



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



In the matter of:)
)
) ISCR Case No. 16-03478
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Although he mitigated the personal conduct concerns, he failed to mitigate the concerns raised by his history of financial problems, which includes unpaid federal and state tax debt and other delinquent accounts. Clearance is denied.

Statement of the Case

On January 11, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on April 19, 2017. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on April 25, 2017. He did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 49, has worked as a project manager for a federal contractor since June 2012. He completed a security clearance application, his first, in December 2015. He disclosed a delinquent home loan, which is alleged in the SOR (¶ 1.i). The ensuing investigation revealed additional derogatory financial information. The SOR alleges that Applicant failed to file federal and state income tax returns from 2003 to 2006 (SOR ¶ 1.a – 1.h), and that he owes \$45,924 in federal taxes (SOR ¶ 1.q) and \$ 30,707 in state taxes (SOR ¶ 1.r), respectively. The SOR also alleges that Applicant owes \$21,813 in other delinquent debt (SOR ¶¶ 1.j - 1.p, and 1.s - 1.w).³

Applicant claims that he began experiencing financial problems after he was laid off from his job of eight years in 2009. He remained unemployed for two years. According to Applicant, his income decreased from \$68,000 to \$25,000. During this period of unemployment, Applicant became delinquent on his mortgage and the bank initiated foreclosure proceedings. He admits that he and his wife did not file their 2003 to 2006 federal and state income tax returns as alleged in the SOR. He does not explain why he failed to file the required income tax returns or pay the resulting income taxes. In the absence of the federal income tax returns, the IRS generated its own returns for Applicant and his wife separately and assessed income tax liabilities to each of them as single individuals.⁴

Applicant claims that some of the SOR debts have been resolved. He claims he and his wife have filed their outstanding federal and state income tax returns using the married filing jointly status, which resolved their outstanding tax liabilities. However, the documentation Applicant provided does not support this statement. The IRS

² GE 1.

³ GE 1-6.

⁴ GE 1, 6.

documentation provided relates only to Applicant's wife. He did not provide any information on the status of the outstanding joint returns or the corresponding balances as alleged. He provided no documentation regarding the state tax liabilities. Applicant provided documentation that in January 2017 his mortgage company offered him a trial loan modification. Applicant did not provide any evidence he accepted the offer or complied with the terms of the agreement. Applicant provided documentation indicating that he was in the process of establishing recurring payments for SOR ¶¶ 1.k, and 1.s, but did not provide proof of payments. He states that he has resolved ¶¶ 1.p, 1.t, and 1.v, and is disputing ¶ 1.m. However, he did not provide any documentation confirming resolution of the accounts or establishing legitimate basis for his debt dispute.⁵

The SOR also alleges that Applicant intentionally failed to disclose his failure to file and pay his 2003 through 2006 federal and state taxes in addition to other alleged delinquent debts on his 2015 security clearance application. Applicant denies that he intentionally omitted his financial derogatory information from his security clearance application.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

⁵ GE 2.

⁶ GE 1, 6.

Analysis

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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.⁷

The record establishes the Government's *prima facie* case that Applicant has a history of not meeting financial obligations as well as having an inability to do so.⁸ The record also establishes that Applicant failed to timely file his 2003 through 2006 federal and state income tax returns and to also timely pay the resulting tax liabilities.⁹ While Applicant's financial problems may have been caused by events beyond his control, the loss of a job in 2009 followed by two years of unemployment, he failed to provide evidence that he acted responsibly in light of his circumstances. Applicant did not provide sufficient evidence to establish that his federal and state tax issues are resolved; that he has adhered good-faith effort to repay his creditors; or that he has a legitimate basis for disputing SOR ¶ 1.m. Applicant did not establish that he has received financial counseling or that his finances are under control. Accordingly, none of the financial considerations mitigating conditions apply.

Personal Conduct, Guideline E

Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an individual's reliability, trustworthiness, and ability to protect classified information.¹⁰ The SOR also alleges that Applicant deliberately failed to disclose material facts about his finances on his December 2015 security clearance application. Applicant denied the allegation. Proof of omission, alone, does not establish or prove an applicant's intent or state of mind when he completed the application. The record does not establish that Applicant intended to conceal adverse information from the Government. None of the personal conduct disqualifying conditions apply.

Based on the record, doubts remain about Applicant's ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant failed to meet his burden of production and persuasion to refute or mitigate the SOR allegations. Applicant did not provide any evidence to show financial rehabilitation or reform. Accordingly, Applicant's request for access to classified information is denied.

⁷ AG ¶ 18.

⁸ AG ¶ 19 (a) and (c).

⁹ AG ¶ 19(f).

¹⁰ AG ¶ 15.

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, Financial Considerations:	AGANST APPLICANT
Subparagraphs 1.a – 1.w:	Against Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	For Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge