



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



In the matter of:)	
)	
)	ISCR Case No. 14-03165
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

September 25, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 55-year-old employee of a defense contractor. Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On October 24, 2014, the Department of Defense 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), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on November 7, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to another

administrative judge on March 2, 2015, and then reassigned to me on June 11, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 8, 2015, scheduling the hearing for August 6, 2015. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on August 14, 2015. The record was left open for Applicant to submit additional exhibits. On August 11, 2015, Applicant presented additional exhibits marked AE G through AE I. Department Counsel had no objections to AE G through AE I and they were admitted. The record then closed.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his employer for the past five years. He is married to his second wife. He has one adult daughter from his first marriage. (GE 1; Tr. 39-40.)

As stated in the SOR, Applicant was alleged to be indebted to the Federal government for a tax lien entered against him in 2011 in the approximate amount of \$120,640. Applicant denied this debt, with explanations. This debt is found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5.)

Prior to his position with his current employer, Applicant worked in a job that required him to travel abroad for long periods of time. In 2006 Applicant was abroad for work shortly after he and his first wife sold their residence and incurred a substantial, taxable profit from its sale. He had sufficient funds in his bank account to resolve the tax incurred from the sale. He also took deductions for work done to the house prior to its sale. He did not have the ability to monitor his bank account abroad and did not know that his then-wife drained his entire account through nefarious activities that eventually led to her arrest. Applicant separated from his wife after he returned from abroad. He lost the documentation of the deductions during the process. They were audited and found to owe the Internal Revenue Service (IRS) approximately \$250,000. Their divorce was not finalized until November 2010. His wife was ordered to pay 50% of the tax liabilities as part of their divorce decree, but she has not done so. Applicant was left to resolve the resulting tax obligations on his own. (AE C; Tr. 26-31, 43.)

Applicant hired a tax advisor to help him negotiate with the IRS. In 2010 he applied for, and received, limited innocent spouse relief, due to some of his then-wife's criminal activities and the resulting tax consequences. However, he was found to owe approximately \$120,640 with fines and fees for the 2006 through 2009 tax years, largely attributable to the profits from the sale of his prior residence and the lack of documentation to support deductions. A lien was filed against him for \$120,640 in 2011. His IRS transcripts reflect Applicant continued to negotiate with the IRS and established an installment agreement to resolve his Federal tax debts for tax years 2006 through 2009 through monthly payments of \$550. He has been making the agreed upon monthly

payment to the IRS in a timely manner since April 2013. His Federal tax liability has decreased to \$78,599.60. The majority of his debt is for the 2006 tax year, although he also owed approximately \$3,000 for both 2008 and 2009. He has fully resolved his tax obligation for 2007. He intends to continue to make payments to the IRS on his debt until this debt is resolved. (AE B; AE C; AE D; AE F; AE G; AE I; Tr. 37-58.)

In addition to his Federal tax obligation, Applicant incurred delinquent state tax obligations through his ex-wife's nefarious activities. In 2014 he fully resolved a \$44,781 tax liability owed to his state tax authority for the tax years 2006, 2007, 2008, and 2011. (AE C; AE E; Tr. 32.)

Applicant lives frugally so that he can resolve his tax issues. He and his current-wife reside in a one-room studio apartment. His August 2015 credit report reflects no consumer credit delinquencies. He testified that his ex-wife left him with substantial debt, but that he was dedicated to resolving it. He increased his credit score to 750, from his low (as a result of his ex-wife's spending) of 350. His landlord considers him to be a good tenant and noted he pays rent on time. (AE A; Tr. 33, 37-38.)

Applicant is well respected by those that know him. He is known by his friends and colleagues to be kind, honest, and forthright. His annual performance ratings reflect he "exceeds" or "far exceeds" all requirements. He has received numerous certificates in recognition of his exceptional on the job performance. (AE H.)

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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s delinquent debts began accumulating in 2006 when his then wife spent all of the proceeds from the sale of their prior residence, unbeknownst to Applicant. Their tax debts increased and accrued interest and penalties through 2012.

The evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Three Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) focuses on delinquencies that result from events that an applicant could not control. Several events affected Applicant's ability to maintain financial solvency, including his then-wife's nefarious activities, her excessive spending spree, and his divorce. These events made it difficult for Applicant to address his Federal income tax liabilities for 2006 through 2009. However since 2011, Applicant acted responsibly under the circumstances by addressing his tax liabilities in a responsible manner. He first negotiated with the IRS for innocent spouse tax relief. When he was found to have remaining unresolved tax issues after innocent spouse tax relief was applied, he began repaying his Federal tax liability under an agreement with the IRS. He has consistently made payments on that agreement for over two years. His delinquent tax obligation has decreased during the past two years from approximately \$120,640 to \$78,599.60. While he has a long way to go to fully resolving his Federal tax obligation, he credibly testified that he is committed to fully resolving this obligation, as he did his state income tax obligation for the same period. He lives frugally in a one-room studio, in order to have funds to repay his Federal tax obligation. Under the circumstances, he is acting responsibly. AG ¶ 20(b) applies.

Applicant sought financial guidance and counseling about how to handle the debts from a tax advisor that helped him file for innocent spouse relief. Applicant initiated a good-faith effort to repay his debt through payments and his Federal tax debt is under control. It is consistently being repaid in accordance with his installment agreement. Moreover, Applicant is incurring no additional delinquent debt of any nature. Applicant brought his financial situation under control. AG ¶¶ 20(c) and 20(d) 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 relevant 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.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's financial difficulties were caused by factors that were beyond his control. He is an honorable man and has diligently worked over the past several years to pay his tax debts. He resolved his state tax obligation and has a history of making regular payments under his installment agreement. He lives frugally. He does not have any delinquent consumer accounts. It is unlikely that Applicant will incur future financial problems.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person analysis for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge