



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



In the matter of:)
)
) ISCR Case No. 17-03053
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

04/12/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 28, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on October 18, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on November 16, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2017, scheduling the hearing for January 30, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 7, 2018.

Findings of Fact

Applicant is a 59-year-old owner of a company that does business on a military installation. He seeks to retain a security clearance, which he has held for many years. He has an associate's degree. He married in 1981 and divorced in 2001. He married again in 2002 and divorced in 2010. He married for the third time in 2017. He has four adult children and three adult stepchildren.¹

Applicant has owned a small company since 1982. He did not pay all the business and personal taxes owed when they were due for the following tax years: 2002, 2003, 2005 through 2012, and 2014. The business taxes included payroll taxes withheld from employees' pay but not paid to the IRS.² The IRS filed the following federal tax liens against the company:

- \$2,798 for tax years 2005 through 2007 - filed in 2012 and released in March 2014;
- \$6,736 for tax years 2005 and 2011 - filed in 2012 and released in April 2015;
- \$2,340 for tax year 2010 - filed in 2013 and released in April 2015;
- \$125,934 for tax years 2007 through 2009 - filed in 2013 and released in January 2016; and
- \$4,635 for tax years 2010, 2011, and 2014 - filed in 2015 and released in January 2016.³

The IRS filed the following federal tax liens against Applicant personally:

- \$73,082 for tax years 2002, 2003, and 2008 - filed in 2010 and released in September 2017 (SOR ¶ 1.c);
- \$31,534 for tax years 2008 and 2009 - filed in 2013 and released in November 2017 (SOR ¶ 1.d);
- \$84,489 for indeterminate tax years - filed in 2013 - unreleased (SOR ¶ 1.e);

¹ Tr. at 23-24, 27-28, 35; GE 1.

² Tr. at 18-21, 28-30; Applicant's response to SOR; GE 2-6; AE B. The SOR did not allege the business taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

³ AE B.

- \$115,913 for indeterminate tax years - filed in 2013 - unreleased (SOR ¶ 1.b); and
- \$55,757 for indeterminate tax years - filed in 2013 - unreleased (SOR ¶ 1.a).⁴

Applicant stated that he “had a bad period of time in [his] life going through a divorce, and really didn’t care about a lot of things and two of them were [his] personal and business taxes.” He stated that he realized that he needed to get his life in order and he went to the IRS and set up a payment plan. The IRS wanted the business taxes paid first. In 2013, he started paying the business taxes through an installment agreement with the IRS. He completed paying those taxes in 2016, and the liens against his company were released.⁵

In April 2016, the IRS approved a \$3,363 per month installment agreement to pay the personal taxes. The amount owed at that time, with interest and penalties, was \$401,414. Applicant made most of the payments on a timely basis. He obtained a new installment agreement with monthly payments of \$4,220. The balance owed as of January 2018 was \$354,177. He hopes to take out a business loan and a mortgage loan on his house to pay his taxes.⁶

Applicant submitted numerous letters attesting to his honesty, dependability, high moral character, work ethic, professionalism, trustworthiness, loyalty, dedication, and integrity.⁷

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, 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.

⁴ Tr. at 34; Applicant’s response to SOR; GE 2, 4-6; AE B.

⁵ Tr. at 18-21, 24, 30-31; Applicant’s response to SOR; GE 3; AE B.

⁶ Tr. at 21-23, 32-33, 39; Applicant’s response to SOR; GE 2, 3; AE A-D.

⁷ AE D.

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:

- (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 did not pay his federal income taxes for years. 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; 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 stated that he "had a bad period of time in [his] life going through a divorce, and really didn't care about a lot of things and two of them were [his] personal and business taxes." His first divorce was in 2001, but he did not pay his taxes for tax

years 2002, 2003, 2005 through 2012, and 2014. He is credited with starting to resolve his back taxes in 2013. He paid his business taxes first, and more than \$142,000 in business tax liens were released. He has been paying his personal income taxes since 2016. The tax liens alleged in SOR ¶¶ 1.c (\$73,082) and 1.d (\$31,534) have been released. Those allegations are mitigated. Those payments appear impressive; however, as of January 2018, Applicant still owed the IRS more than \$350,000.

Applicant's repeated failure to fulfill his tax obligations suggests that he does not possess the high degree of good judgment and reliability required of persons granted access to classified information and that he has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(c) are not applicable. AG ¶¶ 20(d) and 20(g) are partially applicable, but they are insufficient to mitigate the judgment issues raised by Applicant's years of shirking his responsibility to pay his taxes.

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 Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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: | Against Applicant |
| Subparagraphs 1.c-1.d: | For Applicant |
| Subparagraph 1.e: | Against 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