



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



In the matter of:

ISCR Case No. 16-02259

Applicant for Security Clearance

Appearances

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

03/22/2018

Decision

WHITE, David M., Administrative Judge:

Applicant incurred some delinquent consumer and Federal tax debt before his 2014 marriage. He has since repaid, or brought current, all formerly delinquent accounts and restored his financial solvency. Resulting security concerns were fully mitigated. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility is granted.

History of Case

On April 15, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 22, 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 December 19, 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 13, 2017. DOHA issued a Notice of Hearing on May 2, 2017, setting the hearing for May 17, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant testified, and offered Exhibits (AE) A through F into evidence. All exhibits were admitted without objection. One witness also testified on Applicant's behalf. I granted Applicant's request to leave the record open until June 17, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on May 30, 2017. On August 9, 2017, Applicant submitted additional evidence, to which Department Counsel objected on the basis of timeliness. In the interest of basing this decision on the most accurate information, I overruled that objection and admitted the additional evidence as AE G. (See Directive ¶ E3.1.10.)

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 as an aviation maintenance technician by a major Federal contractor since September 2009, and is applying for a security clearance in connection with that work. The SOR contains six allegations concerning delinquent debts, including Federal income taxes due from 2009 through 2013. Applicant admitted the tax delinquencies, but denied the other allegations with explanations. (Answer.) Applicant's admissions are incorporated in the findings below.

Applicant is 53 years old. He is married, for the third time, and has three adult children. He has no previous military or Federal government service, and this is his first application for a DoD security clearance. He earned a post-secondary technical school airframe and powerplant degree and license in 1988. (Answer; GE 1; Tr. 60-62, 83-84.)

SOR ¶ 1.a alleged a debt to the Federal Government for delinquent income taxes that Applicant had failed to pay for tax years 2009 through 2013, totaling \$40,700. This amount was based on Applicant's estimate during his September 15, 2015 interview with an investigator from the Office of Personnel Management (OPM). In his March 2016 response to DOHA interrogatories, he said that this total should be \$56,000

including penalties. In March 2017 the Government filed a tax lien against him in the amount of \$52,687. (GE 2; GE 3; GE 7.).

Applicant incurred this delinquent tax debt due to under-withholding income taxes from his wages during the years in question. His former wife had custody of his children, but provided no financial support for them. He paid for most of their expenses beyond required child support payments, and had insufficient funds after paying his own living expenses to pay the taxes that he owed after he timely filed his returns for each of those years. He had some other delinquencies during those years as well. When his current wife took over the management of their family finances after their May 2014 marriage, she systematically reordered his budget and repaid his delinquent debts while timely paying all incoming bills. The record evidence demonstrates this significant financial improvement, and most of Applicant's formerly delinquent debts had been satisfactorily resolved before issuance of the SOR. (Answer; GE 1 through GE 7; Tr. 42-44, 54-57.)

Applicant and his wife retained the services of a tax assistance company in 2014 to help resolve the Federal tax debt, but terminated that program after paying several hundred dollars with no resulting benefit. They then submitted two different proposed offers in compromise to the IRS during 2015 and 2016, which were rejected. Finally, the IRS accepted their September 8, 2016 request for a direct debit installment agreement to repay the delinquencies at the rate of \$200 per month. In addition to one extra payment made by check, those direct debit payments have been made to the IRS every month since February 2017. Applicant recently completed reacquisition of title and refinancing of the mortgage on his former family home, which his ex-wife had permitted to fall into foreclosure proceedings with his name on the mortgage loan. He has substantially more than \$100,000 in equity in that home, on which his mortgage payments are now current. He intends to sell the home as soon as his ex-wife can find other accommodations, at which time the full amount of the Federal income tax lien will be satisfied and he will have no delinquent debt. (GE 1; GE 3; Answer; AE A; AEG; Tr. 44-45, 50-53, 56-58, 67-71.)

SOR ¶ 1.b alleged a judgment debt that was erroneously reported on Applicant's credit reports due to a typographical error. Applicant provided documentation proving that this was not his debt, and Department Counsel agreed that it had been incorrectly attributed to him and was not a concern. (Answer; AE B; Tr. 30-34, 60-61.)

SOR ¶ 1.c alleged a \$900 delinquent utility debt that had been placed for collection. Applicant was unaware of it before his September 2015 OPM interview. In February or March 2016, after ascertaining that the debt was valid, he paid it in full. (GE 2; GE 3; Answer; AE C; Tr. 34-35, 61.)

SOR ¶¶ 1.d through 1.f alleged three \$71 delinquent debts placed for collection by the city in which Applicant lives. The origin of these debts was not made clear by the evidence, but Applicant paid them in full on March 3, 2016, after determining that they were valid debts. (GE 2; GE 3; Answer; AE G; Tr. 61-62.)

Applicant previously owned another home in another state, which he successfully rented for a number of years before his responsible tenants moved out. The successor tenants failed to pay rent and severely damaged the property. Applicant was unable to maintain the mortgage payments without rental income, and the lender foreclosed on that home in 2013. He received an IRS form 1099-C in 2014, forgiving the remaining loan debt after the foreclosure. He paid about \$6,000 in additional Federal income taxes for 2014 as a result. Applicant and his wife have timely paid all taxes from 2014 until present, and have sufficient income to continue doing so. (GE 1; GE 3; Tr. 48-50, 62.)

Two friends who have known Applicant for a number of years wrote letters describing his dedication to his family and profession. They commended him as a responsible and hard-working man of good character. (AE G.) His testimony was direct and credible, without any attempted prevarication or excuses for his former financial issues.

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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (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 encountered financial difficulties starting before his 2014 remarriage, due primarily to excessive requirements to support his former wife and their then-minor children, as well as his own living expenses. He partially dealt with these issues through under-withholding of Federal income taxes from 2009 to 2013, but could not timely pay the resulting tax deficiencies. 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 five 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; 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 timely filed all required income tax returns but was unable to pay the taxes owed for several years due to hardships largely resulting from his second divorce. After several failed attempts to resolve these tax issues in 2014 and 2015, he successfully negotiated and is complying with the IRS repayment agreement he entered into during September 2016. He documented having made all required payments, and one additional payment, under that agreement. Additionally, he has completed his acquisition of clear title to his former marital home, and will sell it to satisfy the balance of his tax debt. The remaining equity from this home, and his present financial solvency, will preclude any future financial issues. Applicant has fully repaid all other formerly delinquent debts, and documented his successful dispute of the debt alleged in SOR ¶ 1.b. He established complete mitigation of financial security concerns under these five mitigating conditions.

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 has demonstrated accountability for his decisions that led to substantial debt he was formerly unable to repay. He has now resolved all of his formerly delinquent debt, except for some Federal income taxes toward which he has been making regular agreed monthly payments and will fully repay when his house sells. He provided strong character references from friends who have known him for many years. Applicant demonstrated sufficient evidence of rehabilitation and an established track record of compliance with debt-resolution agreements. The potential for pressure, exploitation, or duress is minimal. Overall, the evidence has eliminated the formerly legitimate doubt as to Applicant's eligibility and suitability for a security clearance. He successfully met 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:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.f:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge