



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 17-02952
)
Applicant for Security Clearance)

Appearances

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

04/23/2018

Decision

MASON, Paul J., Administrative Judge:

Applicant filed four federal and state tax returns for tax years 2013 through 2016, but has more returns from 2008 through 2012 that have not been filed. He has delinquent federal and state taxes that he owes. He also owes a large student loan debt that became delinquent over seven years ago. His evidence in mitigation is insufficient to overcome the lingering security concerns arising from the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On August 12, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for security clearance eligibility so that he could work for a defense contractor. He provided an interview (PSI, Item 4) to an investigator from the Office of Personnel Management (OPM). On October 3, 2017, The Department of Defense (DOD) could not make the necessary affirmative finding to grant Applicant's security clearance and issued an SOR to him detailing security reasons under the financial considerations guideline (Guideline F). The action was taken under Executive Order (E.O.) 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) effective in the DOD on June 8, 2017.

Applicant provided his notarized answer to the SOR on November 22, 2017. He elected to have his case decided on a written record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM) (the Government's evidence in support of the allegations in the SOR) to Applicant on December 11, 2017. Applicant received the FORM on December 18, 2017. The Government advised Applicant that he could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. Applicant's response was received by the Defense Office of Hearings and Appeals (DOHA) on January 11, 2018. DOHA assigned the case file to me on February 14, 2018.

Rulings on Procedure

In a footnote on the first page of the FORM, Department Counsel informed Applicant that his May 2017 PSI would be excluded from evidence if he objected to the exhibit. Alternatively, Department counsel advised him that he could correct, update, or modify the exhibit to improve its clarity or accuracy. Applicant did not object, and the exhibit is admitted into evidence. See, E3.1.20. of DOD Directive 5220.6, page 52.

Findings of Fact

The SOR 1.a and 1.b allege that Applicant did not file federal and state tax returns for tax years 2013 through 2016. SOR 1.c alleges that he has a delinquent student loan debt. In his November 2017 answer to the SOR, Applicant admitted he had not filed the tax returns and that he owed the student loan. In attachments to his answer, he provided proof the returns were filed. A review of the federal and state tax returns shows that the 2016 returns were filed in May 2017 (adjusted gross federal income: \$51,329); the federal and state returns for 2015 (adjusted gross federal income: \$30,788) were filed in October 2017;¹ the federal and state tax returns for 2014 (adjusted gross federal income: \$30,372) were filed in October 2017; and the federal and state tax returns for 2013 (adjusted gross federal income: \$17,456) were filed in October 2017. In February 2015, Applicant's wages were garnished to satisfy the delinquent state taxes he owed for tax year 2013. Applicant intended to have a payment plan in place by November 6, 2017 to pay off the delinquent federal taxes. He provided an undated payment plan with the student loan collection agency (SOR 1.c) indicating a future payment schedule of \$5 a month from October 2017 through June 2018. There is no documentation verifying that payments were made under the plan. He owes the university collection agency \$5,892 (unalleged), and the student loan agency \$82,711

¹ The 2015 state tax return was filed initially in May 2017, but refiled in October 2017 because Applicant claims his tax preparer did not inform him where his signature was to be entered on the return. (Answer to SOR)

(SOR 1.c). The student loan became delinquent in April 2010. (Item 4 at 7-8; answer to SOR, with attachments; response to FORM)

Applicant is 36 years old and single. He received a bachelor's degree in May 2004. After college, he had several jobs: he worked as a security officer and surveillance operator in the casino industry; he was a teacher and sales consultant. Between 2012 and 2016, he was a part-time delivery driver. From September 2013 to the present, Applicant has been employed as an attendance officer for a school system. In July 2016, he began working for a defense contractor as a security officer. Though his April 2016 e-QIP shows no periods of unemployment between December 2005 and the present, Applicant indicated in his May 2017 PSI that he was unemployed from August to September 2009. (GE 1 at 7-9, 10-18; GE 4 at 5)

In his April 2016 e-QIP, Applicant disclosed only one debt, a delinquent car loan which he brought to a current status in three months. (GE 1 at 28-30) In his May 2017 PSI, Applicant was unable to explain why he did not reveal his tax issues or his delinquent student loan in his April 2016 e-QIP. He indicated that he did not file his federal and state taxes for 2013 through 2016 because he was working so much and did not have time to file the returns. He also mentioned his financial problems materialized because of inadequate earnings. In February 2015, Applicant's wages were garnished by the state tax agency to satisfy a tax lien for taxes due for 2013. (SOR 1. b) In July 2015, the tax lien was satisfied. Applicant claimed that he had been making \$50 monthly payments on an unalleged university student loan since April 2017. He also intended to double his payments to the university to \$100 a month and begin payments of \$100 a month to the collection agency for the government student loan. (SOR 1.c) (GE 1 at 28; GE 4 at 7-9) No proof of payments was submitted to support his monthly payment claims.

In the conclusion section of Applicant's November 2017 answer to the SOR at #6, he listed personal issues during the 2013 through 2016 period that got in the way of handling his financial obligations: dealing with the estate of his deceased mother; car problems; and weather-related home repairs. (Answer to SOR, attachments)

In his January 2018 response to the FORM, Applicant expanded upon his earlier explanations for his financial problems. First, he identified the emotional toll connected to adjusting to his parent's deaths and expense of the threatened foreclosure of his mother's home. No dates were given for his parent's death or the expense of saving the home from the foreclosure. He mentioned a burglary and bad weather that resulted in damage to his mother's home, but he provided no dates for the burglary and the bad weather that caused damage. No estimates of damage were disclosed either. Applicant stated that he inherited his parent's home. His father passed away some time before August 2009 because Applicant indicated that he was receiving his father's social security during his unemployment between August and September 2009. (GE 1 at 51; GE 4 at 4-5, 9; response to SOR)

Applicant also explained that he met an advisor after beginning his new employment with the defense contractor in July 2016. The advisor's words of encouragement helped Applicant understand what is important in life while strengthening his character. On December 17 and December 20, 2017, Applicant provided proof of three payments totaling \$130 against the balance he owes in delinquent state taxes. On December 6, 2017, Applicant provided proof of paying \$50 to the university for the student loan account. On December 11, 2017, he made the first \$5 payment to the student loan collection agency for the \$82,000 loan. On December 20, 2017, the Internal Revenue Service (IRS) responded to Applicant's request to establish a repayment plan. The IRS noted that the repayment plan would address delinquent federal taxes for tax years from 2008 through 2016.² The IRS provided detailed requirements of a prospective payment plan. The installment agreement was to begin in February 2018, with payments of \$130 dollars a month. (Response to FORM, attachments) Applicant provided no documentation of action taken to address his state taxes for year 2014, 2015, and 2016.

Character Evidence

Applicant indicated that four character references were attached to his answer to the SOR. There are only two references in the court file. The first statement is dated October 19, 2017, and was written by a friend of eight years who complimented Applicant's judgment in making correct decisions. He is active in community service and vice president of a fraternity's local chapter. He is affiliated with an organization that provides college scholarships to worthy high school students. In an undated character assessment, a friend of four years is impressed with Applicant's strong character and ethics. In addition to keen leadership skills, the second reference considers Applicant to be honest, dedicated, and dependable. (Answer to FORM, two character references)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. The protection of the national security is the paramount consideration. AG ¶ 2(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

² The December 2017 IRS payment plan confirms that Applicant owes delinquent federal taxes for tax years 2008 through 2016. He admitted that in addition to the SOR 1.c student loan, he also owes a student loan to the university where he received his bachelor's degree. This additional adverse evidence is not alleged in the SOR. Following Appeal Board precedent, I will consider the evidence in assessing Applicant's case in mitigation, extenuation, or changed circumstances, and in evaluating the overall record under the whole-person concept. See ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010).

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 in seeking a favorable security decision.

Analysis

Financial Considerations

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. Conditions that could raise a security concern and may be disqualifying include:

- (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.

When the SOR was published in October 2017, the government's security investigation showed that Applicant had not filed his federal and state tax returns for 2013 through 2016. (SOR 1. a and 1. b) To Applicant's credit, he filed his 2016 federal and state tax returns in May 2017, before the SOR was issued, even though the returns were filed late. The student loan became delinquent in April 2010. (SOR 1.c) AG ¶¶ 19(a), 19(c), 19(f) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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.

Based on Applicant's failure to file his federal and state 2013 through 2015 tax returns until October 2017, and, except for the garnishment to satisfy his 2013 state taxes, the lack of evidence indicating that he paid federal and state taxes from 2008 through 2016, I infer that he did not file his federal returns from 2008 through 2012. Applicant still owes over \$85,000 for the delinquent student loans. No mitigation is available under AG ¶ 20(a).

Applicant discussed the emotional problems he had in adjusting to his parent's medical problems and their deaths. He provided no information about when they died. There is no indication when his mother passed. His father must have died some time before August 2009 because Applicant indicated that he was receiving his father's social security during his unemployment between August and September 2009. No date was given for when the threatened foreclosure occurred and the cost to save his mother's house. Applicant did not provide dates for when the house burglary and bad weather occurred and the cost to repair the house. In sum, Applicant receives scant mitigation under AG ¶ 20(b) because of a lack of detailed supporting evidence about unforeseen events and how they sparked or exacerbated his financial problems.

Applicant has never had financial counseling. There is no track record of evidence that persuasively shows that the student loan debts are being resolved or under control. Though Applicant set up a payment plan (SOR 1.c) to begin in October 2017, he did not make his first \$5 payment until December 2017. He did not make any documented payments on the unlisted university debt until December 2017. AG ¶ 20(c) is not applicable. Applicant is entitled to limited mitigation under AG ¶ 20(d) because the payments on the student loans were not made until December 2017, after he received

the FORM, and more than seven years after the student loan (SOR 1.c) became delinquent.

Applicant provided some evidence of filing federal and state tax returns for 2013 through 2016. He receives no mitigation for paying his 2013 state taxes because the delinquent taxes were paid by garnishment of Applicant's wages. There is no evidence that Applicant filed the unalleged federal and state tax returns for 2008 through 2012. He provided no evidence of paying his federal or state taxes for 2008 through 2016. On balance, Applicant receives limited mitigation under AG ¶ 20(g).

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 36 years and single. He received a bachelor's degree in 2004. The record shows that he exercises good judgment in making his decisions. He is active in the community and participates in an organization that provides scholarships to deserving high school students. He is considered a leader who is honest and dependable.

The foregoing favorable evidence is insufficient to support Applicant's security clearance application. When he completed his April 2016 e-QIP, the record suggests that he knew he had tax issues and a delinquent student loan. But he only disclosed a debt that he returned to a current status. When the OPM investigator asked him in May 2017 why he did not reveal the tax and student loan issues on the April security form, he could not give a reason for the omission.

In his May 2017 PSI, he indicated that he had made payments on the student loan debts. However, the first documented payments on the debts were more than six months later in December 2017 and two months after he received the SOR. Given the timing of his filing of the tax returns and payments on the student loan debts, Applicant's

primary motive for the action was to increase his chances of obtaining a security clearance. He should have been more proactive in addressing his federal tax issues instead of waiting until December 2017 to negotiate a payment agreement with the IRS. He provided no documentation of steps taken to resolve his delinquent state taxes for 2014-2016. Having considered the entire record from an overall common-sense point of view, Applicant's ongoing serious financial and tax problems have not been 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
Subparagraph 1.a-1.c:	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 access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge