



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 16-03371

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

05/22/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns, resulting from unfiled Federal income tax returns and delinquent consumer debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On December 29, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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* (AG), effective within the DOD after September 1,

2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on February 25, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). On March 23, 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 and received by him on March 30, 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 a response to the FORM or object to the Government's evidence. Items 1 through 5 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to another administrative judge on October 1, 2017, and re-assigned it to me on May 11, 2018.

Findings of Fact

Applicant is 44 years old and married. He has one child. He earned a bachelor's degree in 2010. He has worked for defense contractors since 2011. (Item 2)

On March 3, 2016, Applicant submitted a security clearance application (SCA). In it, he disclosed that he failed to timely file Federal income tax returns for 2012, 2013, and 2014. He noted that he did not have enough money to pay his 2012 and 2013 taxes. He stated that he and his wife scheduled a meeting with the Internal Revenue Service (IRS) to resolve these issues. He also disclosed three delinquent consumer debts and stated that he arranged monthly payments to resolve them. (Item 2)

During a June 21, 2016 interview with a government investigator, Applicant discussed his unfiled Federal tax returns. He did not file his 2012 and 2013 Federal tax returns because he thought he would receive a refund. In December 2015, he filed his 2014 Federal income tax return, but it was rejected by the IRS in accordance with an IRS rule. He claimed he paid all three delinquent consumer debts. (Item 3)

Based on Applicant's admissions and credit bureau reports (CBR) from December 2011 and March 2014, the SOR contained six allegations, including three relating to taxes, and three consumer debts. The allegations arose between 2012 and 2016. (Item 2, Item 4, Item 5)

In his February 2017 Answer, Applicant admitted all SOR allegations. He stated that his financial problems arose because he was unemployed and underemployed for a period of time. (Item 1) Applicant said that the three debts listed in SOR ¶ 1.d for \$471; SOR ¶ 1.e for \$463; and SOR ¶ 1.f for \$184, have been "cleared up" (Item 2) He submitted

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

proof of payment of the debt listed in SOR ¶ 1.d for \$471, but not for the other two. (Item 1)

There is no evidence that Applicant participated in financial or credit counseling. He did not provide a budget or other information related to his financial obligations from which to determine his current financial reliability and adherence to his legal responsibility to timely file Federal income tax returns.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines 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. Under Directive ¶ E3.1.15, 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 *a/so* 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.²

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

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 has a history of being unable or unwilling to meet his financial and legal obligations, which began in 2012 and continues to date. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. They are as follows:

(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.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant's Federal income tax returns for 2012, 2013, and 2014 are not filed, and he did not submit proof that he paid two consumer debts. The financial issues are ongoing. There is some evidence that unemployment and underemployment contributed to his financial problems, which may have resulted from circumstances beyond his control. However, he did not provide evidence that he has attempted to responsibly manage his financial obligations. There is no evidence that Applicant participated in credit counseling or that his financial problems are under control. He presented evidence that he paid one consumer debt, demonstrating some evidence of a good-faith effort to resolve that debt. Although he mentioned in his March 2016 SCA that he was meeting with the IRS to resolve his tax problems, he did not submit any documents

indicating that his Federal tax issues are, or are being, resolved through an arrangement with the IRS.

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 a circumstance surrounding this case, including those discussed in the analysis of the Guideline F.

Applicant is a mature and educated individual. In December 2016, the SOR informed him that his unfiled Federal income tax returns and delinquent debts created security concerns. After submitting an Answer to the SOR, the Government's FORM notified that he did not submit sufficient information to mitigate the financial allegations. It gave him more time to provide pertinent documentation. Despite that notice, he did not submit additional evidence to prove that he addressed the financial security concerns, including proof of payment of two debts he said he paid. Overall, the record evidence leaves me with sufficient doubt as to Applicant's judgment, reliability, 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e through 1.f:	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 access to classified information. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge