



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



In the matter of:)
)
) ISCR Case No. 17-01778
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/11/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on January 15, 2018, and requested a hearing before an administrative judge.

The case was assigned to me on March 9, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 27, 2018, scheduling the hearing for June 18, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional

information. He submitted documents that I have marked AE F through I and admitted without objection.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2015. He is married with three adult children.¹

Applicant and a partner worked as private contractors for a company from about 2005 until they lost the contract due to a merger in 2011. He worked for another company for about a year until he accepted a job with a defense contractor in January 2013. He worked in Afghanistan from about January 2013 through June 2013, when the company lost its contract. He worked for a temporary agency and another company before he was hired by his current employer in January 2015. He worked in Kuwait from 2015 to May 2017, when his company sent him to Afghanistan, where he has worked since.²

Applicant has a history of financial problems, which include tax returns that were not filed on time, unpaid taxes, delinquent debts, and two Chapter 13 bankruptcy cases. He attributes his financial problems to his lost job in 2011, an IRS audit in about 2010 or 2011, the death of his certified public accountant (CPA) in April 2013, the early termination of his job in Afghanistan in 2013, and being the sole provider for his wife and children. His wife recently graduated from college, and his daughter is still in college.³

Applicant filed his 2007 federal income tax return on time, but he did not pay all the taxes owed. In September 2017, the IRS applied \$2,062 from what would have been a refund from his 2015 taxes (overpayment) to pay the remainder that was owed for 2007.⁴

Applicant's 2008 federal income tax return was filed in April 2010. In March 2015, the IRS applied \$1,789 from the overpayment of his 2014 taxes to pay the remainder that was owed for 2008.⁵

Applicant filed his 2009 federal income tax return on time, but he did not pay all the taxes owed. The IRS applied \$9,369 from the overpayment of his 2016 taxes and

¹ Tr. at 19, 77; GE 1, 2, 8.

² Tr. at 18-19, 28, 34; GE 1, 2, 8.

³ Tr. at 18-20, 23; Applicant's response to SOR; GE 1-8; AE A, F, I.

⁴ GE 2; AE A.

⁵ Tr. at 21-23; GE 2; AE A.

\$6,275 from the overpayment of his 2017 taxes to his 2009 taxes. As of October 2018, he still owed the IRS \$30,009 for tax year 2009.⁶

Applicant did not file his 2010 federal income tax return when it was due. His CPA prepared the return in June 2011, but it was not submitted to the IRS until April 2014. The IRS filed a substitute return in March 2012. The IRS applied \$3,715 from the overpayment of his 2015 taxes to pay the remainder that was owed for 2010.⁷

Applicant stated that he thought his 2011 federal income return had been filed. IRS records indicate the 2011 tax return has still not been filed. He indicated that he had minimal income of about \$6,000 in 2011. That amount would not require him to file a return if he was an employee. Because he was self-employed, he had to file a return.⁸

Applicant filed his 2012 federal income tax return on time with an extension, but he did not pay all the taxes owed. The IRS applied \$1,076 from the overpayment of his 2015 taxes and \$159 from the overpayment of his 2016 taxes to pay the remainder that was owed for 2012.⁹

Applicant filed his 2013 federal income tax return in June 2014, but he did not pay all the taxes owed. As of October 2018, he owed the IRS \$4,961.¹⁰

Applicant filed his 2014 federal income tax return on time. His 2015 and 2016 federal income tax returns were filed in September 2017. His 2017 federal income tax return was filed on time. He would have received refunds each year if he did not owe back taxes. His overpayments were applied to taxes owed for previous tax years.¹¹

Applicant established a \$248 per month installment agreement with the IRS in September 2018. The first payment was not yet due when the record closed. As of the date of the installment agreement, he owed a total of \$34,971 in taxes, penalties, and interest for tax years 2009 and 2013.¹²

Applicant and his wife filed a Chapter 13 bankruptcy case in 2010. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$99,501 in secured claims, which included a mortgage loan, a vehicle loan, and homeowner's association (HOA) dues. Under Schedule E, Creditors Holding Unsecured Priority Claims, the

⁶ Tr. at 30; GE 2; AE A, B.

⁷ Tr. at 19, 23-26; Applicant's response to SOR; GE 2; AE A, E.

⁸ Tr. at 27-30; Applicant's response to SOR; GE 2; AE A. See <https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center>.

⁹ GE 2; AE A.

¹⁰ Tr. at 31-33, 40-45; GE 2; AE A.

¹¹ Tr. at 33-39; Applicant's response to SOR; GE 2; AE A, B.

¹² Tr. at 20, 39-40, 70-71; GE 2; AE F, H.

petition listed debts of \$5,089 to the IRS for 2007 and 2009 taxes and \$3,360 in attorney's fees. The petition listed debts totaling \$62,907 under Schedule F, Creditors Holding Unsecured Nonpriority Claims. The debts included \$1,612 owed on the judgment alleged in SOR ¶ 1.k.¹³

Applicant paid the approved Chapter 13 bankruptcy plan for about 37 months. The case was dismissed in October 2013 upon motion of the trustee. Applicant was \$9,944 behind in payments, which constituted almost three months of payments. Applicant paid a total of \$63,397 into the plan, but none of the taxes or other unsecured debts were paid. The trustee and Applicant's bankruptcy attorney received \$5,952. The remainder was paid to secured claims such as the mortgage and car loans and the HOA dues.¹⁴

Applicant and his wife filed another Chapter 13 bankruptcy case in January 2014. In August 2014, the trustee moved to dismiss the bankruptcy because Applicant was \$7,850 behind in payments, which constituted almost four months of payments. The case was dismissed in October 2014. Applicant paid \$7,513 into the plan. The trustee and Applicant's bankruptcy attorney received \$5,062; \$1,505 was paid to a mortgage loan; and \$946 was refunded to Applicant and his wife.¹⁵

In addition to the tax and bankruptcy matters, the SOR alleges delinquent debts that were listed on a December 2016 credit report and an unpaid judgment that is not listed on any credit report in evidence. Applicant admitted owing the \$1,171 debt alleged in SOR ¶ 1.j at one time, but he stated that the debt was settled for \$800, and that he paid half the settlement amount. He paid \$409.88 to the creditor in November 2017. The February 2018 credit report lists the debt with a \$761 balance (\$1,171 minus \$410 equals \$761).¹⁶

Applicant denied owing the judgment alleged in SOR ¶ 1.k. The judgment is reported by LexisNexis as being filed in October 2005 for \$1,612. As indicated above, the judgment was listed as a creditor in Applicant's 2010 bankruptcy petition. However, there is no evidence that the creditor ever filed a claim with the bankruptcy court. The judgment was for back rent and eviction. As proof he did not owe the judgment, Applicant submitted a March 2005 statement from his landlord showing that from 2001 through 2005, his rent was always paid on time. Applicant's 2012 Questionnaire for National Security Positions (SF 86) shows that he lived in the rented house until September 2005, when he moved into the home that he purchased. The judgment is not listed on either of the credit reports in evidence.¹⁷

¹³ Applicant's response to SOR; GE 7; AE B.

¹⁴ Applicant's response to SOR; GE 7.

¹⁵ Applicant's response to SOR; GE 6.

¹⁶ Tr. at 46-48; Applicant's response to SOR; Applicant's response to SOR; GE 3, 4; AE F, G.

¹⁷ Tr. at 49-50; Applicant's response to SOR; Applicant's response to SOR; GE 3-5, 7, 8; AE C.

SOR ¶ 1.I alleges a credit card debt that was \$154 past due with a \$597 balance. The debt is listed as such on the December 2016 credit report. The debt is listed on the February 2018 credit report as charged off in the amount of \$643, transferred, with a zero balance. A collection company lists the debt with a \$643 balance. Applicant denied owing the debt and stated that he had never heard of the bank. He stated that he called the bank, but they had no record of his account. He provided no documentation of his dispute.¹⁸

Applicant admitted owing the \$8,979 charged-off auto loan alleged in SOR ¶ 1.m, but he stated that the account was closed. The December 2016 credit report lists the account as opened in 2005. The 2010 bankruptcy petition listed the debt with a balance of \$18,818. The bankruptcy court allowed secured and unsecured claims of \$18,473 on the debt. The creditor received \$7,293 in principal and \$1,637 in interest during the course of the bankruptcy. The debt was listed as a secured debt with a balance of \$5,781 on the 2014 bankruptcy petition. There is no evidence that the creditor filed a claim with the bankruptcy court. Applicant stated that he settled the debt for \$5,000 with a collection company in 2015. He stated that he paid \$600 every two weeks until the collection company stopped accepting payments. The debt is not listed on the February 2018 credit report.¹⁹

Applicant stated that his finances are now stable. He intends to pay his debts. He believes he can resolve his financial problems through his work in Afghanistan.²⁰

Applicant submitted SF 86s in July 2012 and August 2016. He reported tax problems on both questionnaires, and he reported his Chapter 13 bankruptcy case on the May 2012 questionnaire. He did not intend to falsify the SF 86s or mislead the government about the state of his finances when he failed to report additional financial issues.²¹

Applicant submitted documents from military personnel recognizing his outstanding support of the mission in Afghanistan. He is praised for his dedication, selfless service, expertise, and “countless hours of hard work and continued responsiveness.”²²

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,

¹⁸ Tr. at 51-52; Applicant's response to SOR; GE 3, 4.

¹⁹ Tr. at 52-55; Applicant's response to SOR; GE 3, 4, 6, 7.

²⁰ Tr. at 65-71.

²¹ Tr. at 55-64; Applicant's response to SOR; GE 1, 2, 8.

²² AE D.

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.

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;
- (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, dismissed Chapter 13 bankruptcy cases, unfiled tax returns, and unpaid federal income 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 attributes his financial problems to his lost job in 2011, an IRS audit in about 2010 or 2011, the death of his CPA in April 2013, the early termination of his job in Afghanistan in 2013, and being the sole provider for his wife and children. The loss of his jobs in 2011 and 2013 and his CPA's death in 2013 were beyond his control, but his financial problems predate those issues. Of particular concern is his failure to file his federal income tax returns on time and pay his taxes. 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. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

All of Applicant's federal income tax returns have been filed, with the exception of tax year 2011. SOR ¶ 1.g alleges that Applicant owes the IRS \$51,374 for tax years 2007, 2009, 2010, 2012, and 2013. His large refunds for the last four years have been applied to previous tax years. He established that all tax years except 2009 and 2013 have been paid, and the amount owed has been reduced to \$34,971. He recently entered into an installment agreement. While those actions are positive indicators, they are insufficient to mitigate the still unresolved tax problems from tax years 2009, 2011, and 2013. AG ¶ 20(g) is applicable to all the tax years except 2009, 2011, and 2013.

I accept Applicant's statements that the judgment and the car loan (SOR ¶¶ 1.k and 1.m) are resolved or sufficiently attenuated, and those debts are mitigated. He stated that he settled the \$1,171 debt alleged in SOR ¶ 1.j for \$800 and that he paid \$400 toward the settlement. He documented a \$409 payment, which means the settlement has not been completed. That debt is not mitigated. He denied owing the debt alleged in SOR 1.I, but he provided no supporting documentation. That debt is also not mitigated.

I am unable to find that Applicant 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. Security concerns raised by Applicant's finances are not mitigated.

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 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 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally submit false information about his finances on his 2012 and 2016 SF 86s. AG ¶ 16(a) has not been established. SOR ¶¶ 2.a through 2.f are concluded for Applicant.

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 Guidelines E and F in my whole-person analysis. I also considered Applicant's outstanding support of the mission in Afghanistan.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he 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.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant
Subparagraphs 1.g-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.f:	For Applicant

Conclusion

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