



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06116

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: John W. Richards, Esquire

01/08/2016

Decision

HOWE, Philip S., Administrative Judge:

On November 22, 2013, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On July 7, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 20, 2015. Applicant denied all six allegations of not filing his tax returns. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 14, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to the Applicant on August 18, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Item 4 is admissible based on the letter submitted by Applicant's attorney, which is part of the Response. Applicant had no objection to its consideration. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in January 2014. (Response)

Applicant received the file on August 24, 2015. Applicant filed a Response to the FORM within the 30-day time allowed that would have expired on September 23, 2015. Department Counsel had no objection to the admission of the documents. I received the case assignment on October 9, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant denied all allegations in the SOR. He attached copies of the federal and state tax returns he stated he filed in April 2014 and April 2015 for the latest returns due. (Items 1-3, 5)

Applicant is 70 years old, married for 49 years, and has four adult children, and several grandchildren. He has a bachelor's degree and a masters' degree in engineering. He has a secret clearance starting in 2003. Applicant retired from federal service several years ago and now works for a private company. (Items 3 and 5; Response)

Applicant did not file his federal and state income tax forms in a timely manner as required by law for the tax years of 2011 to 2013. He now claims, as shown by the income tax forms he sent in answer to the SOR, that his returns are filed with the appropriate authority. He filed his 2011 and 2012 tax returns on April 14, 2014, and his 2013 tax returns on April 15, 2015. These filings were done before the date of the SOR. After he completed his e-QIP on November 22, 2013, in which he was asked about the filing of his annual tax returns in Section 26 of the e-QIP. He stated in that document that his tax money was withheld by his employer and did not expect to owe any money on his taxes. However, he did owe \$1,396 on his 2011 federal tax return, \$480 on his 2011 state return, \$165 on his 2012 federal tax return, and \$538 on his 2013 federal tax

return. The total owed is \$2,579. He is due a refund on his 2012 state return of \$303; and \$93 on his 2013 state tax return. His Response contained cancelled checks for the 2011, 2012, and 2013 taxes due to show he paid the money due or received the money owed him. He also submitted proof his 2014 income tax returns for all jurisdictions were filed and paid on time. These tax debts are resolved. (Items 1-3; Response)

Applicant's Response included the cover letter from his attorney stating that his 2014 income tax returns were both filed in a timely manner. The letter also stated has an excellent credit score and he pays his debts on time. Applicant admitted he found completing the tax forms an unpleasant chore, which was why he procrastinated in doing it for three tax years. (Item 4; Response)

Applicant's Response included a character reference from the vice president of operations of his current employer. This person opined that Applicant is dependable, thoughtful, and has the complete confidence and trust of the reference. Another vice president of the same company submitted a character reference for Applicant. This reference was very favorable about Applicant's work ethic and his interaction with other staff.

Applicant did not submit any documentation that he has participated in credit counseling or budget education. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(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 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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

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 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, one condition is applicable to the facts found in this case:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file federal and state income tax forms for the tax years of 2011 to 2013. This condition applies because of the failure to file the tax forms.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions might have applicability.

(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.

AG ¶ 20(c) is established by the filing and payment by Applicant of his past-due tax obligations. The problem is clearly resolved and is no longer an impediment to Applicant's request for a security clearance.

AG ¶ 20(d) is established because Applicant made an effort, though late because of his procrastination, to pay the taxes owed and resolve these 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 facts and circumstances surrounding this case. Applicant was an adult of age and experience in his profession when he incurred the tax debts by failing to file and pay the additional sums required for his income taxes. As an employee his taxes were withheld and paid to the IRS, but he failed to file the required annual tax forms and pay any additional tax for the years in question. However, now he accomplished the filing and payment of additional taxes owed. There is no potential for pressure, coercion, exploitation, or duress because all his obligations are paid. Applicant's character references show he has good character and is valued as an employee and colleague. There is no likelihood this failure to file will be repeated based on his character and history.

Overall, the record evidence leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraph 1.a to 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge