



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-00297
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2018

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On October 16, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ Applicant responded to the SOR on November 13, 2017, and he elected a hearing. On May 24, 2018, a notice of hearing was issued, scheduling the hearing for June 11, 2018. The hearing proceeded as scheduled. Applicant testified and submitted ten documents, which I admitted as Applicant Exhibits (AE) A through J.² Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1

¹ The action was taken 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 implemented by the DOD on June 8, 2017.

² Transcript (Tr.) 31. Department Counsel objected to AE E on the basis of completeness. I overruled the objection and admitted AE E with the explanation that I cannot infer any information or evidence of any enclosures not included in the admitted exhibit.

through 4, without objection. After the hearing, Applicant submitted one email and two attachments, which I admitted as AE K through M, without objection. DOHA received the transcript on June 20, 2018.

Findings of Fact

The SOR alleges financial considerations security concerns based on Applicant's six delinquent consumer debts (SOR ¶¶ 1.a.-1.f.), two tax liens (SOR ¶¶ 1.g.-1.h.), and two unfiled tax returns (SOR ¶¶ 1.i.-1.j.). In his response to the SOR, Applicant admitted the delinquent debts and tax liens (SOR ¶¶ 1.a.-1.h.). He denied the allegations of unfiled returns (SOR ¶¶ 1.i.-1.j.). After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 51 years old. He earned a bachelor's degree in 1990 and a master's degree in 1997. He married in 1992, and he has three children – ages 10, 13, and 16.³

In 2004, Applicant started his own business. In about 2007, his work slowed, requiring him to travel to increase his client base and income. The resulting travel and business expenses decreased his annual income by about 20-25%. Eventually, the business downturn caused him to obtain regular employment with a DOD contractor in July 2016. His self-employment continues but to a much-diminished degree.

Applicant's admissions, the November 2015 credit report, and the December 2016 credit report established the six consumer debts, totaling approximately \$6,700. Applicant testified that he remained delinquent on these debts, including his mortgage (SOR ¶ 1.a.) and home-equity loan (SOR ¶ 1.b.), and that he initiated payment plans to resolve the deficiencies. There is no documentation of any payment plans or payments with respect to the six consumer debts (SOR ¶¶ 1.a.-1.f.).⁴

Applicant's admissions and the two credit reports established the state (SOR ¶ 1.g.) and Federal (SOR ¶ 1.h.) tax liens filed in 2017. Although the total balances are not alleged, the documentary evidence and Applicant's admissions established that he owed approximately \$43,000 in delinquent state income taxes and owed approximately \$307,000 in delinquent Federal income taxes for tax years 2008 through 2015 (excluding 2010). Applicant presented documentary evidence of a repayment plan with the state and some efforts to establish a repayment plan with the Internal Revenue Service (IRS); however, he provided documentary evidence of only one \$1,000 payment to the IRS and no payments to the state. Applicant testified that he had made payments on his delinquent state taxes since about January 2017, but he provided no documentary evidence to support his claim. He admitted that he repeatedly initiated and defaulted on repayment plans with the IRS and that he had not made any payments to the IRS in at least six months.⁵

³ GE 1; GE 2; Tr. 37, 40.

⁴ AE B-C; Tr. 52-59.

⁵ AE E, F; Tr. 29, 65-70.

During his September 2016 OPM interview, Applicant admitted that he had not yet filed his Federal and state tax returns for tax year 2015, SOR ¶¶ 1.i. and 1.j., respectively. At hearing, Applicant credibly testified that he had received extensions of time to file his returns and that he had subsequently filed the two returns. Applicant submitted his completed, though undated, tax returns and IRS documentation confirming that his returns had been filed.⁶

Besides the business downturn, Applicant also attributed his financial delinquencies to his lower income as an employee with his taxes withheld. Applicant prepared his own income tax returns and has not received any credit or financial counseling. While self-employed, Applicant did not pay any installments on his Federal income taxes, as required by law. There is no evidence that he set aside any income to pay his estimated income taxes. Applicant also testified that increased health insurance costs contributed to his financial problems. He testified that his wife was briefly hospitalized in about 2012, and the resulting medical expenses were approximately \$5,000-6,000. He provided no documentary evidence to corroborate any of these claims.⁷

Applicant's monthly take-home pay is approximately \$8,600, and his wife's monthly take-home pay is approximately \$1,000. Applicant is unable to fulfill his monthly financial obligations, and repeatedly has been delinquent on these obligations for several years. His checking account reflected a negative balance of approximately \$770. Applicant claimed to have approximately \$200,000 in equity in his residence; however, he had no intent to sell the property and had taken no steps to obtain another home-equity loan.⁸

Applicant volunteers in support of youth athletics in his community. He is also a Sunday school teacher at his church. Applicant's character and work performance are well regarded by his employer.⁹

Policies

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

⁶ Answer; AE L.

⁷ Tr. 45-50, 59-60.

⁸ AE A, D; Tr. 59-60, 76-83.

⁹ AE G-J.

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 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 or inability 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 risk of having to engage in illegal 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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 six consumer debts totaled approximately \$6,700, and his two tax liens totaled approximately \$43,000. Applicant admitted that his financial problems have persisted since about 2009, with an ongoing inability to fulfill his monthly financial obligations. The Government did not establish that Applicant failed to file his 2015 Federal and state income taxes (SOR ¶¶ 1.i. and 1.j.). The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), 19(c), 19(e), and 19(f).

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; and
- (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

Since about 2009, Applicant has failed to adhere to his financial obligations to pay his consumer debts, state income taxes, and Federal income taxes. He provided documentary evidence of only one payment towards his delinquent Federal income taxes, and he established no payment plan to resolve his Federal tax debt. His checking account reflected a negative balance, and he admitted that he repeatedly was delinquent on his mortgage, home-equity, and consumer accounts in the last several years. There is no documentary evidence of a reasonable debt-resolution plan or significant steps in furtherance of such a plan. Applicant did not engage any professional or credit-counseling assistance to address his financial and tax problems. Notwithstanding the business downturn and medical expenses, Applicant did not demonstrate that he acted responsibly in addressing his financial problems. Applicant's tax problems persisted for several years, yet he took no steps to adjust his financial practices, set aside business income to pay his taxes, or take other measures to reduce the likelihood of additional tax delinquencies. Consequently, his Federal income tax debt has increased to over \$300,000. None of the financial considerations mitigating conditions applies. Applicant has not demonstrated financial responsibility or mitigated the financial considerations security concerns.

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Notwithstanding the favorable record evidence about Applicant's volunteerism, community involvement, character, and work performance, he has not demonstrated reliability and good judgment as to his delinquent taxes and consumer debt. 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
Subparagraphs 1.a.-1.h.:	Against Applicant
Subparagraphs 1.i.-1.j.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge