



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



In the matter of:)
)
) ISCR Case No. 16-03661
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Applicant has been in a payment plan to resolve his tax issues since at least September 2015. Clearance is granted.

Statement of the Case

On January 7, 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 7, 2017. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on May 25, 2017, and provided a response. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7 and Applicant's Exhibits (AE) A and B, are admitted without objection. On October 25, 2017, I opened the record to allow the parties to submit additional information. Applicant submitted information about the status of his tax repayment plan, which was admitted as AE C, without objection.

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 The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017.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 has worked for a federal contractor since July 2013. He completed a security clearance application, his first, in September 2015. Applicant disclosed financial issues, including outstanding Federal taxes for the years 2010 through 2012 and that he filed a Chapter 7 bankruptcy petition that was discharged in January 2010. Applicant's background investigation revealed state tax issues. The SOR alleges and Applicant admits having 11 state tax liens filed against him between February and May 2015 (SOR ¶¶ 1.a – 1.k), receiving Chapter 7 bankruptcy protection in 2010 (SOR ¶ 1.l), and owing Federal income taxes for the 2010 through 2012 tax years (SOR ¶ 1.m).

Applicant's financial problems began between 2004 and 2006, when he was self-employed. Applicant admits that while he was good salesman, he was not a good business man and did not manage his state sales tax obligations properly, resulting in the state tax liens alleged in the SOR. Although he incurred state tax debt, Applicant believed that his finances were otherwise stable until 2008 when the country experienced a recession. Applicant's employer, a cable company, cut Applicant's hours. Around the same time, Applicant's wife lost her job and began experiencing medical problems. With the lower income and increase in expenses caused by his wife's medical treatment, Applicant fell behind on his bills. Applicant filed for bankruptcy protection in 2009, and his petition was discharged in January 2010.

Despite receiving a discharge of debts in 2010, Applicant was unable to pay his outstanding tax debt. On his security clearance application, Applicant indicated that he owed \$7,000 in Federal taxes. He explained that by September 2015 he had reduced

² GE 1.

the balance by half and was paying the remaining half through payroll deductions. In September 2016, Applicant retained a lawyer to help him resolve his state tax debt. Applicant agreed to pay a \$3,500 down payment and 24 monthly payments of \$437 to resolve his outstanding \$10,500 balance. Applicant is in compliance with this payment plan.

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).

Analysis

Financial Considerations

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.³

³ AG ¶ 18.

The record establishes the Government's *prima facie* case, that Applicant has a history of not meeting his financial obligations and an inability to satisfy debts.⁴ The record also establishes that Applicant has failed to pay Federal and state income taxes as required.⁵ Applicant's history of financial problems between 2008 and 2010 were caused by events beyond his control. His decision to file for bankruptcy protection was reasonable given his circumstances. Applicant's accumulation of delinquent debt during those years as he coped with his and his wife's loss of employment and her medical expenses constitute circumstances unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.⁶

Applicant's tax issues were caused by his failure to properly manage his state and federal tax obligations; however, his efforts to resolve his tax problems are enough to mitigate the security concern raised by his behavior. Applicant provided evidence that he has made arrangements with the proper tax authority to pay the amount of taxes owed and he is in compliance with those arrangements.⁷ The record also establishes that Applicant initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve his outstanding tax debt.⁸

Accordingly, no doubts remain about Applicant's suitability for access to classified information. In reaching this decision, I have considered the whole-person factors at AG ¶ 2(d). Although Applicant failed to properly manage his Federal and state obligations for many years, he has taken the appropriate steps to remediate the issue. An Applicant is not required to be debt-free, all that is required is that he make a plan to resolve his delinquent debt and show that he has taken steps to effectuate that plan. Applicant has done so. Accordingly, his request for access to classified information is granted.

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:	FOR APPLICANT
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Subparagraphs 1.a – 1.m:	For Applicant
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⁴ AG ¶¶ 19(a) and (c).

⁵ AG ¶ 19(f).

⁶ AG ¶ 20(a).

⁷ AG ¶ 20(g).

⁸ AG ¶ 20(d).

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge