



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



In the matter of:)	
)	
)	ISCR Case No. 07-07030
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Applicant's Wife, Personal Representative

April 3, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 1, 2006. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. The action was taken under Executive Order 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), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On October 5, 2007, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on December 28, 2007. The case was assigned to another administrative judge on January 3, 2008. On January 9, 2008, a Notice of Hearing was issued, scheduling the hearing for January 30, 2008. The case was transferred to me on January 16, 2008. On January 22, 2008, a Notice of Hearing was issued, rescheduling the case for February 7, 2008. The case was heard on that date. The Government offered five exhibits which

were admitted as Government Exhibits (Gov) 1 – 5 without objection. The Applicant offered 19 exhibits which were admitted as Applicant Exhibits (AE) A – S without objection. Applicant and his wife, who also served as his personal representative testified. The record was held open until March 1, 2008, to allow Applicant to submit additional evidence. On March 4, 2008, Applicant requested an additional delay and the record was held open until March 21, 2008. Applicant timely submitted a two-page document which was admitted as AE T without objection. The transcript was received on February 19, 2008. The record closed on March 21, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

Applicant did not receive the Notice of Hearing within 15 days as required by ¶ E3.1.8 of the Directive. He waived the 15 day advance notice. (Tr at 7.)

On February 4, 2008, the Government submitted a motion to amend the SOR by adding the following subparagraph under Guideline F:

1.h. A California State Tax Lien was filed against you on or about September 13, 2007, in the approximate amount of \$9,456. As of February 4, 2008, this lien has not been satisfied.

Applicant was served a copy of the motion to amend. At hearing, Applicant did not object to the motion. The SOR was amended. Applicant admitted to the new allegation. (Tr at 15-16.)

Later in the hearing, the Government motioned to amend the SOR in accordance with ¶ E3.1.17 of the Directive to add the following allegation:

1.i. You failed to file federal and state income tax returns for tax years 2002 through 2006.

Applicant did not object and the motion to amend was granted. (Tr at 107-108.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g, and denied the allegation in ¶ 2.a.

Applicant is a 45-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a local area network administrator with the defense contractor since September 2005. He is married and has three children, a daughter, age 20, and a son, age 25, from a prior marriage, and an eight-year-old daughter with his current wife. (Tr at 21; Gov 1.)

On February 1, 2006, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the question 27(c) "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?", Applicant answered "No." In response to questions in Section 28 of e-QIP related to financial delinquencies, Applicant answered "Yes" and listed a credit card with a \$10,000 balance that is alleged in SOR ¶ 1.b. (Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$221 account that was more than 180 days delinquent (SOR ¶ 1.a); a \$10,628 charged off credit account (SOR ¶ 1.b); a \$264 account that was more than 180 days delinquent (SOR ¶ 1.c); a \$3,058 state tax lien recorded against Applicant for tax year 2002 (SOR ¶ 1.d); and a \$5,183 state tax lien recorded against Applicant for tax year 2003 (SOR ¶ 1.e). (Gov 3.) A credit report, dated February 4, 2008, revealed an additional state tax lien in the amount of \$9,456 filed against Applicant on September 13, 2007. (Gov 4.)

In February 1997, Applicant and his wife filed for Chapter 7 bankruptcy protection. His dischargeable debts were discharged in May 1997. (¶¶ 1.f and 1.g; Gov 5.) State and federal tax debts were listed in the bankruptcy. Applicant's wife states that these were her tax debts which existed prior to their marriage in June 1996. (Tr at 49-50.) They did not attend any financial counseling in conjunction with the bankruptcy. (Tr at 50.)

The bankruptcy was the result of an on-the-job injury suffered by Applicant in 1995. He was out of work due to the injury for approximately a year and a half from September 1996 to December 1998. He had surgery in September 1997. Applicant's income went from \$60,000 per year to \$200 per week during this time. (Tr at 39-41; Gov 1, section 11, items 11 and 12.)

After his injury, Applicant attended training in the computer career field. He completed school in November 1998. He began his new career field at the bottom level doing temporary work for various agencies. He took six months off after his daughter was born in April 1999 because his wife earned more income at the time. (Tr at 44.) Between January 2001 and December 2004, he had no breaks in employment. (Tr at 45.)

In 2002, Applicant's father-in-law was diagnosed with lung and brain cancer. He resided in another state. In December 2004, Applicant and his wife moved to that other state to care for him. His father-in-law passed away in December 2004 but they still followed through with their move. After moving, Applicant was unemployed for several months between January 2005 to April 2005. He worked for two other companies before obtaining a job with his current employer in September 2005. (Tr at 45-46, 105-106; Gov 1 at Section 11.)

In his response to interrogatories, dated June 25, 2007, Applicant indicated that he and his wife were taking out a home equity loan in order to pay the debts off. (Gov

2.) They refinanced the home in the amount of \$50,000 in September 2007. They used the money to resolve several of the debts alleged in the SOR and pay down credit card balances. Approximately \$18,000 is left over which they intend to apply towards resolving their tax issues. (Tr at 102-103; AE G; AE H.) Applicant currently has approximately \$1,500 to \$1,800 left over each month after expenses. (Tr at 99.)

The current status of the debts are:

SOR ¶ 1.a: Gas bill for \$221. Account was settled and paid in full on October 3, 2007. (Tr at 55-56; AE D; AE N; Gov 4 at 1.)

SOR ¶ 1.b: \$10,628 charged off credit card account. Account was settled for \$9,091 on September 17, 2007. (Tr at 56-57, 62-63; AE C; AE F; AE M; Gov 4 at 2.)

SOR ¶ 1.c: \$264 account. Applicant disputes this account. He does not recognize the account. He formally disputed the account to the credit bureaus on October 5, 2007. He has not received a response to the formal dispute. (Tr at 63 – 67; Gov 3 at 5; AE E; AE F.)

SOR ¶ 1.d: \$3,058 state tax lien for tax year 2002. Applicant's wife arranged to have an accountant friend do their taxes for tax years 2002 and 2003. They believed that they were under an extension. They discovered in 2003 that the accountant did not file their taxes. On September 17, 2007, they paid the state tax lien. (Tr at 68-75; AE B; AE K.) They still have not filed tax returns for 2002 or 2003 but anticipate a refund when they file. (Tr at 80-81.)

SOR ¶ 1.e: \$5,183 state tax lien for tax year 2003. Explanation same as the immediate paragraph above pertaining to SOR ¶ 1.d. On September 17, 2007, they paid the state tax lien. (Tr at 68-75; AE B; AE K.) They still have not filed tax returns for 2002 or 2003 but anticipate a refund when they file. (Tr at 80-81.)

SOR ¶ 1.h: \$9,456 state tax lien for tax year 2004. They have not filed tax returns for tax year 2004. The state tax lien has not been resolved. (Tr at 75-78; AE S.)

SOR ¶ 1.i: Applicant admits that they have not filed state or federal tax returns for tax years 2002, 2003, 2004, 2005, and 2006. (Tr at 78-88.) After the hearing, Applicant submitted a document indicating that they retained a certified public accountant on March 11, 2008, to handle all tax issues. (AE T.)

Applicant states that he was never aware of the tax issues until they were addressed during his background investigation. The state tax liens were first raised in June 2007, when Applicant was sent interrogatories to answer pertaining to the tax issue. His wife later informed him of the other tax issues. (Tr at 72, 82-88.) Applicant's wife accepts full responsibility for the tax problems. She claims that she was responsible for filing and paying the taxes and kept telling Applicant that everything was fine. (Tr at 20, 76.)

Applicant's recent performance evaluations indicate that he meets or exceeds standards. (AE P.) The facilities manager of one of Applicant's former employers has known Applicant for several years and states he has a "high degree of integrity, responsibility, and ambition." Other co-workers describe him as dependable, honest and hard working. Three close personal friends wrote letters on his behalf describing similar attributes. (AE Q.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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 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 Executive Order 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).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); FC DC ¶19(c), (a history of not meeting financial obligations); and FC DC ¶ 19(g) (failure to file annual Federal, state, or local income tax returns or the fraudulent filing of the same) apply to Applicant’s case. Applicant has a history of not meeting financial obligations. In 1997, he filed for Chapter 7 bankruptcy. After his bankruptcy, Applicant incurred three delinquent consumer accounts with an approximate balance of \$11,113. In addition to the consumer debt Applicant incurred three state tax liens for tax years 2002, 2003, and 2004, totaling approximately \$17,697. There may be additional tax debt. It was revealed during the hearing that Applicant and his wife have not filed federal and state tax returns for tax years 2002, 2003, 2004, 2005 and 2006.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) is not applicable. Applicant has a history of financial irresponsibility going back to 1997. Although Applicant resolved the debts alleged in SOR ¶¶ 1.a 1.b, 1.d, and 1.e and formally disputes the debt alleged in SOR ¶ 1.c, his tax issues remain unresolved. He still owes the \$9,456 tax lien for tax year 2004. Although he became aware of the tax issues in June 2007, his state and federal tax returns for tax years 2002-2006 were not filed at

the close of the record. After the hearing, an accountant was retained to assist in resolving his tax issues but no steps had been taken to resolve the matter.

FC MC ¶ 20(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), and the individual acted responsibly under the circumstances) applies, in part, due to Applicant's period of unemployment as a result of his on-the-job injury which resulted in the Chapter 7 bankruptcy. However, it cannot be concluded that he acted responsibly under the circumstances with regards to his federal and state income taxes. Applicant's wife accepts full responsibility for the tax problems. However, Applicant could have taken more proactive steps to insure his state and federal income taxes were being filed. For this reason, FC MC ¶ 20(b) is given less weight.

FC MC ¶20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) does not apply. There is no evidence that Applicant attended financial counseling. While several of the debts are resolved, Applicant's state and federal tax returns for tax years 2002-2006 were not filed at the close of the record and it is unlikely the tax issues will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, in part, with respect to SOR ¶¶ 1.a. 1.b. 1.d, and 1.e. However, Applicant's state and federal tax problems remain. The \$9,456 state tax lien alleged in SOR ¶ 1.h was not resolved even though Applicant apparently had money available from his home refinancing. Applicant became aware that he had tax issues in June 2007. He took no action until after the close of the record, more than five months later, to retain an accountant to assist with his tax problems.

FC MC ¶20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) does not apply. Although Applicant disputes the debt alleged in SOR ¶¶ 1.c, he did not formally dispute the debt until after the SOR was issued. This issue remained unresolved at the close of the record.

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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 information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal conduct concerns are raised because Applicant failed to list his state tax liens for tax years 2002 and 2003 in response to section 27(c) on his e-QIP application. Personal Conduct Disqualifying Condition ¶ 17(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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) potentially applies to this allegation. Applicant claims he was unaware of the tax liens. He claims he was not aware of the tax issues until he was sent interrogatories in June 2007. There is nothing in the record evidence indicating that he was aware of the state tax liens when he filled out the e-QIP application on September 14, 2006. I find Applicant did not deliberately withhold this information when filling out his security clearance questionnaire. I find for Applicant with respect to the personal conduct concern.

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(a): "(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) 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 common sense 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 work evaluations, reference letters, and his efforts to resolve some of the accounts. I also considered Applicant's past financial problems which resulted in his filing for Chapter 7 bankruptcy in 1997 and his unresolved state and federal tax issues. Despite, his wife's claims that she is responsible for the tax problems, Applicant should have been more proactive in ensuring that his state and federal tax returns were filed. Once he discovered the tax issues in June 2007, he took no steps to file his federal and state tax returns over a period of five months. He did not retain an accountant to assist with the matter until after the hearing. At the close of the record, the state and federal tax returns for tax years 2002-2006 still had not been filed.

Overall, the record evidence leaves me with 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 financial considerations.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge