a defense contractor since September 2013; and is seeking a security clearance in connection with that position. He earned a bachelor's degree in 1984 and a master's degree in 1995. He served as an Air Force officer from 1984 to 1996, and received an honorable discharge. He was granted security clearances in 1989 and 2007. (Item 5; Item 10.)

Applicant admitted all of the allegations in the SOR with some explanations. (Item 4.) His admissions are incorporated in the following findings.

Applicant and his wife filed for Chapter 13 bankruptcy relief in September 2006, including \$13,928 in unpaid Federal, state, and county taxes; and \$11,229 of other unsecured debts. Applicant claimed this was necessary due to several large emergency bills and his wife's inability to work for three months for health reasons, but provided neither details concerning nor corroboration of these claims. They received a discharge of their outstanding dischargeable debts in June 2008. (Item 4; Item 5; Item 6.)

¹ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

In his answer to the SOR, Applicant said that he thought the 2006 tax debt that was alleged in SOR ¶ 1.c was included and resolved in that bankruptcy proceeding. The Schedule E from that bankruptcy filing lists \$11,412 of unpaid Federal tax debts for 2003 through 2005; and \$2,516 for unpaid state and county tax debts from 2005 and 2006. Applicant's unpaid Federal taxes due for 2006, 2007, and 2012 were not included and remain unresolved. (Item 4; Item 6 at 21.)

While the Chapter 13 bankruptcy plan filed in 2006 was proceeding, Applicant failed to pay approximately \$18,515 that he owed for his tax year 2006 and 2007 Federal income taxes. He subsequently failed to pay approximately \$17,635 in Federal income taxes owed for tax year 2012. As a result, in February 2014 the Federal Government filed two tax liens against him in those amounts. (Item 4; Item 5; Item 8.)

Applicant claimed that his unemployment from April 2012 to September 2013 contributed to his unpaid income tax problems, but the record shows that the unemployment resulted from his being fired from his previous job for "reduced performance." He did not demonstrate that this was a circumstance beyond his control. He said in his 2014 e-QIP, "Now that I am working, I will be consulting a tax resolution agent to resolve this issue." (Item 5 at 30.) He said in his answer to SOR that he was "working with [a reputable tax relief company] to resolve all prior tax discrepancies." (Item 4 at 3.) However, Applicant provided no documentation to corroborate any such consultation, or demonstrating other efforts to resolve his admitted tax delinquencies.

Applicant claimed, again without documentation, that he paid the delinquent \$54 medical debt alleged in SOR ¶ 1.d. That debt appeared on the August 2014 credit report in the record, but not on the November 2015 record credit report. It is considered resolved, and is not significant enough to create additional security concerns. (Item 4; Item 8; Item 9.)

Applicant did not document any financial counseling except the credit counseling required in connection with his bankruptcy proceedings. He provided no recent budget information from which to predict his future solvency, or his ability to make any payments toward his delinquent tax debts. He offered no evidence to support findings concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures there. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing. (Item 4; Item 6; Item 7.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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."

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 *also* 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, and continues to owe, more than \$36,000 in delinquent Federal income taxes for tax years 2006, 2007, and 2012, after discharging \$13,928 in earlier unpaid taxes and \$11,229 in unsecured debts through a Chapter 13 bankruptcy in 2008. He documented neither the ability nor any effective efforts to satisfy these debts. 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 admitted delinquent income tax issues:

- (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's delinquent Federal income tax debts are substantial and ongoing. His failure to address these debts in a meaningful way over the past ten years creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant neither documented a reasonable basis to claim that his income tax issues arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He offered no evidence of effective financial counseling, or budget information that would demonstrate either solvency going forward or an ability to repay his delinquencies. He provided insufficient evidence that these problems are being resolved, are under control, or that a good-faith effort toward resolution has been initiated. Neither arrangements with Federal tax authorities to pay the amounts owed, nor compliance with such arrangements was demonstrated. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c), 20(d), or 20(g).

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 accountable for his choices. He continues to owe more than \$36,000 in delinquent Federal income tax debts, and provided no evidence that he has taken action to resolve them. He provided insufficient evidence to demonstrate rehabilitation or other permanent behavioral changes. The potential for pressure, exploitation, or duress remains undiminished, and recurrence was not shown to be unlikely.

Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	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 a security clearance. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge