



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00320

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

01/12/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for access to classified information. He has a long-standing history of noncompliance with his tax obligations. He failed to timely file federal income tax returns for tax years 2004 through 2014, and he owes more than \$23,000 to the IRS. He also owes at least \$6,408 to the state tax authority based on a state tax lien filed in May 2016. His tax problems went on far too long, are too much, and are too recent to justify a favorable clearance decision. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on February 3, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on October 14, 2016, after reviewing the application and the information gathered during a background investigation, the

¹ Exhibit 1.

Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations based on a history of financial problems.

Applicant answered the SOR on November 17, 2016. He admitted all the factual allegations made in SOR. He also requested a hearing before an administrative judge.

The case was assigned to me on February 7, 2017. The hearing took place as scheduled on April 26, 2017. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Exhibits 1-6 and A-G, respectively. The hearing transcript (Tr.) was received on May 4, 2017. The record was kept open until May 10, 2017, to allow Applicant an opportunity to submit additional documentary matters, but no such matters were received.²

Findings of Fact

Applicant is a 40-year-old employee who is seeking to obtain a security clearance for the first time. His educational background includes a high school diploma and some college. He is employed by a logistics company as a material expeditor on a U.S. military installation. He has never married and has no children. His employment history does not include military service. He has a good employment record and is considered a trustworthy employee according to six letters of recommendation submitted by co-workers and supervisors.³

In his February 2015 security clearance application, Applicant disclosed a wage garnishment or attachment for about \$1,300 owed to a state tax authority. Otherwise, he did not disclose any problems with his financial record. As alleged in the SOR and admitted by Applicant, he has a long-standing history of financial problems consisting of the following matters: (1) failure to timely file federal income tax returns for tax years 2004 through 2014; (2) a federal tax delinquency of \$30,094 based upon a tax lien entered against him in 2012; (3) a federal tax delinquency of \$12,691 for tax years 2008 through 2015; (4) failure to timely file state income tax returns for tax years 2006 and 2007; (5) a state tax delinquency of \$6,408 based upon a tax lien entered against him in 2016; and (6) four collection accounts for a total of \$2,549.⁴ In addition to his admissions to the SOR allegations, the above matters are established by his responses to interrogatories and credit reports from 2015 and 2016.⁵

² Tr. 28-31, 68-69.

³ Exhibits B-G.

⁴ Tr. 35.

⁵ Exhibits 2-6.

At the hearing, Applicant did not present documentation showing that any of the four collection accounts were paid, in a payment arrangement, in dispute, settled or compromised, cancelled, forgiven, or otherwise resolved. He acknowledged that the collection accounts were unpaid as far as he knew.⁶

Applicant failed to meet his tax obligations due to a serious misunderstanding. He understood that if you do not file a tax return, then you are not required to file a tax return, but if you file a return once, then you are required to file forever.⁷ He further explained that he believed he was not responsible for filing returns and paying taxes because he did not own a business or corporation.⁸ He claimed that he did not realize that the state tax authority and IRS were separate entities.⁹ He denied that he was a tax protester or was otherwise engaged in tax evasion.¹⁰

Applicant's understanding of his tax obligations changed in March 2012, when the IRS filed a \$30,904 federal tax lien and explained and clarified his obligations.¹¹ As of June 2016, per his IRS account transcripts, Applicant owed approximately \$23,196 in back taxes, penalties, and interest for tax years 2004 through 2015.¹² That sum excludes tax years 2010 and 2011 for which there are no account transcripts.

In 2012, Applicant hired a tax preparer to help him prepare and file the past-due returns.¹³ The IRS prepared substitute tax returns for Applicant for tax years 2004 through 2007; he filed tax returns for tax years 2008 through 2012 in June 2013; and he filed tax returns for tax years 2013 through 2015 in May and June 2016.¹⁴ To repay the tax delinquency, he entered into an installment agreement with the IRS in June 2013, but the agreement was no longer in effect by September 2014, which suggests he defaulted.¹⁵ Applicant believed he was in an installment agreement with the IRS as of

⁶ Tr. 35-37.

⁷ Tr. 37-38.

⁸ Tr. 38, 58.

⁹ Tr. 45.

¹⁰ Tr. 59-60.

¹¹ Tr. 38, 61.

¹² Exhibit 2.

¹³ Tr. 38-39, 44.

¹⁴ Exhibit 2. As I understand IRS practice and procedure, for a taxpayer who has not filed a return in many years, the IRS requires a taxpayer to go back and file returns for the last six years and then make arrangements to pay what is owed in order to be in compliance. The six-year-period for past-due returns is found in IRS Policy Statement 5-133 and Internal Revenue Manual 1.2.14.1.18.

¹⁵ Exhibit 2.

2016, and was paying his tax preparer \$200 monthly for that purpose.¹⁶ In a June 9, 2016 letter, his tax preparer stated that Applicant was paying \$200 monthly per an installment agreement.¹⁷ Applicant did not present a copy of his installment agreement, nor did he present a copy of any annual statements the IRS issues to a taxpayer for an installment agreement. Applicant stopped using the services of his initial tax preparer in mid-2016 and hired another tax preparer to assist him.¹⁸

Concerning the state tax matters, the state tax authority filed a \$6,408 tax lien against Applicant in May 2016.¹⁹ Other than the wage garnishment or attachment he disclosed in his security clearance application, he has not made any payments to the state tax authority for his back taxes.²⁰ Applicant believed that his initial tax preparer filed the state income tax returns, but he expressed some uncertainty about the matter, and he did not present copies of the state returns or other documentary proof of filing.²¹

Applicant's plan to resolve his back taxes and collection accounts is to seek relief in bankruptcy court. To that end, he retained the services of an attorney in November 2016, but a bankruptcy petition has not yet been filed.²² Since the general rule is that most tax debts cannot be discharged (wiped out) in bankruptcy, Applicant understands his attorney has advised him that a Chapter 13 bankruptcy case with a payment plan is the best course of action.²³

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.²⁴

¹⁶ Tr. 62-66, 75-77.

¹⁷ Exhibit 2.

¹⁸ Tr. 47-48.

¹⁹ Exhibits 4 and 6.

²⁰ Tr. 54-55.

²¹ Tr. 56-57.

²² Exhibit A.

²³ Tr. 41-42.

²⁴ The 2017 AG are available at <http://ogc.osd.mil/doha>.

It is well-established law that no one has a right to a security clearance.²⁵ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁷ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁸

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁴

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁶ 484 U.S. at 531.

²⁷ 484 U.S. at 531.

²⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁹ Directive, ¶ 3.2.

³⁰ Directive, ¶ 3.2.

³¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³² Directive, Enclosure 3, ¶ E3.1.14.

³³ Directive, Enclosure 3, ¶ E3.1.15.

³⁴ Directive, Enclosure 3, ¶ E3.1.15.

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. . .³⁵

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. His history of financial problems goes back many years when he began his practice of not filing federal or state income tax returns and continued until 2012, when he began the process of resolving his failure to timely file returns and failure to pay tax when due. His federal returns have now been filed through tax year 2015, but I am unable to determine if he has filed his state returns. He owes the IRS more than \$23,000 in back taxes, penalties, and interest (and probably more) based on a review of the available IRS account transcripts. He owes the state tax authority \$6,408 (and probably more) based on a 2016 state tax lien. He does not have a payment plan in place with the IRS or state tax authority. He intends to seek relief via bankruptcy court, although a bankruptcy case has yet to be filed on his behalf.

³⁵ AG ¶ 18.

Applicant's tax problems are unresolved and ongoing. The failure to timely file tax returns and pay tax when due bears close examination and is a matter of serious concern to the federal government.³⁶ Both the failure to file and pay tax when due suggest that an applicant has a problem with complying with well-established governmental rules and regulations. Voluntary compliance with such rules and systems is essential for protecting classified or sensitive information. An applicant who has a history of not fulfilling their tax obligations, which is the case here, may be said not to have demonstrated the high degree of judgment and reliability required for access to classified or sensitive information.

Accepting his statements and explanations at face value, Applicant had a gross misunderstanding of his tax obligations. He saw the light in 2012, when the IRS took enforcement action against him. He has since been working to come into compliance with the IRS and state tax authority. His actions in that regard amount to taking the initial steps in the right direction. His efforts, while commendable, are insufficient to overcome the serious concern raised by his failure to meet his tax obligations over a period of many years. It is my view that his tax problems went on far too long, are too much, and are too recent to justify a favorable clearance decision.

Applicant's long-standing history of noncompliance with his tax obligations creates serious doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:
Subparagraphs 1.a-1.i:

Against Applicant
Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge

³⁶ The General Accountability Office (GAO) expressed serious concern over the relationship between tax delinquents and clearance holders in its July 28, 2014 report, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, <http://www.gao.gov/assets/670/665052.pdf>.