



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



In the matter of:

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) ISCR Case No. 17-02578
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Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2018

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of significant financial problems, which includes unpaid Federal taxes, student loans, and spousal support. He failed to mitigate the financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 11, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for re-investigation. On August 15, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 that became effective within the DOD for SORs issued on June 8, 2017.

On October 25, 2017, Applicant answered the SOR (Answer), and requested a hearing. On November 13, 2017, the Department of Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge. On February 21, 2018, DOHA re-assigned the case to me. On March 13, 2018, DOHA issued a hearing notice, setting the case for April 17, 2018. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. They were admitted without objections. Applicant testified, but did not offer any exhibits. DOHA received the hearing transcript (Tr.) on April 25, 2018. The record remained open until May 18, 2018, to give Applicant time to submit exhibits. He timely submitted Applicant Exhibits (AE) A through C, which are admitted without objections.

Findings of Fact

Applicant admitted the allegations contained in the SOR ¶¶ 1.a and 1.i. He denied all other allegations with explanations. His admissions are accepted as factual findings.

Applicant is 51 years old and divorced since 2013. He and his former wife have three adult children and two grandchildren. He has some college credits and has earned a certificate pertinent to his job. He began working for his employer in 1987, at the age of 20. (Tr. 19-21) He has held a security clearance since 1994. (Tr. 8)

In his September 2015 e-QIP, Applicant disclosed that he owed Federal taxes in the amount of \$30,000 for 2012 and stated he was establishing a payment plan. He also disclosed that he owed the U.S. Department of Education about \$125,600 for unpaid educational loans he took out for his three children's undergraduate and graduate educations. He indicated that in 2014 the Federal government filed a garnishment against him for unpaid taxes. He also disclosed that in 2014 his state filed a garnishment against him for spousal support for \$4,300. (GE 1)

In February 2017, a government investigator interviewed Applicant about matters in his e-QIP, including delinquent taxes, unpaid alimony, delinquent student loans, and other unpaid debts. He explained that he did not timely pay his 2012 Federal taxes because he did not earn enough money and that his children's educational loans became burdensome. (GE 2)

While testifying, Applicant said that during 2012 he did not have enough money withheld from his paychecks for taxes because he was saving those monies to pay his three children's college costs. The \$30,000 that he owed to the Federal government was the cumulative amount he owed for years 2009, 2010, 2011, and 2012. He owed about \$4,000 for 2009; \$6,000 for 2010; between \$5,000 and \$10,000 for 2011; and \$16,000 for 2012. (Tr. 23-28) He did not timely file his 2013 Federal tax return because at the time he was going through a divorce and moving to another location. He filed his 2013 Federal

income tax return in 2017 and owes \$4,000 for that year. (Tr. 28-29) He timely filed his 2014 income tax returns and owed \$1,900 that he paid. He timely filed his 2015 and 2016 Federal income tax returns and received refunds for each year that were applied to his tax debt. He obtained an extension for his 2017 income tax returns and hoped to establish a payment plan for all outstanding taxes. In January 2018, he spoke to the Internal Revenue Service (IRS) and intended to work out a payment plan for all unpaid taxes, which now total about \$60,000.¹ (Tr. 32-36)

Applicant stated that his former wife handled their taxes and finances while they were married, and as a result he was not familiar with all of their debts. He thought she was paying them because he was earning enough money. He learned of the unpaid Federal tax debt in 2011. (Tr. 29-31) When he spoke to her about the tax debt, she told him that she was paying the children's college debt instead. (Tr. 36-37)

Applicant and his wife financed their three children's entire college tuition and expenses through educational loans that they, as parents, assumed in their own names. Applicant and his wife did not want their children to be burdened with debt upon graduating. He made some payments on the loans when they became due, but was unable to make them consistently. He thinks some loans became due in 2000, when his first child was attending school. His children are unaware of his financial problems resulting from obtaining their educational loans. His ex-wife is making some payments toward the loans, but he is unsure which debts or how much. In April 2018, he initiated a payment plan with the collection agency for the student loans and agreed to pay \$128 a month for five years. As of that date, the student loans totaled \$202,951. (Tr. 39-43, 50-51; AE B)

Based on credit bureau reports (CBR) from February 2016, July 2017, and November 2017, the SOR alleged: unpaid Federal taxes for 2012 in the amount of \$30,000; four delinquent student debts totaling \$156,140; three delinquent debts totaling \$6,243; and delinquent spousal support in the amount of \$4,300. (GE 3, 4, 5) The status of each SOR debt is as follows:

1. (SOR ¶ 1.a) The \$16,000 Federal income tax debt for 2012 is unpaid. No payment plan has been established. (Tr. 23-25)
2. (SOR ¶ 1.b) The \$85,980 delinquent student loan is unpaid.
3. (SOR ¶ 1.c) The \$33,214 delinquent student loan is unpaid.
4. (SOR ¶ 1.d) The \$20,813 delinquent student loan is unpaid.
5. (SOR ¶ 1.e) The \$16,133 delinquent student loan is unpaid.

¹ Any derogatory information referenced in this decision that was not alleged as a security concern in the SOR, shall not be considered in the analysis of disqualifying conditions. It may be considered in the analysis of mitigating conditions, the whole person, and in an evaluation of Applicant's credibility.

6. (SOR ¶ 1.f) The \$357 delinquent consumer account is paid. (Tr. 43-44)
7. (SOR ¶ 1.g) The \$4,572 delinquent credit card is paid. (Tr. 44; GE 4.)
8. (SOR ¶ 1.h) The \$1,314 delinquent debt owed for personal services is paid. (Tr. 44; AE C; Answer)
9. (SOR ¶ 1.i). Applicant continues to owe unpaid spousal support that is being paid through a March 2013 garnishment order. As of September 2013, he owed \$4,278 for past-due support and \$3,800 for current support. The balance owed for both current and unpaid support is unknown. (Tr. 47; AE A) This debt is unresolved.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 to classified information 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. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an

applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information 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 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.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability 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 information. Financial distress can also be caused by 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 acts to generate funds.

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.²

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case. Four conditions may be potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 being unable to satisfy financial obligations, which includes failing to pay Federal income taxes for 2012, student loans, and spousal support. His indebtedness continues to date. The evidence is sufficient to raise the above disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides conditions that could mitigate security concerns raised under this guideline. The following may be 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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's delinquent student loans, unpaid taxes, and garnishment for spousal support are ongoing and unresolved. They continue to raise concerns about his reliability and judgment. The evidence does not establish mitigation under AG ¶ 20(a).

Applicant provided some evidence that his delinquent Federal taxes, for years 2009, 2010, 2011, and 2012, may have arisen as a result of his former wife's mishandling their finances. That could have been a circumstance beyond his control. However, his

decision to fully finance his three children's college educations, which affected his ability to pay taxes and other obligations, was the result of circumstances within his control over numerous years. There is insufficient information to prove that he acted responsibly under those circumstances. The evidence establishes minimal mitigation under AG ¶ 20(b), as to his tax debt, but does not establish mitigation for any of the other SOR allegations.

Applicant has not participated in credit counseling and has not presented credible evidence that he has sufficiently resolved or is resolving his taxes, delinquent student loans, or his spousal garnishment. His financial obligations are not under control. The evidence does not establish mitigation under AG ¶ 20(c). Applicant demonstrated a good-faith effort to resolve the delinquent debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h. AG ¶ 20(d) applies to those debts.

Applicant did not provide evidence that he has made arrangements with the IRS to pay his delinquent federal income taxes. There is insufficient evidence to establish AG ¶ 20(g).

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.

According to 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is an intelligent 51-year-old employee of a defense contractor, where he has successfully worked since 1987 and held a security clearance since 1994. Beginning in about 2009, he failed to responsibly manage his income taxes. Those problems have

continued and remain unresolved, despite being on notice since he submitted his 2015 e-QIP. Additionally, he assumed a significant amount of student loan debt for his children that he knew or should have known, he would be unable to responsibly repay. To date, he owes more than \$266,000 in delinquent debt for which he has not established a track record of responsibly managing. His failure to diligently manage his obligations raises serious concerns about his judgment. Overall, the record evidence leaves me with doubts as to Applicant's present eligibility and suitability for a security clearance. Applicant did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraphs 1.f through 1.h:	For Applicant
Subparagraph 1.i:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge