



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



In the matter of:)
)
) ISCR Case No. 17-00384
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2017

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 March 31, 2017, 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 April 17, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on June 5, 2017. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 20, 2017, scheduling the hearing for July 19, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 3 through 6 were admitted in evidence without objection.¹ The objection to GE 2 was sustained. Applicant testified and

¹ Department Counsel submitted seven exhibits. The first six exhibits were pre-marked. The last exhibit is a credit report from July 2017. I inadvertently marked that as GE 6 instead of GE 7. I never asked Applicant if he had any objection to what was pre-marked as GE 6, a credit report from May 2017. There

submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit additional information. Nothing additional was submitted. DOHA received the hearing transcript (Tr.) on July 26, 2017.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1982 until he retired with an honorable discharge in 2004. He has a bachelor's degree. He is married for the second time, with two adult children and six adult stepchildren.²

Applicant has worked primarily for defense contractors since his retirement from the military. He spent about four years working overseas. He was unemployed from about January 2014 through October 2014 when a contract ended. He also had a death in the family in about 2013. He was unable to pay all his bills while he was unemployed, and a number of debts became delinquent.³

The SOR alleges four delinquent debts totaling \$41,634 and a \$54,692 federal tax lien filed in 2015. The debts and lien are established through credit reports and Applicant's admissions.

Applicant submitted his tax transcripts for tax years 2013 through 2016. In 2013, he and his wife earned \$245,434, plus \$26,372 in military retirement pay. Of that amount, \$97,600 was excluded from taxation as foreign earned income. Their adjusted gross income was \$181,523. The total tax liability was \$56,283, and \$5,706 was withheld from Applicant's pay during the year. Applicant paid \$2,000 in June 2014. The IRS withheld \$4,513 from Applicant's refund for tax year 2014 and \$4,355 from his 2015 refund. The \$54,692 federal tax lien was filed in June 2015. In July 2017, the balance, with penalties and interest, was \$57,015.⁴

Applicant's and his wife's income (wages plus military retirement) was \$83,548 in 2014; \$108,411 in 2015; and \$88,505 in 2016. He does not owe any taxes for tax years 2015 and 2016, but in July 2017, the IRS assessed additional taxes for tax year 2014. In July 2017, the balance was \$20,640.⁵

are no significant differences between the two credit reports. Because Applicant did not have a chance to object to the admission of the credit report from May 2017, I am not considering it in my decision. That report has been remarked as Hearing Exhibit (HE) I.

² Tr. at 21-22, 33, 41; GE 1.

³ Tr. at 22-23; Applicant's response to SOR; GE 1.

⁴ Tr. at 25-30; AE B.

⁵ Tr. at 26-30, 40-41; AE B. The SOR did not allege the unpaid 2014 taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

Applicant's wife handled the family's finances when he was working overseas. He admitted that their finances were not managed properly. He stated that he has taken back control of the family's finances. He has not received financial counseling. He is current on his monthly bills. He stated that he is working with the creditors of his delinquent debts to make payment arrangements. He asserted, without documentation, that he made some payments. He hopes to work overseas again, which will provide him the extra income that will help him pay his taxes and delinquent debts.⁶

Applicant served in Operations Desert Shield and Desert Storm. He also deployed for humanitarian missions.⁷

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.

⁶ Tr. at 25, 30-31, 37-42; GE 4-6; AE A, C-L.

⁷ Tr. at 21-22.

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 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 delinquent debts and unpaid taxes. The evidence is sufficient to raise the above disqualifying conditions.

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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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's wife handled the family's finances when he was working overseas; he was unemployed for an extended period in 2014; and he had a death in the family. Those events may have been beyond his control, but he did not act responsibly under the circumstances.

Applicant's and his wife's income (wages plus military retirement) was \$271,806 in 2013, of which \$97,600 was excluded from taxation as foreign earned income. Applicant only voluntarily paid \$7,706 toward his total tax liability of \$56,283. The IRS withheld \$4,513 from Applicant's refund for tax year 2014 and \$4,355 from his 2015 refund, but he still owes \$57,015, which includes penalties and interest, for tax year 2013 and \$20,640 for tax year 2014. He made no documented payments toward the four non-tax delinquent debts totaling \$41,634.

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. Applicant's financial issues are not mitigated under any of the mitigating conditions.

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 considered Applicant's honorable military service and his work overseas. However, he has a history of financial problems, and he shirked his tax obligations. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See *e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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
Subparagraphs 1.a-1.e:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge