



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



In the matter of:)
)
) ISCR Case No. 17-04009
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has several hundred thousand dollars of past-due, unresolved tax debt. He admitted that he deliberately failed to disclose that information, as required, on his security clearance application. Applicant did not resolve financial and personal security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 22, 2017. On December 15, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (Exec Or.) 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 27, 2018,¹ and elected to have his case decided on the administrative (written) record, in lieu of a hearing. On March 12, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on March 27, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 3) are the pleadings in the case. Item 2 is a procedural document. Items 4 through 6 are admitted into evidence without objection. The case was assigned to me on June 27, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.f, and ¶ 2.a, without explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He has two prior marriages, and two grown children. He has a high school diploma and technical training. He has not previously held a security clearance. (Item 4)

From 1997 to 2013, Applicant owned and operated his own business as a videographer and photographer. From February 2013 to July 2013, he worked in that role for a company in the aerospace industry. He reported on his SCA that he was terminated from that job as retaliation for whistleblowing. Applicant was then unemployed until February 2015. He then worked as a technician in the aerospace industry, until April 2016. From April 2016 to April 2017, he worked outside the defense industry. He took his current position, with his employer and clearance sponsor, in April 2017. (Item 4)

When Applicant submitted his SCA, in June 2017, he disclosed extensive details about his job termination in February 2015, and the lawsuit he filed as a result. (Item 4 at 19-21, 41-42). In answering questions on his SCA about his financial record, he did not disclose any delinquent debts or tax liens. (Item 4 at 40)

During Applicant's September 2017 background interview, he was confronted with his credit report, from July 2017. (Items 5, 6) Applicant's credit report lists an unreleased federal tax lien for \$611,000, filed in December 2008 (SOR ¶ 1.a), and an unreleased state tax lien for \$133,000. (SOR ¶ 1.b) The credit report also lists two small medical debts in collection (SOR ¶ 1.c for \$300, and ¶ 1.e for \$108) as well as a small past-due insurance debt (SOR ¶ 1.d for \$145). (Items 1, 3, 5, 6)

Once confronted about them, Applicant explained in his background interview that the tax liens arose after he sold a business in 1997. He said he had been unable to make payments towards the liens. Applicant believed that the other small debts were related to injuries suffered on the job from which he was terminated in 2013. (Item 6)

¹ Applicant dated his SOR response "January 27, 2017" by mistake.

The Government alleged the tax liens (§§ 1.a and 1.b) and the three small debts (SOR §§ 1.c, 1.d and 1.e) as outstanding financial security concerns, since they remain unresolved. Applicant admitted the Guideline F allegations without further comment. (Item 2) He did not respond to the FORM, so he offered no information or documentation to mitigate these debts.

Under Guideline E, the Government alleged that Applicant deliberately failed to disclose the two tax liens, both issued in 2008, in answering questions on his SCA about financial delinquencies involving enforcement (Item 1 at SOR § 2.a, referencing Item 4 at 40) Applicant admitted SOR § 2.a without further comment. (Item 2) Applicant did not respond to the FORM, so he offered no mitigating information.

The “enforcement” questions on Applicant’s SCA, as referenced in SOR § 2.a, include the following:

Section 26 – Financial Record: Delinquency Involving Enforcement

Other than previously listed, have any of the following happened to you? . . . In the past seven (7) years, you had a lien placed against your property for failing to pay taxes or other debts. . . . [and] You are currently delinquent on any Federal debt. . . .²

Both tax liens alleged were issued in 2008 – more than seven years before Applicant submitted his SCA in 2017. SOR § 1.b, a state tax lien, is not a Federal debt. That debt need not have been disclosed in either respect. SOR § 1.a, however, is a federal tax lien, so it was a Federal debt applicable to this question, and disclosure was required.

Policies

It is well established that no one has a right to a security clearance.³ As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁴

The adjudicative 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

² Item 1. (The SCA question in SOR § 2.a also references delinquent alimony, child support, and judgments, none of which are applicable here).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁴ 484 U.S. at 531.

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, 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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. . . .

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.⁵

⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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
- (g) . . . failure to pay annual Federal, state or local income tax as required.

Applicant owes several hundred thousand dollars in past-due taxes as a result of two outstanding tax liens. Three other, much smaller, debts are also unresolved. AG ¶¶ 19(a) and 19(c) therefore apply. According to Applicant's interview summary, the tax liens relate to the sale of a business in 1997. It is not established that they are for past-due income taxes, as required by the specific language of AG ¶ 19(g). AG ¶ 19(g) is therefore not established.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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.

The tax liens at SOR ¶¶ 1.a and 1.b were issued in 2008. They relate to the sale of Applicant's business, in 1997. Nevertheless, they remain outstanding and unresolved delinquent debts. It is well established that an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.⁶ AG ¶ 20(a) does not apply.

⁶ See, e.g., ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016).

Applicant admitted the financial allegations without further comment. He offered no mitigating evidence. No other mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 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:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

Under Guideline E, the Government alleged that Applicant deliberately failed to disclose SOR ¶¶ 1.a and 1.b on his June 2017 SCA, in response to certain financial questions about enforcement. Both tax liens alleged were issued (“placed against [Applicant’s] property”) in 2008 – more than seven years before Applicant submitted his SCA in 2017. Thus, Applicant was not required to disclose either tax lien, per the wording of the tax lien question alleged in SOR ¶ 2.a.

However, SOR ¶ 1.a, as a federal tax lien, is a Federal debt. Applicant had a duty to disclose it in answer to the question asking if he was “currently delinquent on any Federal debt,” as referenced in SOR ¶ 2.a. Applicant admitted that he deliberately failed to do so. AG ¶ 16(a) therefore applies to Applicant’s failure to disclose SOR ¶ 1.a on his 2017 SCA.

SOR ¶ 1.b, a state tax lien, is not a Federal debt. Applicant had no duty to disclose it in answering that portion of the financial enforcement questions on his June 2017 SCA. Despite Applicant’s unqualified admission to SOR ¶ 2.a, AG ¶ 16(a) does not apply to the portion of SOR ¶ 2.a relating to the state tax lien. No other falsifications are alleged.⁷

⁷ Applicant’s SCA also contains the following question: **Taxes: In the past seven (7) years**, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance.” Applicant answered “No,” and thereby failed to disclose either the Federal or the state tax lien, both of which were outstanding during all of the seven years which preceded Applicant’s June 2017 SCA. (Item 4 at 39) Falsification of that question, however, is not alleged in the SOR, and I have not considered it as disqualifying conduct.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken 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.

Applicant admitted SOR ¶ 2.a without further comment. He offered no mitigating evidence. No mitigating conditions apply.

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(a), 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.

Applicant admitted all the SOR allegations without further comment. He therefore offered no mitigating evidence. He owes several hundred thousand dollars in outstanding, unresolved state and federal tax debt. He offered no mitigating evidence, and offered no information about his efforts to resolve the debts. Applicant also admitted that he

deliberately failed to disclose his federal debt, as required, on his SCA. Applicant's finances, taxes, and his lack of candor to the Government remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, Personal Conduct.

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.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge