



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



In the matter of:)	
)	
)	ISCR Case No. 14-02471
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On September 5, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on May 28, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated April 17, 2015¹. Applicant received the FORM on April 22, 2015. Applicant submitted documentation in response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted six items for the record.

Findings of Fact

In his answer to the SOR, Applicant denied all SOR allegations under Guideline F (financial considerations) with the exception of 1.h. (Item 1)

Applicant is 49 years old. He received his undergraduate degree in 1996 and his graduate degree in 1998. Applicant is single and has one child. He has been employed with his current employer since April 2010. (Item 3) He has held a security clearance since 2003.

The SOR alleges five collection accounts, and failure to file federal income tax returns for tax years 2011 and 2012. In addition, the SOR alleges a federal tax lien entered in 2010 in the amount of \$24,882, and a state tax lien from 2010 in the approximate amount of \$11,684. Applicant filed a petition for a chapter 13 bankruptcy in 2001. (Item 1)

Applicant states the failure to file Federal and state tax returns for the years mentioned is the result of his father's death in 2006. (Item 3) In his 2014 investigative interview, Applicant stated that he filed for an extension but forgot to file the taxes. He explained that he became involved with his father's estate and the probate process.

Applicant filed his 2011 and 2012 federal income tax returns in January 2014 and provided documentation to support the claim. (SOR 1.b)

Applicant explained that the 2001 Chapter 13 bankruptcy was dismissed, due to defaulting on payments when he became unemployed. He stated that he told his security officer in 2003 that he had defaulted on the payments and that the petition was dismissed. He presented two checks in the amount of \$1,015 and \$1,257 payable to the IRS, which he stated paid the remaining balance on the bankruptcy debts. (SOR 1.a) He referred to the fact that this was a condition precedent to getting a security clearance. (Answer to SOR)The checks that he submitted do not establish that the bankruptcy debts were discharged.

As to SOR 1.c, Applicant states that he has been making payments on the federal tax lien from 2010 in the amount of \$24,882. He reports that an April 2015 statement reflects that there is a balance of \$16,886 and that he is currently paying the remaining balance. He refers to documentation that proves that he has been paying on the lien. However, there is nothing in the file to reflect this payment plan.

As to SOR 1.d, Applicant's 2010 state tax lien in the amount of \$11,684, he states that he has a balance of \$3,344.43. He submitted a January 21, 2015 notice showing that for tax year 2006, payments were made in the amount of \$12,660 and the balance due is \$3,344.43. He did not submit any current payments or receipts.

As for the collection accounts in 1.e and 1.f, Applicant denied them because they were delinquent accounts in his father's estate. Applicant assumed responsibility for the accounts but in response to the FORM, he states that both are paid in full. He referred to documents that were not in the record to prove that he paid them.

Applicant states that he now has two tax liens, totaling approximately \$20,230 that he has been making payments and will continue to do so. He did not provide sufficient evidence to confirm his assertion.

Applicant claims that the medical account (\$1,800) in 1.g has been paid in full. He submitted bank statements that he paid \$450 and \$1,400 in February 2014. He stated that he was unaware of the bill.

Applicant admitted that he owed the debt in 1.h and arranged for two payments of \$1,000 on October 31, 2014 and a payment of \$928 to pay the account in full. There was no additional documentation in the file or response to FORM to corroborate.

Applicant denied that he owed an account in 1.i. However, he stated that it has been paid in full as of February 7, 2014. He provided his bank statements from 2014 to confirm that the account has been paid.

Applicant states that he submitted documents with his answer to the SOR in May 2015. He submitted some documents but none that correspond to the payments that he noted for the accounts as listed above. The record is incomplete to show that Applicant has made some payments as he claimed.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

protect classified information.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he did not file his taxes for a number of years. His credit reports confirm delinquent debts. He filed for a 2001 bankruptcy. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. FC DC 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) is also applicable. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” Applicant still has unresolved debts. He filed his tax returns in 2014 after the Government’s investigative process. He has not provided evidence of satisfaction or recent payments for some accounts. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant has given his father’s death in 2006 as a reason for not filing his taxes and having delinquent debts. His father’s death was beyond his control. However, he presented no evidence that he has acted responsibly. He just filed the 2011 and 2012 tax returns. He states that he intends to continue to make payments on accounts, but provided no supporting documentation. He has not acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. FC MC AG ¶ 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.

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 an 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) 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 49 years old. He is single and has one child. He has been employed with his current employer since 2010. He has held a security clearance since 2003. The record does not provide any details about his duty performance.

Applicant filed his 2011 and 2012 income tax returns in 2014. He said he requested an extension and then forgot to file. He did not do so until after the security clearance process began. Applicant provided some information on accounts that he paid. He has not provided sufficient documentation concerning the tax liens. I have doubts about his judgment and reliability. Any doubts must be resolved in favor of the Government. Applicant did not persuade me that he refuted or mitigated the Government's case concerning 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge