



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



In the matter of:)
)
) ISCR Case No. 14-03562
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guidelines F (financial considerations) and E (personal conduct). Clearance is denied.

Statement of the Case

On September 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant answered the SOR on October 14, 2014; November 28, 2014; December 22, 2014; and January 16, 2015; and indicated

that he did not wish to have a hearing. In Hearing Exhibit (HE) 1, Department Counsel requested a hearing on January 16, 2015. The case was assigned to me on February 2, 2015. DOHA issued a notice of hearing on February 10, 2015, and the hearing was convened as scheduled on February 25, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5. Applicant testified and submitted exhibits (AE) A through J. The record of the proceeding was left open until March 11, 2015, to provide Applicant the opportunity to submit additional matters. Applicant timely submitted AE L through R. All proffered exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 9, 2015.

Findings of Fact

Applicant, 54, has been working for various defense contractors in the same position since February 2003. He graduated from high school in 1979. He served on active duty in the U.S. Navy from 1981 to 2001, attained the grade of petty officer first class (E-6), and retired honorably. He married in 1988 and separated from his wife in 2001. He has no children. He has held a security clearance without incident since 1983.¹

Under Guideline F, the SOR alleged that Applicant failed to file his federal income tax returns for 2006 through 2010 in a timely manner (SOR ¶ 1.a); that he did not file a federal income tax return for 2011 (SOR ¶ 1.b); that he was delinquent on paying his federal income taxes for 2006 through 2010 (SOR ¶ 1.c); and that he had five other delinquent debts totaling \$15,769 (SOR ¶¶ 1.d-1.h). Under Guideline E, the SOR alleged that Applicant deliberately falsified his responses to two questions in his Electronic Questionnaire for Investigations Processing (e-QIP) dated February 6, 2013. (SOR ¶¶ 2.a and 2.b). In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.c and 2.a and 2.b. His admissions are incorporated as findings of fact.²

Federal tax allegations. As noted above, Applicant separated from his wife in 2001. As spousal support, she receives his military retirement pay. He provides her no other support. For tax year 2001 to 2005, he filed his federal income tax returns as “married filing separately.” He stated that he failed to file his 2006, 2007, 2008, 2009, and 2010 federal income tax returns in a timely manner because he did not have his wife’s Social Security number to file as “married filing jointly.” He thought that he would obtain a larger refund if he filed in that latter status. He attempted to obtain her Social Security number from the military pay office, but they would not provide that information to him. He also stated that he had no contact information for his wife so he could not obtain the information from her. He testified that he did not know if his wife had been working or filing her tax returns separately. He filed the 2006-2010 federal income tax

¹ Tr. 5-7, 34-35, 54, 61-64; GE 1, 2.

² Applicant’s Answer to the SOR; HE 2 (a supplement to Applicant’s Answer to the SOR).

returns as “married filing jointly” in November 2012 after receiving a letter from the IRS. He stated that the IRS again contacted him shortly after the filing and made him amend his filing status on the tax returns to “married filing separately.”³

In his Answer to the SOR, Applicant admitted that he was indebted to the federal government for delinquent taxes in the approximate amounts of \$5,171 for 2006; \$5,451 for 2007; \$5,122 for 2008; \$5,801 for 2009; and \$5,516 for 2010. In July 2014, he entered into an agreement with the IRS to pay \$600 per month toward his delinquent taxes for 2006 through 2011. The amount of delinquent taxes owed for 2011 is unknown. The agreement provided that the payment would be automatically withdrawn from his checking account starting in August 2014. He testified that the agreement was later expanded to include his delinquent taxes for 2012. He provided documentation proving that he has been making the \$600 monthly payment since August 2014.⁴

Applicant did not consult with a tax professional for advice on filing his federal income tax returns. He first testified that he filed his 2011 and 2012 federal income tax returns in the middle of 2013, but later testified that he filed the 2011 federal income tax return in November 2012. He delayed filing those returns because he was still hoping to obtain his wife’s Social Security number so that he could file them as “married filing jointly.” He also testified that he owed the IRS \$1,152 in past-due taxes for 2013 and that amount has not yet been included in his agreement with the IRS. In October 2014, his employer received a notice from the IRS directing that Applicant’s withholding exemptions be changed to “Single, 0.” He testified that, prior to that change, he was claiming one exemption. The change to his withholding exemptions became effective at the end of October 2014.⁵

Other delinquent debt allegations. Applicant contends that the debts listed in SOR ¶¶ 1.d-1.h are not his debts. In June 2011, the Navy notified him that his Personally Identifiable Information (PII) was potentially compromised, although there was no evidence to suggest his PII was misused. He also pointed out that one of his credit reports contained another individual’s Social Security number. Other credit reports identified him with a middle initial that does not belong to him or listed a post office box for him that he never had. He stated that he called a credit reporting bureau in February 2015 to dispute those debts. His latest credit report dated February 10, 2015, does not list any of the debts alleged in the SOR. I find in favor of Applicant on the debts alleged in SOR ¶¶ 1.d-1.h.⁶

³ Tr. 55-56, 61-70; GE 1, 2.

⁴ Tr. 50-53, 61-67; GE 2; AE A, K-R; Applicant’s Answer to the SOR; HE 2.

⁵ Tr. 48-50, 52-55; GE 2; AE J.

⁶ Tr. 34-42, 57-61; GE 2; AE B, C, F, G, I.

Falsification allegations. In his e-QIP, Applicant answered “No” to the question that asked whether he failed to file or pay federal, state or other taxes as required by law in the last seven years. He also answered “No” to the questions that asked whether, in the last seven years, he had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, cancelled for failing to pay as agreed; and had any other debt over 120 days delinquent; or whether he was currently over 120 days delinquent on any debt.⁷

At the hearing, Applicant admitted that he deliberately falsified his e-QIP when he did not disclose that he had failed to file and pay his federal income taxes as required by law. He knew that answer was false when he signed the e-QIP. He indicated that he was trying to resolve his tax filing at that time so he answered “No” to that question. He indicated that he correctly answered the e-QIP questions concerning the other alleged delinquent debts because he does not believe those debts were his responsibility.⁸

Applicant earns about \$51,000 per year in his current job. He testified that he currently had no credit cards or any delinquent debts other than the past-due taxes.⁹

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in reaching a decision.

⁷ GE 1, 2.

⁸ Tr. 67-70.

⁹ Tr. 55-57; GE 2.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required

Applicant failed to file his 2006 through 2011 federal income taxes in a timely manner as required by law and failed to pay his federal income taxes in a timely manner. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations 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), 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant's delay in filing his federal income tax returns for 2006-2011 casts doubt on his reliability, trustworthiness, and good judgment. During the period in question, he had not been communicating with his wife for years and did not know whether she was working or filing her income tax returns separately. Any attempt to file a joint federal income tax return without first coordinating with her was an irresponsible course of action. His failure to file his federal income tax returns in a timely manner was not due to a condition beyond his control. He could have continued to file his federal

income tax returns as “married filing separately” as he had done from 2001 to 2005. AG ¶¶ 20(a) and 20(b) do not apply.

Applicant filed his 2006-2011 federal income tax returns in November 2012. He owed over \$26,000 in past-due taxes for those years. In July 2012, he entered into an agreement with the IRS to pay his back taxes. Since then, he has been paying \$600 per month toward the back taxes. AG ¶ 20(d) applies to SOR ¶ 1.c. AG ¶ 20(c) partially applies.

Applicant provided sufficient evidence to establish that the debts in SOR ¶¶ 1.d-1.h are not his responsibility. AG ¶ 20(e) applies to those debts.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(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.

Applicant deliberately omitted required information from his e-QIP when he failed to disclose that he did not file or pay federal income taxes as required by law. AG ¶ 16(a) applies to SOR ¶ 2.a.

Applicant did not deliberately falsify his e-QIP when he failed to disclose the delinquent debts listed in SOR ¶¶ 1.d-1.h. He reasonably believed that those debts were not his responsibility. I find in favor of Applicant on the allegation in SOR ¶ 2.b.

Six personal conduct mitigation conditions under AG ¶ 17 are potentially applicable:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's e-QIP falsification as alleged in SOR ¶ 2.a was recent and significant. In falsifying his e-QIP, he seriously undermined the security clearance adjudication process. I find that none of the mitigating conditions apply to his falsification.

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.

My comments under Guidelines F and E are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant retired from the Navy after serving honorably on active duty for 20 years. He has held a security clearance for many years without incident. Nevertheless, he failed to show that he acted responsibly when he failed to file and pay his federal income taxes in a timely manner or when he intentionally falsified a response in his e-QIP. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant failed to present sufficient evidence to mitigate the security concerns under Guidelines F and E.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Decision

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

James F. Duffy
Administrative Judge