



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-00199
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

11/30/2018

Decision

HOGAN, Erin C., Administrative Judge:

On April 17, 2018, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On May 7, 2018, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 5, 2018. The case was assigned to another administrative judge on August 9, 2018. A notice of hearing was issued on September 14, 2018, scheduling the hearing on October 3, 2018. The case was transferred to me on October 2, 2018. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered seven exhibits which were admitted as Applicant Exhibits (AE) A – G. The record was held open to allow Applicant to submit additional documents. He timely submitted documents which were admitted as AE H. The transcript (Tr.) was received on October 11, 2018.

Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 54-year-old employee of a DoD contractor seeking to maintain a security clearance. He has worked for his current employer since May 2017. Prior to his current job, he has worked for numerous DoD contractors. He has held a security clearance since 2008. The highest level of education Applicant has achieved is a bachelor's degree. He is married and has two sons, ages 27 and 23. (Tr. 8-9, 56-58; Gov 1)

On April 29, 2016, Applicant submitted a security clearance application as part of a periodic reinvestigation. (Gov 1) A subsequent security clearance background investigation resulted in the following SOR allegations: a \$13,499 delinquent federal tax debt for tax year 2008 (SOR ¶ 1.a: Gov 2 at 8-11); a \$38,708 delinquent federal tax debt for tax year 2009 (SOR ¶ 1.b: Gov 2 at 12-13); an \$11,194 delinquent federal tax debt for tax year 2011 (SOR ¶ 1.c: Gov 2 at 15-16); a \$19,487 delinquent federal tax debt for tax year 2013 (SOR ¶ 1.d: Gov 2 at 18-19); and Applicant is alleged to have failed to pay his state income taxes for tax years 2008 and 2009. (SOR ¶ 1.e: AE F).

Additional allegations include: three loans from a credit union placed for collection in the respective amounts of \$9,578; \$2,780; and \$1,937 (SOR ¶¶ 1.f, 1.g and 1.h: Gov 3 at 2; Gov 4 at 11, 13). Applicant filed for Chapter 13 bankruptcy in November 2007. The bankruptcy was converted to a Chapter 7 bankruptcy in December 2007. Applicant's debts were discharged in May 2008 (SOR ¶ 1.i: Gov 4 at 5; Gov 5); Applicant filed a Chapter 7 bankruptcy in August 1997 which was discharged in December 1997 (SOR ¶ 1.j: Gov 6).

In 1997, Applicant filed for bankruptcy, in part, because of his position as a contractor. Applicant and his wife had to sell their house. They made no profit from the sale of their home. In 2007, Applicant filed for bankruptcy because he was unemployed for about a year. They initially filed under Chapter 13, but converted it to a Chapter 7 bankruptcy. Applicant listed \$661,517 in assets and \$790,238 in liabilities. The household monthly income was \$6,945. The average monthly expenses were \$10,390.94. Applicant's household had a negative monthly balance of \$3,445. Their largest debt was their mortgage. The home was foreclosed in conjunction with the bankruptcy. (Tr. 27 – 30; Gov 5; Gov 6)

Regarding the delinquent federal tax debts alleged in SOR ¶¶ 1.a – 1.d, Applicant was unable to pay his federal tax debts for tax years 2008 and 2009 because he was unemployed. Applicant's wife filed the income tax returns. She testified that for tax years 2011 and 2013, she did not file a 1099 for her husband's contracting position because she misunderstood the filing procedures for contract employees. As a result, they incurred large tax debts.

Applicant and his wife entered into several installment agreements with the Internal Revenue Service (IRS) beginning in 2009. The agreements covered tax years 2008, 2009, and 2011. He and his wife paid \$500 a month toward the federal tax debt. In April 2013, they stopped making payments towards the payment plan and hired a tax expert to submit an Offer in Compromise to the IRS. Mr. N., their tax expert, submitted an Offer in Compromise to the IRS. The Offer in Compromise was denied in December 2013. In February 2014, Mr. N. offered to file another Offer in Compromise on their behalf free of charge. In September 2016, Applicant and his wife discovered that an Offer in Compromise was never submitted. At the close of the record, Applicant and his wife were researching various tax consultants with the intent to hire one to submit another Offer in Compromise. Aside from the IRS claiming their tax refunds, no payments were made towards the federal tax debt. In September 2017, they filed suit in small claims court against Mr. N. for failing to represent them. They were asking for the return of the \$1,900 fees they paid him to submit the Offer in Compromise. (Tr. 34-41; AE A; AE B; AE C; AE E)

Applicant claims to have paid the state income tax debt owed for tax years 2008 and 2009. A June 2015 statement from the state department of revenue indicates that their 2014 tax refund was applied towards their state tax debts for tax years 2010 and 2008. The balance on the 2008 state tax debt of \$641 was paid in full. Approximately \$1,199 of the 2014 state tax refund was applied to the 2010 state tax debt leaving a balance of approximately \$174. No proof was provided that the remaining \$174 balance was paid. Applicant's wife pays all of the bills as well as the taxes. Since 2010, they have had a tax preparer file the tax returns. (Tr. 31-33; AE F)

Applicant's wife took out the three credit union loans (SOR ¶¶ 1.f, 1.g. 1.h) that were placed for collection. She was an employee of the federal agency where the credit union was located. She took out loans for expenses related to purchasing a house in 2011. Applicant was unemployed from 2013 to 2014. His wife was laid off in 2013 and was unemployed for a year and a half. She could not afford to pay the loans, so they were placed for collection. Once they became employed, Applicant's wife attempted to contact the credit union and offered to enter into a repayment plan to pay off the loans. She included a check in her letter. The credit union mailed back the check and informed her that they would not accept the check because all three loans were charged off. Applicant was listed as a co-owner on the accounts. No additional payments were made towards this debt. No attempts were made to find the current owner of the debt. (Tr. 41-43; AE G)

After the hearing, Applicant provided a monthly budget. His and his wife's combined net monthly income is \$8,386. Their total monthly expenses are \$6,194.74. They have \$2,191.26 left over each month after expenses. During the hearing, Applicant's wife testified that they provide \$850 a month to their son who is in college and \$800 a month to their son who is currently unemployed. When asked about the status of the budget, Applicant's wife claimed that she would find ways to cut corners. When her son finds employment, they will be in a better financial position. She does not believe that they need to attend financial counseling. They do not splurge on expenses.

They don't gamble. She claims it is hard to recover from 14 months of unemployment. Applicant currently earns \$113,000 annually. His wife currently earns \$45,000 annually.

Whole-Person Evidence

Ms. F., Applicant's former supervisor from November 2013 to August 2015, wrote a letter on his behalf. She worked with Applicant for seven years. She states that Applicant has integrity. He is dedicated to his work and is "quite honest, professional, and reliable." Applicant is a model team member. (AE H at 4) A performance evaluation from 2012 stated Applicant met all objectives. (AE H at 5-11)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access 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, 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 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 the applicant may deliberately or inadvertently fail to protect or 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.

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).

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. 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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (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 has a long history of financial problems including two bankruptcy discharges under Chapter 7 in 1997 and 2007. He owes the IRS approximately \$82,888 for tax years 2008, 2009, 2011 and 2013. He owed state income taxes for tax years 2008 and 2010. The SOR also alleged three charged-off accounts owed to a

credit union, with a total approximate balance of \$14,295. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

With regard to Applicant's federal tax debts, the emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions 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; 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.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. None of the debts alleged in the SOR have been resolved.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his periods of unemployment and his wife's periods of unemployment. These circumstances were beyond Applicant's control and adversely affected his ability to pay his bills. However, this mitigating condition is given less weight because Applicant has not demonstrated he acted responsibly under the circumstances. While Applicant and his wife were on an installment agreement with the IRS, they stopped the installment agreement. They retained a tax attorney to submit an Offer in Compromise to the IRS. The first request was denied in December 2013. In 2016, they discovered their attorney did not timely file a second Offer in Compromise so they terminated his services. In 2017, they took him to small claims court. Since 2016, Applicant had two years to work out a payment plan with the IRS or attempt to submit another Offer in Compromise. While Applicant claims that he is taking his time hiring another tax attorney, the length of his inaction suggests procrastination as opposed to due diligence towards resolving his federal income tax problems. For this reason AG ¶ 20(b) is given less weight.

AG ¶ 20(c) does not apply. Applicant did not take a formal financial counseling course. His debts remain unresolved.

AG ¶ 20(d) does not apply because Applicant has not demonstrated a good-faith effort towards resolving his delinquent debts. While Applicant intends to pay his federal tax debt, he has not made a payments to the IRS since he stopped making payments on his payment plan in April 2013, with the exception of his federal income tax refunds being applied towards his federal tax debts by the IRS. Applicant did not actively monitor the progress of the Offer in Compromise even when he hired the tax attorney. The first Offer in Compromise was denied in December 2013. His tax attorney offered to submit another Offer in Compromise in early 2014. Several years passed before

Applicant and his wife discovered in 2016 that a second Offer in Compromise was not submitted. Since that time, they have not followed up with another Offer in Compromise or an installment agreement with the IRS. Applicant states that he intends to hire another tax attorney to submit an additional Offer in Compromise on his behalf. A promise to pay in the future is not sufficient to mitigate security concerns raised under the financial considerations. Applicant has not shown that he was making a good-faith effort to resolve his federal tax debts.

AG ¶ 20(g) does not apply because Applicant's federal tax debts remain outstanding.

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 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 considered Applicant's favorable employment history as a federal contractor. I considered Applicant's and his wife's periods of unemployment. I also considered Applicant's history of financial problems since 1997 to include two bankruptcies and substantial federal income tax debt. As a security clearance holder, he should have taken a proactive approach towards resolving his federal income tax debts. For several years now, he has earned sufficient money to enable himself to enter into a payment plan with the IRS or hire an attorney to submit an Offer in Compromise. No steps were taken to resolve his federal tax debts. Security concerns under financial considerations are not 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
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Subparagraphs 1.a -1.j	Against Applicant
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Conclusion

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

ERIN C. HOGAN
Administrative Judge