



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 17-01003  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

02/15/2018

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct). National security eligibility for access to classified information is denied.

**Statement of the Case**

On January 5, 2015, Applicant completed and signed his security clearance application (SCA). On June 15, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) under Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs)*, which is applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The SOR set forth security concerns arising under the financial considerations and personal conduct guidelines.

On June 21, 2017, Applicant responded to the SOR (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4) On August 1, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing ten items, was mailed to Applicant. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On August 15, 2017, Applicant submitted a one-page response, marked as Applicant's Exhibit (AE) A, which was admitted into evidence without objection from the Government. Applicant did not object to Items 1 through 10, which were also admitted into evidence. On November 13, 2017, the case was assigned to me.

### **FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is a 63-year-old program director employed by a DoD contractor since October 2014. He was previously employed by another Federal contractor from July 2009 to August 2014. From 2000 to approximately 2006, he was the president and CEO of his own business. Applicant attended some college courses over the years, but he did not earn a degree. He was married from 1980 to 2005, at which time he was divorced. He married his second spouse in 2007. He is the father of two adult sons, ages 39 and 34. (Items 1, 4, 5 and 6)

The SOR alleges a Chapter 7 bankruptcy filed by Applicant in 2006 (§ 1.a), and four allegations stating that he owes the Federal government for delinquent taxes covering tax years 2004, 2005, 2007 and 2008. (§§ 1.b-1.e.) The combined amount of his delinquent Federal taxes totaled \$103,742. Applicant admitted all of the allegations under Guideline F (Financial Considerations) in his Answer to the SOR. The SOR also alleges that he deliberately failed to disclose that he had both a tax lien filed against him within the last seven years, and he had current delinquent Federal debt, when he completed his SCA in January 2015. (§ 2.a) Applicant denied this allegation under Guideline E (Personal Conduct).

Applicant was interviewed by an authorized DoD investigator on March 26, 2015. The record of the interview was provided to Applicant in April 2017. After making a minor correction to the record, Applicant adopted the report of his interview as accurate. (Item 6) During the interview, Applicant was asked if he had any tax liens filed against him in the last seven years, and he gave a negative response. The investigator confronted him with a Federal tax lien that was filed in May 2010 in the amount of \$20,012.00. Applicant stated that he had been aware since 2002 that he owed Federal taxes due to his failed business. Despite being aware of the tax issue, he waited four years before he communicated with the IRS. In 2006, he signed an installment agreement which included over \$100,000 in Federal tax debt. Applicant claimed to be making monthly payments of \$1,072 to the IRS, however, he believed that his tax debt had increased due to the high interest rate. He also stated his

business failure was the reason he filed for Chapter 7 bankruptcy in 2006. His bankruptcy petition shows that he owed the IRS over \$152,000 in 941 withholding taxes, which is what an employer withholds from an employee's paycheck for income taxes, social security tax, or Medicare tax. He admitted to the investigator that he had never sought credit counseling. (Items 6 and 8)

The SOR alleges that Applicant was not truthful on the January 2015 SCA when he failed to disclose both an outstanding tax lien and his delinquent Federal tax obligation. In his Answer, Applicant states that he never received official notice of the tax lien from the IRS. In addition, he did not consider himself as being "delinquent" on his Federal tax debt since he was currently making monthly payments to the IRS. (Items 1, 4 and 5)

The Federal tax transcripts in the record (Item 7) show that as of January 2017, Applicant was no longer a party to an installment agreement with the IRS. As of May 2017, his outstanding Federal taxes totaled \$103,743.74. The records also show that he was involved in several installment agreements over the years that were eventually cancelled by the IRS. Before Applicant completed the SCA in January 2015, his most recent installment payment to the IRS occurred in September 2013. The installment agreement in effect at that time was terminated by the IRS in January 2014. For the entire year of 2014 and up to the January 2015, Applicant had not made any installment payments to the IRS.

The tax transcripts also disclosed that Applicant received a Notice of Intent to Levy by the IRS, which was signed by him on a returned receipt dated March 31, 2010. A tax lien was filed against him in May 2010, and in that same month, he was issued a Notice of Lien Filing and Right to Collection Due Process Hearing. Applicant returned a Collection Due Process request in June 2010. Applicant's response to the Government's FORM (AE A) was that he did not remember that a tax lien had been filed against him. He also stated that the tax issues from his failed business have exceeded the statute of limitations. (Items 4, 7, AE A)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's national security eligibility.

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(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person applying for national security eligibility seeks to enter 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 an applicant may deliberately or inadvertently fail to 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).

## **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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (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 previously filed and had debts discharged through Chapter 7 bankruptcy. He currently owes over \$103,000 for unpaid Federal taxes for various tax years. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 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.

Applicant got into tax trouble with a failed business venture. This incident occurred under such circumstances that was beyond his control, and unlikely to recur. AG ¶¶ 20(a) and (b) partially apply. The next prong, however, before the full application of the mitigating factors can be applied, is to look at whether the incident casts doubt on Applicant's reliability, trustworthiness, or good judgment, and determine if he acted responsibly under the circumstances. Applicant has been aware of his unpaid taxes since 2002. He did not take any action to contact the IRS until 2006, the same year he filed for Chapter 7 bankruptcy. His delay in promptly addressing his tax issue, and his inability to adhere to an installment agreement over the years, caused him to accumulate a substantial Federal tax debt that is still unresolved. His failure to adequately address his tax issues casts doubt on his reliability and good judgment and shows that he did not act responsibly under the circumstances. I find AG ¶¶ 20(a) and (b) do not apply.

For the application of AG ¶¶ 20(c) and (d), there must be a showing that Applicant has or is receiving counseling for the tax problem, and he has initiated and adhering to a good-faith effort to repay the IRS. There is insufficient evidence to show that Applicant has received any counseling for his tax problems. During his background interview, he admitted that he had not received any financial counseling. As mentioned above, the tax transcripts show that he has entered into several installment agreements with the IRS since 2008, and that these agreements were later terminated by the IRS. As of January 2017, Applicant was not currently adhering to an installment agreement with the IRS. He has not yet articulated a realistic plan for resolving his delinquent tax debt of over \$103,000. AG ¶¶ 20(c) and 20(d) do not apply.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) applies to these facts and circumstances: deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct

investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose on his 2015 SCA both an outstanding Federal tax lien and his delinquent Federal obligation, as required. There is sufficient evidence to show his omission was intentional to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (b) the offense is so minor or so much time has passed, or the behavior is so infrequent, or happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

In his Answer, Applicant denied he was aware of his 2010 tax lien since he did not receive any notice from the IRS. The tax transcripts show that this was not the case, based on signed receipts from the Applicant. In addition, Applicant claimed that he did not believe he had "delinquent" Federal debt, because at that time, he was making monthly payments to the IRS. The tax transcripts show that his claim is not true. Before completing the SCA in January 2015, his most recent installment payment to the IRS occurred in September 2013. The current installment agreement in effect at that time terminated in January 2014. For the entire year of 2014, up until he completed his SCA in January 2015, Applicant had not made any payments to the IRS. There is insufficient evidence to support the application of the above 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 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 have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Applicant's failed business caused him to accumulate delinquent Federal tax debt. Despite being aware of the tax problem in 2002, Applicant failed to communicate with the IRS until 2006. He failed to adhere to an installment agreement with the IRS over the years. In addition, his failure to be completely candid on the 2015 SCA was deliberate, and his explanations for the omission were not credible. Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as his national security eligibility. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of access to classified information.

### **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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	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's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge