



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



In the matter of:)	
)	
)	ISCR Case No. 14-03609
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges he is delinquent on a home equity loan and has unpaid Federal and state income taxes due for tax years 2011 and 2012. He failed to document payment on his delinquent obligations. The financial considerations security concerns have not been mitigated. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 27, 2014, the DoD issued a Statement of Reasons detailing security concerns. On December 5, 2014, Applicant answered the SOR and elected to have the matter

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated June 25, 2015. The FORM contained six attachments (Items). On July 8, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He was informed he could submit any material he wished to be considered. His response was due August 7, 2015. No material was received. On September 21, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing the second mortgage on a house that went to foreclosure and owing state and Federal income tax. He asserted, but failed to provide documentation, that he had arranged repayment agreements with the Internal Revenue Service (IRS) and the state franchise tax board. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 57-year-old environmental laboratory technician who has worked for a defense contractor since January 1984 and seeks to obtain a security clearance.² (Item 3) From September 1977 through August 1983, he honorably served in the U.S. Navy. (Item 3, 6) Applicant provided no information about his duty performance and provided no character reference letters.

In Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he failed to pay his 2010 taxes and estimated he owed \$14,500. (Item 3) He also indicated that he had a debt payment agreement in place with the IRS and state covering tax years 2010, 2011, and 2012. (Item 3) In his January 2014 Personal Subject Interview (PSI), he indicated his tax debts had not yet been satisfied, but he was current on the debt repayment program. (Item 6) He indicated his current financial situation was a struggle. (Item 6)

On Applicant's e-QIP, he stated that his financial problems commenced in January 2010 and resulted in the foreclosure of his investment real estate in October 2013. (Item 3) In February 2004, he had a \$363,000 mortgage. (Item 4) In May 2004, he had a \$75,000 line of credit. (Item 4, 5, 6) He borrowed money from his residence to pay on investment real estate "to capitalize on the growing real estate market at the time." (Item 6) He asserted foreclosure occurred when he was unable to borrow additional funds. (Item 6)

In Applicant's PSI, he said he "intends to pay off his debt entirely." (Item 6) In 2006, Applicant went to arbitration after failing to return the renter's security deposit because they failed to take care of the house. The arbiter rendered a decision against Applicant and the \$400 to \$500 security deposit was returned. (Item 6)

² Applicant indicated he had a clearance while in the U.S. Navy prior to obtaining his current employment. (Item 3)

The FORM indicated Applicant stated the mortgage was in foreclosure and that he was paying his tax debt, but no documentary evidence was provided to support these assertions. Nor had he provided any information as to how and why the debts were incurred. (FORM) Absent documentary evidence of payment, the Government argued, he failed to mitigate the concern.

Policies

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

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. Applicants are not required to be debt free, but are required to manage their finances to meet their financial obligations.

Applicant's investment real estate went to foreclosure resulting in a delinquent account of more than \$67,000 and he failed to pay his Federal and state income tax for tax years 2010, 2011, and 2012.³ AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same” apply.

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

³ Although Applicant failed to file and pay his 2010 Federal and state income tax returns, only tax years 2011 and 2012 are listed in the SOR. In reaching a decision as to security worthiness, only his failure to file and pay taxes for these two tax years listed in the SOR have been considered.

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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer since January 1984. In January 2014, a year and a half ago, he was made aware of the Government's concerns about his delinquent debt. He indicated he intended to pay his debts and had a repayment plan to address his Federal and state tax debts. He provided no documentation showing payment on his debts. By failing to document the payment of delinquent debts he has failed to act responsibly under the circumstances.

Applicant provided no information as to how and why the delinquent debts occurred and what caused his inability to pay his delinquent financial obligations. The housing market did decline causing real estate prices to lower. There is evidence the investment property had been rented at one time, but there is little documentation evidencing factors beyond his control. AG ¶ 20(b) does not apply.

In his January 2014 PSI, Applicant provided no indication he intended to repay the equity loan, other than his general statement that he intended to pay his debts. In October 2014, he received the SOR listing the Government's concern over the unpaid equity loan and unpaid taxes. In June 2015, he received the FORM and was informed he could submit documentation as to the status of his delinquent accounts. No documents were received.

Applicant was given sufficient opportunity to address his financial delinquencies, Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that

his financial problems are under control or that he has a plan to bring them under control. The mitigating condition listed in AG ¶ 20(c) does not apply. There is no showing of a good-faith effort to satisfy debts or a showing that payments have been made in accord with a repayment agreement. The mitigating condition listed in AG ¶ 20(d) does not apply.

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not disputed any of the delinquent debts. He admitted all of the debts.

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. Applicant has failed to document any payment on his delinquent accounts. He has been aware of the Government's concern about his delinquent debts since his January 2014 interview, which was reinforced by the October 2014 SOR, and June 2015 FORM. There is no documentation of payment.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on scant explanation in his response to the SOR, he failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all Applicant's debts have been paid – there is no documentation that any payments have been made – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.c: Against 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. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge