



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



In the matter of:)	
)	
)	ISCR Case No. 17-01045
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/12/2018

Decision

CERVI, Gregg A., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 4, 2016. On May 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government’s written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on August 30, 2017.

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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) implemented by the DOD on September 1, 2006.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 6, 2017. He submitted a narrative and a resume in response to the FORM, marked as Applicant Exhibits (AE) A and B. The Government's exhibits included in the FORM (Items 1 to 13), and AE A and B, are admitted into evidence. The case was assigned to me on November 29, 2017.

Findings of Fact

Applicant is a 53-year-old commissioning engineer for a defense contractor since August 2014. He received a bachelor's degree in 2004. He is unmarried, and previously held a security clearance.

The SOR alleges Applicant filed Chapter 13 bankruptcies in 1997 and 2001, and a Chapter 7 bankruptcy in 2000. All were dismissed for failure to file required documentation, including unfiled tax returns. It also alleges he is indebted to a cable provider for \$365; and that four state tax judgment liens were filed against him in 2011, 2014 and 2015, totaling \$81,713. Additionally, the SOR alleges under Guideline E that Applicant failed to disclose his state tax debts in his 2016 SCA. Applicant admitted filing the bankruptcy cases, but denied that he owes any state taxes or that he deliberately falsified his SCA. Applicant's credit reports, bankruptcy and state tax records support the SOR allegations.

Applicant disagrees with the method by which taxable income is computed, arguing that the federal government, and hence the state government, may tax only income derived primarily from foreign sources. He claims that the IRS has directed his employer to "deduct the maximum amount" from his wages. Applicant used the bankruptcy courts to challenge his federal tax obligations, and apparently failed to pay state taxes owed under the same theory.

In his narrative response to the FORM, Applicant argues in part:

[T]he state cannot arbitrarily determine tax liability without a self-assessment. These self-assessments are made by filing certain federal tax forms. However, if the federal tax form does create a tax liability, then no assessment can be acquired. You did not provide any assessment vehicles or tax law which support the tax liability. I have provided a plethora of case law where tax liability for internal State and Federal policy practices conflict with Supreme Court ruling and the Constitution itself.

In 2002, a U.S. bankruptcy judge wrote in a decision to Applicant:

Debtor must come to grips with the reality that he like everyone else must file income tax returns and pay the tax due. Sooner or later the IRS may see fit to commence a prosecution for willful failure to file a return pursuant to 26 U.S.C. § 7203, the consequences of which are imprisonment and a fine, not merely denial of confirmation of a plan.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. The revised AG apply to this case.

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.

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 incurred significant state tax judgments and liens, a small cable provider debt remains unresolved, and he filed several bankruptcy cases that were all dismissed due to failure to file required documents and pursue the cases. The record 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.

The bankruptcies and state tax liens apparently arose from Applicant's views of his tax obligations that are inconsistent with well understood tax regulations and filing requirements. Although his tax theory and reasoning are largely incomprehensible, Applicant used the bankruptcy courts to challenge his federal tax obligations, and apparently failed to pay state taxes owed under the same theory. No documentary evidence of resolution of the cable debt or the state tax liens have been provided, and his failure to appropriately pursue three bankruptcy filings, or use of the bankruptcy courts to challenge tax liabilities, calls into question his financial responsibility and willingness to comply with laws, rules and regulations.

I am unable to find that he acted responsibly under the circumstances or that he made good-faith efforts to pursue legitimate claims. Applicant exhibited financial irresponsibility that has not been mitigated. His actions continue to cast doubt on his current reliability, trustworthiness, and good judgment. I have insufficient evidence to determine that he has control over his finances and can meet future financial obligations when due. No mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) 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.

When falsification allegations are controverted, as in this case, the Government has the burden of proving the allegations. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.² An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.³

Appellant failed to report his state tax debts on his SCA as required. Considering Applicant's bankruptcy filings and unsuccessful challenges to tax laws and regulations, I find that he knowingly failed to report his state tax debts, despite his apparent challenge to the state's legal authority or the liens' authenticity.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it 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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant denied falsifying his SCA by failing to report his failure to file or pay Federal, state, or other taxes when required by law or ordinance. Despite his contention that he does not owe taxes, it is reasonable to conclude that he likely had actual notice of state civil court actions seeking judgments and liens as alleged in the SOR. He also pursued there bankruptcy actions seeking to litigate his belief

² See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

³ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

that he did not have to file or pay federal taxes, and would have known, or should have known, that he was likewise in violation of state law with regard to state taxes.

Applicant's challenges to requirements by tax authorities do not absolve him from reporting state tax judgments and liens that were filed against him on his SCA. He did not provide documentary evidence supporting his denial of the falsification allegation and there is insufficient evidence to determine the omission was unintentional or unknowing. No mitigating condition applies.

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(a):

- (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 Guidelines F and E in my whole-person analysis. I considered Applicant's Answer to the SOR and his response to the FORM. Applicant continues to challenge the authority of the federal and state tax authorities to determine how to calculate gross income and tax liabilities. He has not resolved a small cable debt, and did not pursue his bankruptcy filings in a responsible and appropriate fashion. I am also convinced that he intentionally failed to submit full and truthful answers on his SCA as noted above.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations or personal conduct 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
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge