



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-00802
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

07/19/2018

Decision

HOGAN, Erin C., Administrative Judge:

On April 17, 2017, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. The AG were superseded by the Security Executive Agent Directive 4 (SEAD 4) which amended the AG on June 8, 2017. I reviewed both AG. The outcome of this case would have remained the same under either guideline.

On June 8, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 24, 2017. The case was assigned to another administrative judge on October 16, 2017, and transferred to me as a result of a change of venue on April 19, 2018. On April 24, 2018, a Notice of Hearing was issued scheduling the hearing for May 23, 2018. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified. The record was held open until June 7, 2018, to allow Applicant to submit additional documents.

Applicant timely submitted two documents (30 pages each), which were admitted as Applicant Exhibits (AE) A and B. On July 11, 2018, Applicant submitted an additional document. The Government had no objection to the document and it was admitted as AE C. The transcript (Tr.) was received on June 5, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is an employee of a DoD contractor seeking to maintain a security clearance. He has worked for his current employer since March 2016. He has worked for various DoD contractors since 2003. He has held a security clearance since 2003. He worked as a contractor in Iraq from June 2006 to September 2008, and in Afghanistan from October 2008 to October 2012. In January 2014, he was laid off from his contract position as a result of the federal government sequestration. He was unemployed until July 2014. He is a high school graduate and has some college credits. He is married and has three children, ages 29, 28, and 21 (Tr. 10-11, 25-29; Gov 1; Gov 6)

On March 11, 2016, Applicant submitted a security clearance application as part of a periodic reinvestigation. In Section 26 – Financial Record of the application, he disclosed he was behind on his payments towards his first and second mortgages. He did not mention any additional debts to include any federal tax debts. (Gov 1, section 26)

A subsequent security clearance background investigation resulted in the following SOR allegations: a \$68,505 second mortgage account that was charged off in October 2012 (SOR ¶¶ 1.a: Gov 2 at 1; Gov 3 at 5; Gov 5 at 19); six delinquent medical accounts placed for collection between 2012 and 2013 with the respective amounts of \$649; \$499; \$303; \$94; \$63; and \$566 (SOR ¶¶ 1.b – 1.f; and 1.i: Gov 2 at 2; Gov 3 at 8-9); a \$4,076 judgment filed against Applicant in 2014 (SOR ¶ 1.g: Gov 2 at 3; Gov 3 at 4); a \$4,815 judgment filed against Applicant in 2009 (SOR ¶ 1h: Gov 3 at 4); and it is alleged Applicant failed to file his Federal and state income tax returns for tax years 2014 and 2015. (SOR ¶ 1.j).

Applicant claims his financial problems began when he was laid off in January 2014. He was unable to find a job that was commensurate with his experience. He worked temporarily at a job that had reduced income. The money he earned just covered grocery expenses and the mortgage. When a position opened up again with the DoD contractor who laid him off, Applicant was rehired again in 2016. He is just starting to stabilize his financial problems. (Tr. 11-14)

Applicant filed for Chapter 7 bankruptcy in February 2017, two months before the SOR was issued. His net monthly income was \$5,825. His monthly expenses were \$6,815. His dischargeable debts were discharged in June 2017. In July 2017, Applicant filed for bankruptcy under Chapter 13 in order to attempt a loan modification for his

home mortgage. The modification was recently approved and the Chapter 13 bankruptcy was discharged about a week after the hearing. Applicant's mortgage payments were initially \$2,936. The payments were reduced to \$2,627. (Tr. 38-40; Gov 4; Gov 5; AE A at 22-23)

Applicant denies failing to file his federal income tax returns for tax years 2014 and 2015. He claims he requested an extension and filed the returns later. He provided copies of his tax returns for 2013, 2014 and 2016, but did not provide a copy of his 2015 federal tax return. I find it is likely Applicant filed his federal tax return for tax year 2015. He admits owing approximately \$10,000 for tax years 2014 and 2015. Applicant attempted to negotiate a payment plan with the Internal Revenue Service (IRS). Once he filed bankruptcy, he was told that he could not negotiate a payment plan until after his bankruptcy was complete. Once his Chapter 13 bankruptcy is complete, he will begin negotiating with the IRS. (Tr. 46-49; Admin Not I).

Applicant had an extension for his 2016 tax returns. He filed the return in October 2017. He owed the IRS approximately \$2,753 for the 2016 tax year. It is not clear whether he paid the amount of taxes owed for 2016. He is currently on an extension for his 2017 federal income tax returns. He indicated that his accountant will file the return in July 2018. He provided proof that he filed and paid his state tax returns in 2015. (Tr. 49-50; AE B at 5; AE C)

In 2013, Applicant's adjusted gross income was \$151,283. In 2014, his adjusted gross income was \$39,612. Of that amount, \$21,624 was unemployment compensation. In 2016, Applicant's adjusted gross income was \$80,037. (AE A at 3-9; AE B at 4-5)

While working overseas in Iraq and Afghanistan, Applicant earned a salary ranging from \$180,000 to \$200,000. When he returned to the U.S., his salary dropped to about \$140,000. He tried to save money and pay for his children's college educations. Applicant used his savings to pay expenses during his period of unemployment between January and July 2014. He found employment in July 2014, but the wages were much lower. He earned between \$30,000 to \$40,000 annually. His wife was not working because she was taking care of her elderly mother who lived with his family. His mother-in-law passed away in 2016. His wife worked in child care the past year. She earned \$1,200 a month. She is soon to start a new job taking care of an elderly woman. Her income will remain the same. (Tr. 27 – 31)

Applicant took a financial counseling course as a requirement of his bankruptcy filing. He has not attended any additional financial counseling courses. (Tr. 55) Applicant provided a copy of his household budget in his post-hearing submissions. Applicant's net monthly salary is \$5,660. His wife's net salary is \$1,000. The household's total net monthly income is \$6,660. The household net monthly expenses total \$5,255. After expenses, there is a remainder of \$1,405. (AE A at 30)

Applicant's performance evaluation dated August 19, 2016, indicated that he exceeds expectations. He exceeded expectations on his October 2017 performance

evaluation as well. He also received a certificate of appreciation for his professionalism and duty performance. (AE A at 26-29; AE B at 10-17, 30)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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(a), 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 access 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 contained in the record.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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 encountered financial problems since at least 2009, when a \$4,815 judgment was entered against him. Between 2012 and 2013, Applicant had a \$68,000 second mortgage account that was charged off and six medical debts totaling \$2,174 that were placed for collection. A \$4,076 judgment was entered against him in 2014. Although he filed his federal tax returns for 2014 and 2015, he admits owing the IRS approximately \$10,000 for those tax years. Applicant's federal income tax debt was not resolved as of the close of the record. AG ¶¶ 19(a), 19(b), 19(c), and 19(d) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until

evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

With regard to Applicant's federal tax debts, the recent emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. ISCR Case No. 17-01807 (App. Bd. Mar. 7, 2018) states:

The mere filing of delinquent tax returns . . . does not compel a Judge to issue a favorable decision. As with the application of any mitigating condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of mitigating condition 20(g) as well as in considering aspects of other overlapping mitigating condition[s].

See *also* ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed). See *also* ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. Although his consumer and medical debts were recently discharged under a Chapter 7 bankruptcy and his mortgage loan was modified under a recent Chapter 13 bankruptcy, Applicant still owes the IRS approximately \$10,000 for federal income taxes owed for the 2014 and 2015 tax years. Applicant researched how to resolve his tax debt, but never took the final step of entering into a repayment plan. His conduct towards resolving his tax debts was not proactive. As a contract employee entrusted with a security clearance, Applicant should have been aware of his duty to file and pay his federal and state income taxes in a timely manner. Yet, he neglected to pay his federal income taxes for tax years 2014 and 2015. Applicant's failure to pay federal income taxes raises questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his unemployment and underemployment between January 2014 and March 2016. He was laid off as a result of the federal government sequestration. This was beyond Applicant's control and adversely affected his ability to pay his bills. However, this mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances because he has not been proactive in resolving his federal tax debt. Most of the debts included in his bankruptcy became delinquent before he was laid off in 2014. Many of them were ignored for years. While his unemployment affected Applicant's ability to repay his debts, he had a history of financial irresponsibility going back several years. For this reason AG ¶ 20(b) is given less weight.

AG ¶ 20(c) does not apply. While Applicant took the financial counseling course required when he filed for Chapter 7 bankruptcy, he did not seek out additional financial counseling programs that could have helped him better manage his finances. While most of his debts were discharged in the bankruptcy, the federal tax debt remains unresolved.

AG ¶ 20(d) does not apply. While filing for bankruptcy is a legal way to resolve one's delinquent debts, it is not considered a good-faith effort. There was no attempt to pay his creditors before the bankruptcy. While the IRS will not negotiate for an offer in compromise for past-due tax debts when there is an active bankruptcy in progress, Applicant made no attempt to pay the tax debt or enter into a payment agreement the previous two years before Applicant filed for bankruptcy. While Applicant intends to submit an offer in compromise in the future, I cannot conclude that he has made a good-faith effort regarding his tax debts. His federal tax debts owed for 2014 and 2015 remain unresolved.

AG ¶ 20(g) partially applies because Applicant provided sufficient proof that he filed his 2014 and 2015 federal income tax returns. However, he has not taken steps to resolve the federal taxes owed for those years which total approximately \$10,000.

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 the 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 considered Applicant's successful career with federal contractors since 2003. I considered his years working as a federal contractor in Iraq and Afghanistan from 2006 to 2012.

I considered Applicant's unemployment and underemployment between 2014 to March 2016 as well his wife's inability to work because she was caring for her elderly mother. I considered that Applicant lives and works in another location and commutes home on the weekends which can further complicate the household's financial situation. If Applicant had followed through with financial counseling, he would have likely learned how to manage a budget. He should have known to timely file and pay his state and federal income tax returns every year. He neglected to pay his federal tax debts for tax years 2014 and 2015. Applicant was not proactive in bringing his federal tax situation under control. Security concerns under financial considerations are not mitigated.

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.i	For Applicant
Subparagraph 1.j:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge