



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



In the matter of:)	
)	
)	ISCR Case No: 15-01930
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

05/10/2016

Decision

DAM, Shari, Administrative Judge:

Since 2004 Applicant has accumulated delinquent debts, including unpaid Federal income taxes. He failed to timely file his 2011 Federal income tax return. He did not provide sufficient evidence to mitigate the allegations raised by the Government. Financial security concerns were not mitigated. Eligibility for access to classified information is denied.

Statement of Case

On October 25, 2012, Applicant submitted a security clearance application (SF-86) for re-investigation. On October 17, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), 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; DoD 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* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on November 18, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On December 23, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six items was provided to Applicant on December 28, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. On January 5, 2016, Applicant signed the document acknowledging receipt of his copy of the FORM and timely returned it to the Defense Office of Hearings and Appeals (DOHA). He did not submit any additional information. DOHA assigned the case to me on March 23, 2016.

Findings of Fact

In his answer to the SOR, Applicant admitted the eight allegations contained in SOR. (Item 2.) His admissions are accepted as factual findings.

Applicant is 42 years old and divorced since 2004. He and his former wife have a teenage daughter. He has worked for his employer since January 1998. He has held a security clearance for most of those years. (Item 3.)

Applicant stated that his financial problems arose after he was divorced in 2004 and he could no longer afford his living expenses and taxes on his salary. Based on credit bureau reports (CBR) from November 2012 and February 2015, the SOR alleged five delinquent debts: ¶ 1.a for \$5,213; 1.b for \$379; 1.c for \$11,748; 1.d for \$480; and 1.e for \$65). They total \$17,885. The SOR also alleged: (¶ 1.f.) that Applicant failed to file his 2011 Federal tax income return; (¶ 1.g.) that he failed to pay Federal income taxes for tax years 2005 through 2011; and (¶ 1.h.) that he owes \$12,500 to the Federal Government for delinquent taxes for tax years 2005 through 2011. The total amount alleged as delinquent in the SOR is \$30,385.

In his answer to the SOR, Applicant stated that he believed the matters alleged had been resolved and were no longer outstanding. He requested an opportunity for further investigate the matters. (Item 2.) Despite having 30 additional days to submit corroborating information, he did not do so.

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 (AG) 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, 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. Directive ¶ E3.1.15 states that “[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 relating to 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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's financial problems, which include delinquent debts and outstanding taxes, along with failing to file a tax return, began after he was divorced in 2004 and continue to date. The evidence raises the above security concerns, 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:

- (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 did not submit any evidence to establish mitigation of the security concerns under any of the above mitigating conditions. Applicant's debts and tax issues

are ongoing and raise questions about his judgment. AG ¶ 20(a) does not apply. Applicant indicated that his financial problems arose after a divorce in 2004. Those may have been circumstances beyond his control. However, he did not produce evidence to demonstrate that he attempted to manage the debt while it was accumulating, which proof is necessary to establish full mitigation under AG ¶ 20(b). There is no evidence that he participated in credit or financial counseling, or that his tax and financial problems are under control. Thus, AG ¶ 20(c) does not apply. He did not submit proof that he made any good-faith payments on any of the delinquent debts or taxes, or that he filed his 2011 Federal income tax return. Hence, he did not establish mitigation under AG ¶ 20(d) as to any SOR allegations. Applicant did not dispute any of the alleged debts. AG ¶ 20(e) 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 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is 42 years old. He has been employed by a defense contractor since 1998, and held a security clearance for much of that time. In 2004 he began experiencing financial and tax problems, as the consequence of a divorce. Although he had an opportunity to provide proof that his debts and tax issues are resolved, he did not do so. At this time he has not established a track record of responsibly managing his taxes and finances. The likelihood that similar problems will continue is significant. Overall, the record evidence leaves me with doubt as to Applicant's judgment, reliability, and trustworthiness. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant ¹
Subparagraph 1.h:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge

¹ The allegation in SOR ¶ 1.g is found in Applicant's favor because it is identical to the allegation in SOR ¶ 1.h, which is found against Applicant.