



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



In the matter of:)
)
) ISCR Case No. 14-04608
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

June 23, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant incurred substantial delinquent indebtedness and has not filed his Federal or state income tax returns for the tax years 2010 through 2012. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on December 4, 2013. On October 30, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on November 12, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 6, 2015, and I convened the hearing, as scheduled, on April 23, 2015.

The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 through 4. All were admitted without objection. Applicant testified on his own behalf and offered eight exhibits marked Applicant Exhibit (AE) A through H, which were admitted without objection from Department Counsel. DOHA received the transcript of the hearing (Tr.) on May 4, 2015.

Findings of Fact

Applicant is a 62-year-old employee of a defense contractor, where he has worked since 2008. He is a high school graduate. He was married in 1972 and divorced in 1974. He has no children. (GE 1; Tr. 27-28.)

In his response to the SOR, Applicant admitted the allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.h. He denied the four debts identified in SOR ¶¶ 1.i through 1.l. Applicant's admissions are incorporated in the following findings.

In his testimony, Applicant confirmed his admissions that he filed Chapter 13 bankruptcy in 1997, which was discharge in June 2002. He attributed the bankruptcy to a delinquent mortgage. He again sought the protections of bankruptcy in 2010. He initially filed for Chapter 13 bankruptcy in 2010, and then converted it to a Chapter 7 bankruptcy in 2013. Applicant's Chapter 7 bankruptcy was dismissed in July 2013, but his Chapter 13 bankruptcy case was continued and he received a discharge on March 20, 2014. Applicant indicated he filed for bankruptcy in 2010 because he wanted a modification to his mortgage. (GE 1; GE 2; Tr. 25-27, 43-47.)

Applicant testified that he has not filed Federal or state income tax returns for the tax years 2010 through 2014. He believes he is due refunds for those years because he had the maximum withheld from his paycheck. He testified that he planned to file his delinquent tax returns with the help of a tax professional within two weeks after the hearing. He stated that he failed to file his Federal and state income taxes because he was in mourning over the loss of several friends. He noted that he was delinquent in filing his Federal and state income tax returns from 1986 to 1991, but that he eventually filed them late. (Tr. 30-3)

Applicant denied: a \$1,296 collection account (SOR ¶ 1.i); a debt to a city for \$30 (SOR ¶ 1.j); and two medical collection accounts, the first for \$691 (SOR ¶ 1.k) and the second for \$246 (SOR ¶ 1.l). He claimed that he does not owe any of these debts. However, he failed to provide documentation to support his claims. He testified that he

had not made contact with any of these creditors. These four debts are not resolved. (GE 3; GE 4; Tr. 36-42.)

Applicant presented seven letters of recommendation that attested to his professionalism, patriotism, and work ethic. (AE A through G.) He presented copies of three certificates he earned. (AE H.) He presented no budget or proof of financial counseling.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under three Guideline F DCs, as set forth in AG ¶ 19:

- (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 or the fraudulent filing of the same.

Applicant has a long history of not meeting his financial obligations, including his delinquent debts and his failure to file his Federal and state income tax returns. He has filed bankruptcy twice: in 1997 and in 2010. He has not filed his Federal or state income taxes for the tax years 2010 through 2012.¹ Additionally, he accrued \$2,264 in delinquent debts, and demonstrated neither the means nor any effort to resolve any of them. The Government raised sufficient security concerns under DCs 19(a), 19(c), and 19(g) thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

¹The SOR did not allege Applicant's failure to file his Federal and state income tax returns for 2013 and 2014. As a result, those years were not considered with respect to the applicability of the disqualifying conditions.

(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 SOR-listed delinquent debts and unfiled tax returns are recent and ongoing, without indication that the circumstances under which they arose have changed. He has neither paid any of his delinquent debts nor has he filed his delinquent tax returns. His history of financial irresponsibility goes back more than 18 years. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). While he attributed his failure to file his Federal and state income tax returns to deaths of his friends, he failed to show he has acted responsibly with respect to this or any other financial obligation. He incurred all of the debt in question, and has been fully employed since 2008. This is not responsible action under the circumstances.

Applicant did not provide any evidence of financial counseling. He did not repay any of his debts. He did not file his delinquent tax returns. He neither documented any effort to repay or otherwise resolve the substantial remaining SOR-listed delinquent debts, nor asserted a legitimate basis to dispute their validity. These facts preclude significant mitigation under MC 20(c), (d), or (e).

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):

