



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



In the matter of:

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Applicant for Security Clearance

ISCR Case No. 16-01168

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

10/23/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F and personal conduct under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On March 17, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) December 15, 2015. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On October 11, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) The action was taken under Executive Order 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 adjudicative guidelines (AG) effective in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on November 9, 2016, admitting nine of the allegations and denying seven allegations of delinquent debt and tax liens under Guideline F. Applicant denied the two allegations of falsification of information in his e-QIP under Guideline E. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 25, 2017. Applicant received a complete file of relevant material (FORM) on February 6, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on October 1, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 5) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 62 years old. He graduated from high school in June 1974. Applicant married in 2003, and divorced in 2004. He has two sons. (Item 4) He has had a security clearance since 1977. He has been employed with his current employer since 2005

The SOR alleges, and credit reports (Items 5, 6, 7, and 8) confirm the following delinquent debts for Applicant: a car loan past due in the amount of \$1,619, with a total balance of \$19,490 (SOR 1.a); a past due credit card balance for \$155, with a balance of \$486 (SOR 1.b); a medical account delinquent in the amount of \$96 (SOR 1.c); a 2010 federal tax lien, a 2015 federal tax lien, a 2007 federal tax lien, another 2007 federal tax lien (SOR 1.d-1.g); a collection account for \$733 (SOR 1.h); three collection accounts totaling \$1,700 (SOR 1.i-k); a 2015 wage garnishment for unpaid state taxes (SOR 1.l); a 2015 wage garnishment for \$39,840 for unpaid federal taxes (1.m) failure to file and pay state property tax for 2014 and 2015 in the amount of \$300 (SOR 1.n); and failure

¹ I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

to file federal tax returns which resulted in the various tax liens, as noted in 1.d-1.g (SOR 1.o). The amount of the delinquent debt is approximately \$156,000, including \$86,000 in tax liens.

The SOR alleges two personal conduct security concerns for Applicant for failing to provide full, accurate, and complete information on his March 17, 2015 e-QIP. Applicant allegedly did not list his federal tax liens and delinquent collection accounts in response to question 26 of the e-QIP. Applicant noted his failure to file his 2011 state tax return and that he owed \$4,436, and believed he was on a payment plan in response to financial question in Section 26 of the e-QIP. He also enclosed paper attachments with his answer showing a wage garnishment from 2011 to 2016. It does appear that he was paying on the federal tax lien from 2015 because the balance has dropped. (Attachment to answer and Item 9)

In the PSI, Applicant reported that he was unaware of most of the delinquent debts reported to him by the security investigator. He recognized some debts as his debts, but he believed that he had paid them. He agreed that he had not paid any tax liens due to the fact that he was behind in his other debts, and he was not filing his tax returns. He noted that he planned to talk with a tax consultant to see what he owes. He noted that he did not list the tax liens on his SCA due to an oversight. He denied receiving collection or other notices about delinquent debts because he moved frequently. He stated that his financial status is "shaky." If he were responsible for the debts, he would contact the creditors and make payment arrangements. (Item 4, PSI)

In his response to the SOR, Applicant attributes much of his delinquent debt to the financial problems encountered when he had "too many things going on." He was not more specific in his answer and he did not respond to the FORM. He also stated that he was a procrastinator when it came to timely filing tax returns. He also stated that he moved around quite a bit and did not know of some of the accounts. He believed some were paid.

Applicant did not provide any documents to verify his SOR response. He did not present any documents to verify that he contacted creditors to make payment or settlement arrangements. He did not provide any evidence of his efforts to pay, settle, compromise, dispute, or otherwise resolve any of the delinquent debts.

Applicant stated that he has been working for 41 years and has no criminal record. He is not dishonest and was wrong with his answers but not dishonest. In response to the SOR, Applicant reported that he blames his lack of proficiency with the computer, being off-site, and being pressured to complete the form. He listed the 2011 failure to file tax return and he attached all the garnishment forms. He wrote on his SCA that he tried to answer things to the best of his knowledge.

As to his failure to provide negative financial information on the e-QIP, Applicant reported that he was working off-site and did not have any other information and maybe

he had not received collection notices because he moved frequently. However, he did know about the tax liens and failure to file or pay state and federal taxes.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant

concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified and sensitive information)

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal, and Applicant admitted, that he has multiple delinquent debts dating to as early as 2003. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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
- (g) failure to file or fraudulently filing annual federal or state

The information raises issues about Applicant’s willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

- (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 problems 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 person has received or is receiving 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; and

(d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant divorced, but he did not establish that the divorce was a condition that prohibited him from attempting to resolve his financial problems. The conditions causing Applicant's financial problems were within his control. He stated that he did not resolve some of his financial issues because of his own procrastination. Applicant did not provide information concerning financial counseling. He did not present a plan to resolve his financial problems or any efforts to pay or resolve his delinquent debts. Accordingly, he has not established a good-faith effort to pay his debts.

Applicant has been gainfully employed for many years. He has not acted responsibly because he has not developed plans to pay his delinquent debts. There is no clear evidence that his debt problems have been resolved, so his finances are not under control. Overall, he has not acted with reason and responsibility towards his finances, especially with not filing his federal and state taxes. His actions are an indication that he will not protect and safeguard classified information. Applicant did not present sufficient information to mitigate financial security concerns.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence that the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot

function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning his tax liens and financial delinquent accounts. The SOR also alleges that Applicant did not report on his e-QIP that he has any delinquent debts. Applicant's failure to list the delinquent debts and failure to pay or file federal and state taxes on his e-QIP raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied that he intentionally did not provide full, complete, and accurate information on his security clearance application due to computer problems, and being pressured to complete the application, and not knowing about some debts. Applicant listed one tax year where he failed to file tax returns and the amount he owed, but he omitted the various federal tax liens and mentioned them in his answer to the SOR.

Applicant did not consult his credit report before completing the e-QIP. He did not list any delinquent debts on his e-QIP. Applicant must have known that he had loans and credit cards that he had not paid. He did not know all of the details of his financial situation, but he knew he had delinquent debt. Because Applicant should have known of his delinquent loans and credit cards, his failure to list any delinquent debt on the e-QIP was deliberate with an intent not to present a true picture of his financial situation. His failure to provide the correct information obscured the full extent of his financial situation from adjudicators. I find Applicant deliberately failed to provide correct and accurate information concerning his debts on his SCA.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's many years of employment while holding a security clearance.

Applicant failed to show that he had a plan to pay his delinquent debts. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances, to adequately articulate his positions, and provide facts to mitigate the financial security concerns. In short, the file lacks sufficient evidence provided by Applicant to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantial documents and details to explain his finances. He noted that he is a procrastinator. In addition, he deliberately failed to report his debts on his SCA. Applicant's failure to appropriately manage his finances, and his lack of action to resolve financial issues, are firm indications that he may not adequately safeguard classified information. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial situation and personal conduct.

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 - 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 eligibility for access to classified information. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge