



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



In the matter of:)
)
) ISCR Case No. 16-03507
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 23, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 15, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on September 12, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 7, 2017, scheduling the hearing for December 6, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 3 through 5 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 14, 2017.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He has worked for his current employer since August 2015. He served on active duty in the U.S. military from 1976 until he was honorably discharged in 1980. He attended college for a period without earning a degree. He married in 1978, separated in 2013, and divorced in 2016. He did not report any children on his Questionnaire for National Security Positions (SF 86).¹

Applicant worked with his ex-wife in real estate from 2007 through 2010. The business was unsuccessful. Applicant and his ex-wife filed a Chapter 7 bankruptcy case in 2010. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$16,331 owed to the IRS for 2007 and 2008. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$65,239. That amount included \$10,995 owed to the IRS for 2005. Their dischargeable debts were discharged in 2010.²

Applicant had periods of unemployment and underemployment from 2010 until he obtained his current job in August 2015. His divorce decree requires him to pay \$2,000 per month in alimony to his ex-wife for seven years. In April 2017, the court ordered him to pay \$3,800 in attorney's fees at a bi-weekly rate of \$189. The alimony and fees are automatically garnished from his paycheck.³

The IRS filed a \$27,406 tax lien against Applicant in May 2010 and a \$19,187 tax lien against him in September 2015. Applicant and his wife did not file their federal income tax returns for 2011, 2012, and 2013 until August 2015. The returns were filed shortly after he submitted an SF 86. He admitted that his application for a security clearance was a factor in the filing, but he stated that he would have filed them anyway because he and his ex-wife needed to work on resolving their tax problems. IRS documents show that as of April 2017, Applicant and his ex-wife owed \$18,444, which included \$21 for tax-year 2007; \$10,363 for tax-year 2008; \$3,922 for tax-year 2013; and \$4,137 for tax-year 2014. Those amounts include penalties and interest.⁴

Applicant contacted the IRS in about April 2017. A payment plan was instituted for him to pay \$297 per month to commence in May 2017. He has not made any payments. He stated that he could not afford to pay the IRS. He testified that he had three months left on his \$498 per month car loan, and that he would begin paying the IRS after the loan was paid.⁵

¹ Tr. at 22, 24-25, 41; GE 1.

² Tr. at 21-22, 25-26, 37; Applicant's response to SOR; GE 1, 3.

³ Tr. at 22, 24-25, 35-36; GE 1; AE J-L.

⁴ Tr. at 25-31, 35; Applicant's response to SOR; GE 1, 4, 5; AE A-E, H, I.

⁵ Tr. at 22-23, 32-35; AE H, I.

Applicant received financial counseling as a requirement of his bankruptcy case. He admitted owing the \$169 debt to a telecommunications company, as alleged in SOR ¶ 1.b. The debt is also listed on the two credit reports in evidence. He stated that he contacted the company to pay the debt, but the company stated they did not have a record of the debt.⁶

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, 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. According to AG ¶ 2(c), 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 national security eligibility will be resolved in favor of the national security."

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.

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

⁶ Tr. at 40-41; Applicant's response to SOR; GE 4, 5.

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 personnel 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable 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 has a history of financial problems, including a bankruptcy case, unfiled tax returns, and unpaid taxes. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.c and 1.d allege federal tax liens of \$27,406 and \$19,187, which were filed against Applicant in May 2010 and September 2015. IRS documents show that as of April 2017, Applicant and his ex-wife owed \$18,444 for tax-years 2007, 2008, 2013 and 2014. The 2015 tax lien more accurately reflects the amount that is currently owed. SOR ¶ 1.c is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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, 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 worked with his ex-wife from 2007 through 2010 in an unsuccessful real estate venture. He then had periods of unemployment and underemployment before obtaining his current job in August 2015. His long-term marriage ended with him having to pay alimony and attorney's fees. Those events were beyond his control. However, his tax issues go back to 2007 and were not beyond his control.

Applicant's repeated failure to fulfill his tax obligations suggests that he does not possess the high degree of good judgment and reliability required of persons granted access to classified information and that he has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). This is true even though the returns have been filed. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

Applicant stated that he contacted the telecommunications company to pay the \$169 debt alleged in SOR ¶ 1.b, but the company stated they did not have a record of the debt. That debt is mitigated. He testified that he had three months left on his \$498 per month car loan, and that he would begin paying the IRS after the loan was paid. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶¶ 20(b) and 20(g) are partially applicable, but they are insufficient to mitigate the judgment issues raised by Applicant's years of shirking his responsibility to file his tax returns and pay his taxes.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge