



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



In the matter of:)	
)	
)	ISCR Case: 14-01941
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

12/09/2014

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of accumulating delinquent debt, including a failure to pay federal and state income taxes on time. Although he mitigated two debts, he failed to provide sufficient evidence to mitigate allegations pertaining to the late payment of income taxes for 2011 and 2012. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On July 26, 2013, Applicant submitted a security clearance application (SF86). On June 13, 2014, 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; 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* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on June 24, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 16, 2014, 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 September 26, 2014, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on October 3, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He submitted additional information in response to the FORM within the 30-day period. I marked his submissions as Applicant Exhibits (AE) A and B, and admitted them into the record without objection from Department Counsel. DOHA assigned the case to me on November 10, 2014.

Findings of Fact

In his answer to the SOR, Applicant denied all six allegations contained in Paragraph 1 of the SOR, and offered explanations thereto. (Item 2.)

Applicant is 53 years old and married to his second wife since June 2000. He has a 21-year-old daughter, who lives with his former wife. He earned a bachelor's degree in January 1983. He is the President and CEO of an information technology company he started in June 2001. He previously held a security clearance. (Item 3.)

In his July 26, 2013 SF86, Applicant disclosed two delinquent accounts: a \$12,000 collection account with a vendor whose account he disputed, and, a \$45,000 delinquent business line-of-credit (LOC) loan. (Item 3.) He used the LOC to support his business operations, but "in 2008 [his] company experienced as most of the country a deficit of business activity and the cost of employees were covered by the LOC." (Item 3 at 30.) He was making monthly payments on a modified loan, but was "behind at the moment." He anticipated resolving this delinquency in the following week based on the projected receipt of client revenues.¹ (Item 3 at 29.)

Appellant also disclosed two income tax issues in the SF86. He failed to timely file his 2011 and 2012 federal and state income tax returns, and to timely pay owed taxes. He explained that he expected to satisfy the 2011 tax obligations at the end of July 2013. (Item 3.)

In his October 30, 2014 response to the FORM, Applicant corrected the above entry regarding his 2011 taxes. (AE B.) He stated that the "line item listed for TY2011 and all the information provided in this section actually pertained to TY2010 Federal taxes only. The 2010 estimated tax amount was correct as listed at \$6k and I did in fact

¹The SOR did not allege a security concern relating to this business LOC.

pay \$5,846.86 on 30 July 2013 as promised in the e-QIP.” (AE B at 6.) He noted that he should have added another entry in the SF 86 for the 2011 taxes, and included information that he had not yet filed or paid those federal and state taxes at the time he completed the SF 86 on July 26, 2013. He filed his 2010 tax returns on October 7, 2011, having requested an automatic six-month extension in April 2011.² (AE B at 6.) He said he did not have enough money to pay the 2010 taxes when they were due in April 2011. (AE B at 2.)

Applicant attributed his failure to timely pay state and federal income taxes for 2011 and 2012 to several factors, including the economic downturn that started in early 2008. Between September 2008 and June 2011, his business declined and he lost some contracts, resulting in a decrease in revenue and personal income. During those years he supported his business and payroll with withdrawals from his LOCs that eventually required repayments, which he could not satisfy. As a consequence he could not secure additional financing for his business. From June 2011 and November 2013, he obtained new contracts, some of which required expenditures of money for personnel. He noted that payments upon completion of contracts were slow, adding further financial strains to his business and personal financial situation. His wife works and earns about \$37,000 annually. (AE B.)

During an interview with a government investigator in October 2013, Applicant discussed his tax issues. He said both the 2011 and 2012 income tax returns were filed late, but did not give the date of the filings. As a consequence of the late filings, he owed penalties in addition to taxes. He explained that the returns for both years were filed late because his operations manager quit in October 2012 and did not leave the information necessary for filing them or calculating his taxes. (Item 6; AE B.) In his June 2013 SF 86, he noted that he was recreating the necessary information to “support the filing of both Federal and State” 2012 taxes. (Item 3 at 29.) His accountants were assisting him in these matters. He explained that in addition to being unable to file the returns, he had insufficient money to pay them for those two years. (AE B.)

The June 13, 2014 SOR alleged six delinquent debts, totaling \$20,863, of which \$19,907 related to unpaid federal and state income taxes for 2011 and 2012. The status of each of these debts is as follows:

1. (SOR ¶ 1.a) The outstanding \$832 debt owed to a state child support enforcement department was paid on January 22, 2014. (Item 2.) Applicant stated that this was an administrative fee, for which he had no knowledge. He made his support payments through a payroll deduction. The child was emancipated in June 2011.. (Item 2.) It is resolved.
2. (SOR ¶ 1.b) The outstanding \$124 debt owed to a cellular company was paid on February 14, 2014. (Item 2.) It is resolved.

² Because the SOR does not allege a security concern related to the late payment of Applicant's 2010 income taxes, said information is not relevant for purposes of establishing a disqualifying condition; however, that information may be relevant in the whole-person analysis.

3. (SOR ¶ 1.c) In April 2013 Applicant filed an automatic request for an extension of time to file his 2012 annual returns. While the deadline for filing a tax return was extended to October 15, 2013, his 2012 taxes were due on April 15, 2013. He noted on said request that his estimated his tax liability for 2012 was zero. He did not make a payment with the request or list any payments made during 2012. Applicant paid his 2012 outstanding federal income taxes in the amount of \$12,646 on April 17, 2014, one year late. (Item 2; AE B.)
4. (SOR ¶ 1.d) In April 2012 Applicant filed an automatic request for a six-month extension of time to file his 2011 federal return. His taxes were due on April 15, 2012, and the return was due on October 15, 2012. On said request, he estimated a tax liability at \$7,000, which he paid with the request. He did not list any tax payments made in 2011. (Item 2; AE B.) On October 20, 2013, he paid an additional \$5,545 to the Internal Revenue Service (IRS) for his 2011 taxes, about 18 months late. On April 17, 2014, two years late, he paid \$1,844 to the IRS, which was the remaining amount of outstanding federal income taxes due for 2011. (Item 2.)
5. (SOR ¶ 1.e) Applicant paid his 2012 outstanding state income taxes in the amount of \$3,855 on June 19, 2014, over one year late. The state provided him a waiver for \$658 of penalties for filing and paying these taxes late. (Item 2; AE B.) There is no information indicating that he made any state tax payments prior to June 2014.
6. (SOR ¶ 1.f) Applicant paid his 2011 outstanding state income taxes in the amount of \$1,566 on June 19, 2014, over two years late. (Item 2.) There is no evidence that he received a waiver for paying those taxes late or that he made any state tax payments prior to June 2014.

Applicant acknowledged that he filed and paid his 2011 and 2012 federal and state income taxes late. He asserted that he exercised diligence in paying all of his debts. He stated that the payment of his state taxes after the issuance of the SOR on June 13, 2014, was coincidental, and not related to this case. He explained that he received vendor payments in April and June 2014, which gave him sufficient funds to make the payments. (AE B.)

Applicant submitted evidence confirming that by September 21, 2012, he had paid \$20,474 in settlement of a \$34,123 home equity loan that had matured in January 2012. An October 27, 2014 credit bureau report (CBR) documented that his business LOC was paid and closed, and all open accounts were current. He submitted proof that on April 16, 2014, he filed a request for an automatic six-month extension to October 15, 2014, for filing his 2013 federal income tax return. That request did not include information regarding any tax payments he made in 2013, an estimate of taxes owed for

2013, or documentation of a payment accompanying the extension request. (AE B.) There is no evidence proving that he filed his 2013 tax returns on or before October 15, 2014 or paid any taxes for the year. He provided no evidence indicating that his current financial situation accommodates tax payments. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability.

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. 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 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.

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 began experiencing financial difficulties in 2008 that continued into late 2013. He has been unable or unwilling to satisfy or resolve financial delinquencies, including federal and state income taxes for 2011 and 2012, until recently. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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

- (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.

Applicant provided evidence that financial problems, including his inability to pay his income taxes, arose as a result of unanticipated economic conditions that started in 2008, continued into 2013, and affected his business. He stated that he could not file his 2011 and 2012 income taxes by the legal deadline because his operations manager left her position in October 2012 and failed to provide him with the necessary accounting information to calculate them. Those were circumstances beyond his control. He provided some evidence that he acted responsibly under the circumstances by engaging accountants to assist him in resolving these matters. However, he presented no evidence that he made any payments on his income taxes until after the legal deadline, or that he contacted the federal or state revenue agencies about the matters when he knew in October 2012 that his 2011 tax returns had not been filed. AG ¶ 20(b) has limited application.

Applicant has not participated in financial or credit counseling. He presented evidence that he paid one non-tax delinquent debt in June 2013 and another in early 2014. He resolved the 2011 and 2012 federal and state income tax delinquencies by June 19, 2014. Although there are indications that his past delinquent debts and taxes are now under control, four SOR-listed delinquent tax liabilities were not fully resolved until April and June of 2014, a year or more after the deadline, which limits the application of AG ¶ 20(c) to them. He resolved two non-tax debts prior to June 13, 2014, demonstrating a good-faith effort to resolve those debts. Because he paid the 2011 and 2012 income taxes more than a year beyond the required time frames, and provided no documentation that he sought a payment plan or other accommodation with the IRS during the intervening time periods, the evidence is insufficient to demonstrate that Applicant made a good-faith effort to resolve the SOR-tax related allegations. Hence, AG ¶ 20(d) has application to the two non-tax allegations, but not to the four tax allegations.

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 53 years old and the president and CEO of a defense contractor. In 2008 his company began experiencing financial difficulties attributable to economic conditions that continued until sometime in 2013. In early October 2012 his operations manager left the company and took the accounting information necessary for filing and calculating his total 2011 and 2012 federal and state taxes. As of June 2014 he paid all outstanding taxes and debts. These are facts that weigh in favor of granting him a security clearance.

However, there are persuasive facts that weigh against granting Applicant a clearance. He has a three-year history, 2010, 2011, and 2012, of failing to file income tax returns and paying taxes on time. He paid in full his 2011 and 2012 federal taxes in April 2014. Both his 2011 and 2012 state income taxes were paid on June 19, 2014, six days after receiving the SOR. Although he asserted that he did not have enough money to timely pay his taxes, he provided no substantive evidence documenting that assertion. The facts indicate that he and his wife had been receiving compensation during those two years, which they used to pay personal expenses rather than taxes. While there is arguably some validity to his defense that he could not calculate his total tax liabilities in order to file the 2011 and 2012 tax returns because he lacked accounting information after October 2012, he failed to provide evidence that he made any tax payments during 2011 and 2012 on income he received, or that he had a legal basis for not making them. Another concerning fact is Applicant's failure to disclose in his July 26, 2013 SF 86 that he had not paid his 2010 federal taxes. His subsequent disclosure in October 30, 2014, that he paid those taxes on July 30, 2013, raises a question about his candor and credibility.

Overall, the record evidence leaves me with concerns as to Applicant's judgment, reliability, and suitability for a security clearance. In April 2014 he requested an extension of time to file his 2013 federal tax return. Again, he noted in that request that he had not paid and did not owe taxes for 2013. In his October 30, 2014 response to the FORM, he did not include documentation verifying that he filed tax returns by the October 15, 2014 deadline or paid any income taxes for 2013. His actions raise a substantive concern that there is likelihood that similar problems relating to his legal obligation to timely pay taxes will continue. He did not meet his burden to mitigate the security concerns arising under the whole person.

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 and 1.b:	For Applicant
Subparagraphs 1.c thru 1.f:	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