



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



In the matter of:)
)
) ISCR Case No. 16-02424
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2018

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On September 9, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 5) On June 14, 2017, Applicant responded to interrogatories (Item 7) sent to him by the Department of Defense (DOD). After reviewing the background investigation and Applicant's answers to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. On September 26, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (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 June 8, 2017.

Applicant answered the SOR on October 24, 2017. He admitted the two allegations of failing to timely file federal income tax returns for tax years 2014 and 2015, and the two allegations of failing to file state tax returns for the same years. He admitted a small medical delinquent debt. He requested that the matter be decided on the written record. (Item 4) Department Counsel submitted the Government's written case on November 13, 2017. (Item 10) Applicant received a complete file of relevant material (FORM) on November 20, 2017, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. (Item 10) Applicant did not respond to the FORM. I was assigned the case on March 9, 2018.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 38 years old. He graduated from high school in June 1998. He has been a service technician for a defense contractor since January 2016. Prior to that job, he was a machinist in a shipyard from January 2013 until January 2016; an assembler at a home improvement store from January 2010 until January 2013; owned his own business from January 2006 until September 2009; was unemployed from May 2005 until September 2005; worked for a city from September 2003 until April 2005; and was employed as machinist for a private business from October 2001 until August 2003. He left each job to either take a better job or because his employer's business closed. He married for the first time in August 2004 and divorced in October 2007. He married for the second time in July 2010. He has one biological child and three stepchildren. He has never been granted eligibility for access to classified information. (Item 5, e-QIP, dated September 9, 2016)

The SOR alleges, and Applicant admits, that he did not timely file his 2014 and 2015 federal and state tax returns. (SOR 1.a – 1.d) In his response to the SOR, Applicant states he is in the process of filing the returns. He tried to work with a tax-preparer, but he believes they are a scam. Applicant also admits to a small delinquent medical debt. (SOR 1.e) He stated he intends to pay the debt. (Item 4, Response to SOR, dated October 24, 2017)

Applicant attributes his financial issues to his 2007 divorce, his period of unemployment in 2005, and the financial strain of providing for four children. Applicant noted his failure to file his state and federal tax returns for tax years 2014 on his September 9, 2016 e-QIP. He reported that he did not have enough funds withheld from his salary to pay the taxes, so he did not file the required return. He could not afford to pay tax because he had four children, one in college, to support. He stated he would get help from a tax prepare, and resolve the issue by the end of 2016. In his response to the SOR, Applicant notes that he is in the process of filing his 2015 federal and state tax

returns. Applicant did not provide any information that he actually filed his 2015 federal and state tax returns.

Applicant claims that he has a payment plan with the Internal Revenue Service (IRS) to pay \$100 a month for his 2013 taxes. He provided receipts for payments in May and June 2017. He provided information from his pay stubs to show three garnishments for tax purposes from his salary in 2013. He anticipates that the tax debt will be paid by November 2017. Applicant's information shows that he is paying his 2013 federal income tax debt by both garnishment and direct payments to the IRS. However, he did not provide information to verify that the debt was paid and resolved.

In his response to the SOR, Applicant initially stated that he would dispute the medical debt at SOR 1.e because the medical provider did not do a good job. He then stated that he would pay the debt by the end of October 2017. Applicant did not provide any documents or information to establish that the debt was paid or resolved.

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 access to classified information will be resolved in favor of 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.

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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

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.

Applicant's admissions in his response to the SOR and to the interrogatories establishes that he failure to timely file federal and state income tax returns for tax years 2014 and 2015. He admitted to a delinquent medical debt. The evidence is sufficient to raise the following Financial Considerations Disqualifying Conditions under 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
- (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's failed to timely file his federal and state tax returns for 2014 and 2015 and his failure to resolve a medical debt exhibits an inability and unwillingness to satisfy debts and 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, 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 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.

The mitigating conditions do not apply. Applicant admits he did not timely file his federal and state tax returns for at least two tax years because he did not have the funds to pay the taxes. He also did not have the funds to pay 2013 federal income taxes, but he is paying those taxes under a payment plan. The lack of funds to pay the taxes that are due does not relieve a person from timely filing returns. His lack of action to file the returns resulted in his financial problems being ongoing and recent, and not incurred under circumstances making recurrence unlikely. Applicant presented no evidence that he received financial counseling.

Applicant has to establish his good-faith efforts to meet his financial obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant must act responsibly given his circumstances. He must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of tax filing. A meaningful track record of tax filing can be established by evidence of actually filing tax returns. A promise to timely file tax returns

is not a substitute for a track record of filing returns in a timely manner and acting in a financially responsible manner.

Applicant knew when he completed his e-QIP in September 2016 that he had not filed his federal and state tax returns for 2014 and 2015. His knowledge was reinforced by his answers to the interrogatories in June 2017. He was again reminded of the requirement to timely file tax returns in the November 2017 FORM. In response to the FORM, Applicant still did not provide any information or documents to verify that he filed his 2014 and 2015 state and federal tax returns.

Failure to timely file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified and sensitive information. A person who fails to fulfill his or her legal obligation to timely file tax returns does not demonstrate the high degree of good judgment and reliability required for a grant of access to classified or sensitive information. Even if an applicant attempts to correct the tax return problem, there must still be careful consideration of the applicant's trustworthiness in view of his longstanding prior behavior evidencing irresponsibility by failing to timely file income tax returns. By failing to file state and federal tax returns for at least two years, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified or sensitive information

Applicant did not provide enough details about what he did to address the tax return allegations in the SOR. Tax return filing is a necessity. The fact that he merely did not file because he did not have sufficient funds to pay the taxes due, does not indicate that the Applicant is acting reasonably and reliably. Applicant did not provide sufficient documentation to show that he worked diligently to resolve the issues that was ongoing for at least two, if not three years. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his tax return problem. There is adequate evidence to show that he did not pay a small medical debt. There is insufficient assurance that his tax and financial problems are being resolved, are under control, and will not recur in the future. His lack of reasonable and responsible actions towards his tax return and his debts are a strong indication that he will not protect and safeguard classified or sensitive information. Under all these circumstances, Applicant failed to mitigate financial security concerns.

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. Applicant did not provide sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his tax and financial obligations. Applicant did not demonstrate appropriate management of his finances. 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 failed to mitigate the security concerns arising from his financial situation.

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 through 1.e: 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.

THOMAS M. CREAN
Administrative Judge