



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



In the matter of:)
)
) ISCR Case No. 17-03636
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

07/30/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On January 9, 2018, 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 February 15, 2018, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on April 9, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 12, 2018. As of June 4, 2018, he had not responded. The case was assigned to me on July 25, 2018. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 67-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1974 until he retired in 1998. He has a bachelor's degree, which was awarded in 1974. He is married with three adult children and an adult stepchild.¹

Applicant's last tour in the military was in a foreign country. After his retirement from the military in 1998, he obtained a job in the foreign country. In 2011, it was determined that he abused his installation privileges by using his son's vehicle, which was plated by the U.S. military. This resulted in his evading about \$4,000 in foreign taxes. He lost his installation privileges for six months. Applicant indicated that he was negligent. He stated the conduct will not happen again because he now knows the rules, and he no longer works overseas.²

Applicant returned to the United States in 2012. He was unemployed from August 2012 to October 2012, August 2013 to October 2013, and February 2015 until he started work with his current employer in April 2015.³

Applicant did not file his state and federal income tax returns when they were due for tax years 2012 through 2016. When he submitted a Questionnaire for National Security Positions (SF 86) in December 2015, he reported that he had not filed his 2012 and 2013 income tax returns and he owed about \$17,000 for 2012 and \$8,000 for 2013. He noted that he was in a dispute with his state and the IRS, but he had retained a CPA to file the returns and address the taxes. He also noted that his wages had been garnished since November 2015 to pay the taxes.⁴

Applicant was interviewed for his background investigation in June 2016. He stated that his failure to file his 2012 and 2013 state and federal income tax returns was due to negligence. He stated that he was working with a CPA to address the matter.⁵

The IRS filed a \$70,627 tax lien against Applicant in May 2016. He responded to DOHA interrogatories in December 2017. He provided contradictory responses as to whether his 2012 through 2014 state and federal income tax returns had been filed. He admitted that he had not filed his 2015 and 2016 state and federal income tax returns. He indicated that his federal income taxes were being paid through garnishment of his military retirement pay and his state taxes were being paid, or had been paid, through garnishment of his salary. In his response to the SOR, Applicant admitted not filing the 2012 through 2016 state and federal income tax returns. He wrote that about \$1,000

¹ Items 3, 6.

² Items 2, 3, 6-8.

³ Items 3, 6.

⁴ Items 2, 3, 6.

⁵ Item 6.

was being garnished from his military retirement pay for the \$70,627 federal tax lien. He also admitted that a garnishment order was issued in November 2015 to withhold \$250 per paycheck from his salary to pay about \$16,745 in state taxes. No documentation was provided.⁶

Applicant owes \$2,314 for charges to a home furnishings store that became delinquent in 2014, and \$852 for a telecommunications debt that became delinquent in 2015. He discussed these debts during his background interview in June 2016. He stated that he would pay the telecommunications debt within 30 days and that he would make arrangements to pay the second debt.⁷ There is no evidence that Applicant received financial counseling or paid the debts.

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.

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(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.

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.

⁶ Items 2, 4-6.

⁷ Items 2, 4-6.

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, unfiled tax returns, and unpaid state and federal income taxes. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.d alleges that Applicant owes \$16,745 in state taxes. SOR ¶ 1.e alleges that Applicant's wages were garnished \$250 a paycheck to pay \$16,745 in state taxes. There is no information in SOR ¶ 1.d that is not also alleged in SOR ¶ 1.e. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.d is concluded for Applicant.

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 had three periods of unemployment between 2012 and 2015. Those events were beyond his control. However, he has been steadily employed since April 2015.

Applicant has a history of tax problems. 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. 14-06686 at 2 (App. Bd. Apr. 27, 2016). He stated, without corroborating documentation, that he has been paying his back taxes through garnishment. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). There is no documentary evidence that he has filed his tax returns or paid his two delinquent debts.

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. 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant abused his installation privileges to evade paying foreign taxes. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant indicated the conduct happened due to his negligence. He stated it will not happen again because he now knows the rules, and he no longer works overseas. Had this been an isolated event, it would have been mitigated. However, taken in conjunction with his tax issues in the United States, it reflects a pattern of poor judgment and a failure to comply with rules and regulations. The conduct is not mitigated.

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 honorable military service.

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 personal conduct and 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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