



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 16-01685

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

November 21, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant incurred more than \$103,000 in delinquent debts, including state and Federal tax debts, which he has not repaid or otherwise resolved. He also has not filed his Federal tax returns for ten out of the last eleven years. Applicant did not show that his financial difficulties are under control. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On August 9, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 2.) On October 12, 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 answered the SOR on November 14, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). (Item 1.) On January 18, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on January 19, 2017, and received by him on April 25, 2017. 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 submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded. Items 1 through 5 are entered into evidence. The case was assigned to me on October 1, 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* (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 implemented 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, and eligibility to hold a security clearance. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

Findings of Fact

Applicant is 37 years old. He is not married, but has a son. Applicant has worked overseas for various defense contractors several times over the past few years. (Item 2.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In his Answer, Applicant admitted all the SOR allegations, with some explanations. (Item 1.) The debts are documented in credit bureau reports in the record dated

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."

September 15, 2015; and April 26, 2016. (Items 3, and 4.) They are also documented in other admissible evidence. (Item 5.) The status of the debts is as follows:

1.a. Applicant admitted owing a past-due debt to a creditor in the amount of \$4,535 for telephone services. No information was provided that this debt has been paid or reduced. This debt is not resolved.

1.b. Applicant admitted owing a past-due debt to a creditor in the amount of \$1,901. In his Answer Applicant stated that he, "Need[ed] to return equipment." No information was provided that this debt has been paid or reduced. This debt is not resolved.

1.c. Applicant admitted that he owed the Internal Revenue Service (IRS) at least \$47,870 in unpaid back taxes. A tax lien was filed against Applicant in 2013 concerning this debt. No further information was provided. This debt is not resolved. (Items 3, and 5 at 8.)

1.d. Applicant admitted owing a past-due debt to a creditor in the amount of \$1,254 for telephone services. No information was provided that this debt has been paid or reduced. This debt is not resolved.

1.e. Applicant admitted owing a past-due debt to a creditor in the amount of \$829. In his Answer Applicant stated that he, "Need[ed] to return equipment." No information was provided that this debt has been paid or reduced. This debt is not resolved.

1.f. Applicant admitted owing a past-due debt to a creditor in the amount of \$122 for insurance services. No information was provided that this debt has been paid or reduced. This debt is not resolved.

1.g. Applicant admitted owing a past-due debt to a creditor in the amount of \$79 for insurance services. No information was provided that this debt has been paid or reduced. This debt is not resolved.

1.h. Applicant admitted that he had not filed his Federal tax returns for tax years 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2013, 2014, and 2015. He did file a return for tax year 2012. In an interview with a Government investigator on November 9, 2015, Applicant stated that during the tax years 2006, 2008, 2009, and 2011 he was working overseas and did not have his tax paperwork forwarded to him. The report also says, "Since returning to the states permanently in 12/12, he has not filed due to being scared since he hasn't filed for so long." Applicant further indicated that he would contact the Internal Revenue Service (IRS) to find out how to become current on his taxes. No further information was provided to show that Applicant has filed any of his tax returns. This allegation is not resolved. (Item 5 at 8, 11-32.)

1.i. Applicant admitted not filing his required state tax returns for all the tax years between 2005 and 2015. No further information was submitted to show that Applicant has

filed the required tax returns, or was not required to file them. This allegation is not resolved. (Item 2 at Section 26.)

1.j. Applicant admitted owing \$47,000 in unpaid state taxes. He stated in his interview that this figure was an estimate. No further information was provided. This debt is not resolved. (Item 5 at 8.)

Applicant admitted in his interview that his current financial situation is “poor.” Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing. (Item 5 at 9.)

Policies

When evaluating an applicant’s 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, “Any 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, “The 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 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 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, "Any 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 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 Federal, state, or local income tax as required.

Applicant has a considerable number of past-due debts, including tax debts, that he cannot, or will not, resolve. He also failed to file up to ten years of Federal and various state tax returns. 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 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; 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 past-due commercial and tax debt in the amount of approximately \$103,000. He offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant did not claim that any unusual circumstances were responsible for his inability to pay his debts, or file his tax returns. Mitigation was not established under AG ¶ 20(b).

No evidence of financial counseling from a legitimate and credible source or budget information establishing solvency going forward was provided. Further, there are no clear indications that Applicant's financial problems are under control. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Finally, Applicant did not claim, or supply any documentation to show, that he has filed any of his past-due tax returns. Nor did he submit any evidence to show that he has entered into a payment arrangement with the IRS or any state taxing authority, and is in compliance with such arrangements. AG ¶ 20(g) does not apply.

Applicant did not mitigate his tax or delinquent debt issues. Guideline F is found against Applicant.

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):

(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 continues to owe more than \$100,000 in bad debts and back taxes, and did not show any plan for resolving that substantial indebtedness. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, 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.j:

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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge