



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



In the matter of:)
)
) ISCR Case No. 17-02923
)
Applicant for Security Clearance)

Appearances

For Government: Andrew W. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

04/19/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 6, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered (Ans.) the SOR on September 22, 2017. The case was assigned to me on November 2, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 12, 2017, and the hearing was convened as scheduled on January 17, 2018. The Government offered exhibits (GE) 1 through 9, which were admitted into evidence without objection. Department Counsel's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibit

(AE) A, which I admitted without objection. The record was held open until February 16, 2018, for Applicant to submit additional information. Applicant submitted AE B-E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 25, 2018.

Findings of Fact

Applicant admitted SOR allegations ¶¶1.a and 1.b. He denied the remaining allegations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 61 years old. He has worked for defense contractors since 2007. He retired from the Air Force after 20 years of honorable service as a master sergeant (E-7). He has a high school diploma and has earned college credits. He married in 1976 and divorced in 1999. He has six children from the marriage. His ex-wife receives 50 percent of his military retirement pay.¹

The SOR alleged and Applicant admitted his failing to file federal and state tax returns from 1999 to 2014 and his indebtedness on a federal tax lien in the amount of \$70,628. The SOR also alleged three student-loan collection accounts totaling \$4,879 and a past-due consumer account in the amount of \$311. The tax lien, student-loan accounts, and the consumer debt are listed in credit reports from July 2016. He admitted in his security clearance application, his security clearance interview, and his hearing testimony not filing his federal and state tax returns for various years.²

Applicant attributed his tax problems to his divorce in 1999. That same year he also retired from the Air Force. He claimed that dealing with these two events was extremely stressful for him and he simply ignored his financial issues. He told an investigator that he did not file his tax returns (federal and state) from 1999 to 2011 because he was sad and was not up to following through with the filings. He also told the investigator that in 2011 he filed his federal and state tax returns for those years and was left with a tax bill of approximately \$70,000. This claim of filing all his tax returns for those years is contradicted by other evidence in the record. Applicant testified at his hearing that he still has not filed any state tax returns. In his post-hearing statement, Applicant indicated he contacted the state tax authority and found out for what years he needed to file state tax returns (only for 2014-2017 because earlier returns were impacted by a statute of limitations). There was no documentation supporting that he had filed any state returns and he admitted that he did not have the funds to pay any state taxes that he owed. As far as his federal tax returns, a government exhibit indicates he entered an agreement with the IRS to make monthly payments of \$697 beginning in May 2016. The agreement encompassed his federal tax debt for 2005 to 2007, and 2011 to 2014 with his total tax debt amounting to \$49,292. The document does not indicate for what years Applicant filed his federal tax returns. He testified that

¹ Tr. at 6, 22, 29; GE 1.

² Tr. at 24-25, 33-34; GE 1, 3, 5.

he has not yet filed his 2016 federal tax return. He produced documentation showing that he made his monthly payments to the IRS beginning in September 2016 through February 2018. The IRS levy was released in May 2016. He did not produce copies of any federal or state tax returns filed from 1999 to 2016 (he produced an IRS document, dated January 2018, reflecting that he owed an additional deficiency towards his 2015 taxes). SOR ¶¶ 1.a and 1.b are not resolved.³

Applicant disputed owing the student loan debts. He claimed they were incurred by his son with the same name. He did not cosign as a guarantor on these loans. His denial of responsibility for the loans is corroborated by the defense investigator asking him about a different social security number, which was not Applicant's and which he denied ever using. Additionally, the two most recent credit reports do not show any student loan debts attributed to Applicant. These debts are resolved in Applicant's favor. Applicant provided documentation showing that he paid this past-due consumer debt in March 2017, before the issuance of his SOR. This debt is resolved.⁴

Applicant testified his current financial picture is that he earns a yearly salary of approximately \$57,500. He has no savings or retirement accounts. He offered no other current financial information. His security clearance was revoked in 2006 for financial consideration issues as well.⁵

Policies

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 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 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.

³ SOR ¶ 1.b refers to a federal tax lien for approximately \$70,000, which was based upon credit bureau reports that listed a federal tax lien. Since Applicant rents an apartment rather than owing his own home, I presume that the references to a lien were erroneous and the term levy is correct. Additionally, Applicant testified that his wages were garnished by the IRS for approximately one year, until March 2016, which is consistent with how a levy is executed. Tr. at 22-23, 32-34, 36-37, 39, 51, 61; GE 3, 8, 9; AE A-C.

⁴ Tr. at 38, 43; Ans.; GE 3, 6-7 AE E.

⁵ Tr. at 46, 57, 60.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 had unfiled federal and state tax returns for various periods between 1999 and 2014, unpaid federal taxes, which resulted in a tax levy, and a delinquent consumer debt. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following 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;
- (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 failed to show significant efforts toward resolving his federal and state tax issues. This pattern shows a lack of reliability, trustworthiness, and good judgment for someone who served in the military for 20 years and is receiving retirement pay. AG ¶ 20(a) is not applicable.

Applicant went through a divorce in 1999, but that circumstance beyond his control is overcome by his negligence in failing to address his federal and state tax issues from 1999 to 2011 and beyond. AG ¶ 20(b) is not applicable.

Applicant hired a tax relief company to address his tax issues, but there is no evidence he sought financial counseling. Applicant's federal and state tax issues remain unaddressed. Applicant's financial problems are not under control. He receives some credit for establishing a payment plan with the IRS and making monthly payments under the plan. However, since it took him over ten years to contact the IRS and negotiate this plan, and because his state tax issues are unaddressed, good-faith efforts to pay or resolve his tax issues are lacking. SOR ¶ 1.e was resolved through proof of payment. AG ¶¶ 20(c) and AG ¶ 20(g) partially apply, and 20(d) does not apply. He provided documentation supporting his dispute of SOR debts ¶¶ 1.c through 1.e. AG ¶ 20(e) applies to those debts.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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 that guideline, but some warrant additional comment.

I considered Applicant's lengthy military service and his family circumstances. However, I also considered that his federal and state tax issues remain unresolved. He

has not established a meaningful track record of debt management, nor shown responsibility in exercising his lawful duty to file his federal and state tax returns, and pay his taxes owed to each government entity.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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
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Subparagraphs: 1.a – 1.b:	Against Applicant
Subparagraphs: 1.c – 1.f:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge