



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



In the matter of:

ISCR Case No. 16-01528

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2018

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$125,000 in tax liens and other delinquent debts over the past eleven years. He provided insufficient documentation of resolution or of legitimate reasons for nonpayment, and failed to demonstrate the means or a workable plan to resolve remaining financial issues. Resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings, and exhibits, national security eligibility is denied.

History of Case

On September 28, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 13, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on November 18, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 8, 2017. DOHA issued a Notice of Hearing on April 27, 2017, setting the hearing for May 16, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified, and offered Applicant Exhibits (AE) A through G into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until June 16, 2017, to permit submission of additional evidence. Applicant timely submitted additional documentary exhibits, which were marked AE H, I, and J, and admitted without objection. DOHA received the hearing transcript (Tr.) on May 31, 2017.

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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant has been employed by a defense contractor since 2014 as an environmental manager and a site safety and health officer, and is applying for a security clearance in connection with that work. The SOR alleged 11 delinquent debts, totaling \$125,644. Applicant denied the allegations in SOR ¶¶ 1.d, 1.g, 1.h, 1.i, 1.j, and 1.k. He admitted the remaining debts, with some explanations. (Answer.) Applicant's admissions are incorporated in the findings below.

Applicant is 54 years old and married for the fourth time. He has two adult children and three adult stepchildren. He has no previous military or Federal government service, and this is his first application for a security clearance. He is a high school graduate, and has earned multiple professional certifications from several community colleges. He was unemployed for two months in 2005 after retiring from a 23-year career as a county firefighter, and for two months in 2010 between jobs, but has otherwise held full-time employment since April 1982. (GE 1; GE 3; Tr. 47-49.)

SOR ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.f alleged five tax liens stemming from delinquent Federal or state income tax debts totaling \$119,043. During his December 2014 security interview, he told an OPM investigator that the tax debts arose because his wife's brothers failed to pay required taxes from 2006 through 2008 for their business, of which they had made his wife a nominal 51% owner. He said he had made

arrangements with the IRS to pay \$500 per month for three years, and with the state tax authority to pay \$100 per month for two years, to resolve these liens. In his November 2016 Answer, Applicant admitted that the liens were his, but said they were based on false information given to the IRS. He said that the tax accounts had been reviewed and updated, and that the amounts due had been (Federal) or would be (state) deleted. During the hearing, Applicant established that the \$8,840 Federal lien for 2008 taxes (SOR ¶ 1.c) and the \$9,217 Federal lien for 2005 taxes (SOR ¶ 1.e) were paid and released in February 2017 and February 2013, respectively. However the remaining Federal and state tax liens, including the \$192 balance still due for 2006 Federal taxes, remain unresolved. (Answer; GE 2; GE 3; AE A; AE H; Tr. 46-57.)

Applicant successfully disputed and obtained cancellation of the \$8,022 judgment debt alleged in SOR ¶ 1.d, which was fraudulently obtained in a 2012 small claims court action. (AE G; Tr. 44-45.) He said he had paid the \$2,943 debt alleged in SOR ¶ 1.g, but failed to provide documentation supporting that claim after saying that he would. (Answer; Tr. 46-47.) He also disputed that the debts alleged in SOR ¶¶ 1.h through 1.k were valid, but failed to document either a reasonable basis to dispute their legitimacy or substantial actions to resolve them. (Answer; GE 2; AE C; AE D; AE F; AE H; Tr. 27-28, 38-40, 43-45, 58-61, 66-67.)

Four current or former coworkers wrote letters describing Applicant as a dependable, reliable, honest, and trustworthy individual with an outstanding work ethic, and a history of careful compliance with protocols, regulations, and guidelines for proper handling of sensitive information. Applicant's descriptions of his debts, in his Answer and during his testimony, did not demonstrate a comprehensive grasp of the overall status, or responsible management, of his financial obligations. His testimony, however, was forthright and credible. He provided no evidence of financial counseling or budgetary information from which to determine his future financial stability. (AE I; AE J. Tr.)

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. Directive ¶ E3.1.15 says that 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 numerous delinquent debts, totaling more than \$125,000, over the past eleven years. More than \$119,000 of that debt involved Federal and state income tax liens. The evidence corroborates that he resolved two of the alleged debts (totaling \$17,239) before the SOR was issued, and one more (of \$8,840) since that time. However, substantial delinquent debt remains, concerning which he demonstrated neither substantial progress toward resolution nor a legitimate basis for dispute. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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;
- (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.

Applicant continues to owe substantial tax and consumer debt that he incurred over the past decade. His only periods of unemployment during that period were two months during job changes in 2005 and 2010, and he did not assert that his financial issues were caused thereby. To the extent that some tax debts might be attributable to business activities involving his wife and her brothers, he did not document such causation or demonstrate responsible actions under the circumstances. He has neither received financial counseling, nor demonstrated a budget that would support a conclusion that his finances are under control. Applicant documented his resolution of three SOR-alleged debts, but did not demonstrate a legitimate basis to dispute his responsibility for any of the remaining unresolved debts. He told the OPM investigator that he had entered into repayment agreements with Federal and state tax authorities, but did not provide evidence showing compliance with such plans and admitted that the substantial state tax debt has not been addressed.

Accordingly, Applicant failed to establish complete mitigation of security concerns arising from his financial irresponsibility under any of these conditions. He resolved three formerly delinquent debts so, other than the historical pattern to which they contribute, resulting security concerns were mitigated concerning those debts.

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 the decisions that led to substantial debt he did not repay in a timely manner. He continues to owe substantial delinquent debt that he accumulated over the past eleven years and either could not, or chose not to, repay or successfully dispute. Past and current coworkers provided strong character references. However, there is insufficient evidence of rehabilitation or a track record of compliance with debt-resolution agreements, and the potential for pressure, exploitation, or duress remains substantial. Overall, the evidence creates significant doubt as to Applicant's 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 the Directive, are:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a and 1.b: | Against Applicant |
| Subparagraphs 1.c through 1.e: | For Applicant |
| Subparagraphs 1.f through 1.k: | Against 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 eligibility for access to classified information or to occupy a sensitive position. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge