



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-01761
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

05/25/2018

Decision

HOGAN, Erin C., Administrative Judge:

On June 12, 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 June 8, 2018.

On July 20, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 15, 2017. The case was assigned to me on February 1, 2018. On March 23, 2018, a Notice of Hearing was issued scheduling the hearing for April 11, 2018. The hearing was held as scheduled. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered one exhibit which was admitted as Applicant Exhibit (AE) A. The record was held open until April 25, 2018, to allow the Applicant to submit additional documents. Applicant timely submitted a five-page document, which was admitted as AE B. The transcript (Tr.) was received on April 18, 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 Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since May 2015. He has worked for various DoD contractors since 2004. He has had no periods of unemployment. He is a high school graduate. He earned a security plus certification in 2012 and a certified ethical hacker certification in 2016. He served on active duty in the United States Marine Corps from 1998 to 2001, separating with an honorable discharge. He is married and has two children, ages 15 and 6. (Tr. 17- 21; Gov 1)

On December 8, 2015, Applicant submitted a security clearance application as part of a periodic reinvestigation. In Section 26 – Financial Record of the application, he disclosed a mortgage foreclosure in May 2014; various medical bills, and a paid off credit card. He indicated that he will be taking Dave Ramsey's financial course. He did not mention any state or federal tax issues. (Gov 1, section 26)

A subsequent security clearance background investigation resulted in the following SOR allegations: failure to file Federal income tax returns for tax years 2008, 2013, and 2014 (SOR ¶¶ 1.a, 1.b, 1.c: Gov 2 at 1, 8, 9); a delinquent federal tax debt in the amount of \$2,090 for tax year 2010 (SOR ¶ 1.d: Gov 2 at 3); failure to file state tax returns for tax years 2012, 2013, and 2014 (SOR ¶¶ 1.e, 1.f, 1.g: Gov 2 at 11); nine medical collection accounts, the approximate total balance of \$2,451 (SOR ¶¶ 1.h, 1.j – 1.n, 1.r -1.t: Gov 3 at 2; Gov 4 at 3); a \$143 television account placed for collection (SOR ¶ 1.i: Gov 3 at 2); a \$515 medical judgment entered in 2015 (SOR ¶ 1.o: Gov 4 at 3); a \$122 charged-off account (SOR ¶ 1.p: Gov 4 at 3); and a mortgage foreclosure (SOR ¶ 1.q: Gov 4 at 3).

Applicant admits that he did not file his federal and state income tax returns for tax years 2008, 2009, 2011, 2012, 2013, and 2015. He filed his 2010 and 2016 federal and state income tax returns. He owes the Internal Revenue Service (IRS) \$2,090 for taxes owed for tax year 2010. Applicant's last contact with the Internal Revenue Service was in 2017. He requested a payment plan for his tax liability. He intended to pay \$200 a month. The plan was never started. At hearing, he estimated his total tax liability to be between \$4,000 to \$5,000. After the hearing, he provided an IRS transcript for tax year 2017, which was filed on April 15, 2017. It showed that the balance owed to the IRS for all tax years was \$6,190. He provided no proof that he filed his outstanding tax returns and no proof that he was making payments towards this tax debt aside from tax refunds being automatically applied to his tax debt. (Tr. 35-40; AE B at 3; Gov 2)

Applicant did not file his state and federal income tax returns because he believed that if he did not owe any taxes, he did not have to file a tax return. He also admits his failure to file his tax returns and pay his debts was caused by procrastination. He and his wife began to have financial problems in 2012. They incurred expensive heating bills for the home they purchased in 2008. In the winter, the bills were often several thousand dollars a month. He and his wife had long commutes and were spending a lot of money on gas. They also ate out often. His wife lost her job in March

2014. Applicant got behind on his mortgage payments in 2012. He attempted to catch up, but he eventually stopped paying the mortgage. The home was foreclosed in May 2014. Applicant does not believe he owes anything on the mortgage because it was a VA loan. (Tr. 49-53; Gov 5).

When his wife lost her job, her annual salary was \$40,000. Applicant was earning \$85,000 at the time his wife lost her job. His wife found another job in 2014 and has been consistently employed since that time. Her current annual salary is \$33,000. Applicant's current annual salary is \$130,000. He earned \$120,000 in 2017 and \$110,000 in 2016. He and his wife do not follow a budget. He contacted his employee assistance program on two occasions regarding his financial situation, but had not attended any formal financial counseling courses. (Tr. 54-57)

The status of the SOR debts are:

SOR ¶¶ 1.a, 1.b, and 1.c: failure to file federal income tax returns for tax years 2008, 2013, and 2014: Applicant admits these tax returns were not filed. He provided no evidence that he filed these federal tax returns.

SOR ¶ 1.d: \$2,090 delinquent federal tax debt for tax year 2010: This debt remains outstanding.

SOR ¶ 1.e-1.g: failure to file state income tax returns for tax years 2012, 2013, and 2014. Applicant admits this allegation. He did not provide proof that the state tax returns were filed.

SOR ¶ 1.h: \$225 medical bill placed for collection: Applicant testified that this bill was still open. He contacted the creditor on the day of the hearing. (Tr. 43)

SOR ¶ 1.i: \$143 television bill placed for collection: Applicant provided proof this debt was paid on April 11, 2018, the day of the hearing. (Tr. 47; AE A at 1)

SOR ¶¶ 1.j, 1.k, 1.l, 1.m, and 1.n, medical debts placed for collection in the respective amounts of \$52, \$26, \$24, \$19, and \$15: Applicant provided proof that this debt was paid on April 11, 2018, the day of the hearing. (Tr. 43-46; AE A at 1)

SOR ¶ 1.o: \$515 medical judgment: Applicant claims this debt was paid through garnishment in 2016. He did not provide any documents showing the debt was paid, but the debt is no longer listed on the most recent credit report in the record, dated May 1, 2017. (Tr. 48; Gov 3)

SOR ¶ 1.p: \$122 debt: Applicant claims this debt was paid off during a previous background investigation in 2009. He did not provide any documents showing the debt was paid, but the debt is no longer listed on the May 1, 2017, credit report. (Tr. 49; Gov 3)

SOR ¶ 1.q: home mortgage foreclosure: This fact is considered as part of Applicant's overall financial history. It is unclear whether Applicant owes anything after the foreclosure. It is unlikely because it is a VA loan. (Tr. 49-53)

SOR ¶¶ 1.r, 1.s, and 1.t: medical accounts placed for collection in the respective amounts of \$726, \$718, and \$646: Applicant claims he is paying these medical debts off through garnishment. His wages are being garnished \$744 each month. The debt is being paid. (Tr. 53; AE B)

Applicant provided a copy of his household budget in his post-hearing submissions. Applicant's net monthly salary is \$7,173. His wife's net salary is \$1,991. Applicant receives monthly VA disability of \$527. The household's total net monthly income is \$9,692. The household net monthly expenses is \$6,844. After expenses, there is a remainder of \$2,847. (AE B at 4)

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 adjudicative guidelines 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 in 2012. He was unable to keep up with mortgage payments. During the winter, the heating bills were several thousand dollars a month. His wife lost her job in late 2013. The loss of income adversely affected the family finances. Their home was foreclosed in 2014. Applicant also owes delinquent federal income taxes for tax year 2010. He failed to file his state and federal income taxes for tax years 2008, 2009, 2011, 2012, 2013, and 2014. Applicant owes several medical debts for routine medical bills for his family. The total approximate amount of the debts alleged in the SOR is \$5,321. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) 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. While Applicant has taken steps at the last minute to pay off his medical debts, his federal and state tax issues remain. It is unclear whether Applicant owes the state for delinquent income taxes. As of 2017, Applicant owes the IRS approximately \$6,190 for delinquent federal taxes. Applicant researched how to resolve his tax debt. He 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. Yet, he neglected to file his federal and state income tax returns in 2008, 2009, 2011 – 2014. Applicant's failure to file tax returns and pay federal and state

income taxes over a six year period raises questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his wife's job loss in 2013. This was beyond Applicant's control. However, this mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. Although Applicant's wife's job loss resulted in the loss of household income, his wife found another job in 2014. Applicant's income has consistently risen over the past three years. He had the means to pay the household bills as well as the delinquent debts including the tax debts, but Applicant did not take action to resolve them. He admits that his failure to pay some debts was the result of procrastination. I cannot conclude Applicant acted responsibly under the circumstances.

AG ¶ 20(c) does not apply. While Applicant initially sought help for his financial problems through his employee assistance program and intended to take the Dave Ramsey financial counseling course, he never attended the course or any other financial counseling program. He resolved some of his debts, but several debts remain unresolved.

AG ¶ 20(d) applies towards the debts alleged in SOR ¶¶ 1.j – 1.p, 1.r-1.t and 1.q. Applicant resolved or is resolving these debts. However, I cannot conclude that he has made a good-faith effort regarding his tax debts. His state and federal tax debts remain unresolved.

AG ¶ 20(g) does not apply. While Applicant contacted the IRS on several occasions, he provided no proof that he entered into a payment program or filed his state and federal income tax returns for 2008, 2009, 2011 – 2014. If Applicant had filed all outstanding state and federal tax returns, actively pursued a repayment agreement for his tax debts, made timely payments toward the agreement, and timely filed and paid his income tax returns for subsequent tax years, this mitigating condition would apply.

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 2004. I considered his honorable service in the United States Marine Corps from 1998 to 2001. I considered that he is a loving husband and father.

I considered that his wife's unemployment for several months in late 2013 to 2014 adversely affected the household finances. However, Applicant earns a good income. The amount of delinquent debt alleged in the SOR was manageable. 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 file his state and federal tax returns for six tax years. He had still not filed them at the close of the record. Applicant was not proactive in bringing his state and federal tax situation under control. The foreclosure caused some financial strain for Applicant and his family. However, he has earned decent income for the last several years. He should have been able to manage his delinquent debts including his delinquent federal and state income taxes. 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.h:	Against Applicant
Subparagraphs 1.i – 1.t:	For 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