



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case: 18-00250
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

September 25, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Statement of Case

On January 17, 2017 Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On September 21, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). (Item 1.) The action was taken under Executive Order (EO) 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 June 8, 2017.

Applicant signed his Answer to the SOR (Answer) on November 1, 2018, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) On February 22, 2019, Department Counsel submitted the Department's written case. A

complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on February 28, 2019.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted no additional information. The case was assigned to me on May 23, 2019. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 42 years old. He is married with three children. He has an associate's degree and has worked for his current employer since 2015. Applicant served in the Air Force from 1995 to 2000, and received an Honorable Discharge. (Item 3 at Sections 12, 13A, 15, and 17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the SOR allegations, with explanations. Applicant accidentally repeated the answer to allegation 1.f on allegation 1.i. Applicant's response to allegation 1.i is included with his response to allegation 1.j.

SOR allegations 1.a through 1.h concern Applicant's Federal and state tax returns and payments. On May 30, 2018, Applicant certified answers to interrogatories propounded on him by the Defense Office of Hearings and Appeals (DOHA). (Item 4.) With regard to his general tax situation Applicant stated, "Wife usually handles all tax paperwork, some of the items have been overlooked." (Item 4 at 9.)

1.a. Applicant admitted that he had not filed his Federal tax return for the tax year 2014. In his Answer Applicant stated, "this was an oversight on my part and am in the process of getting all my tax forms caught up." No further information was provided.

1.b. Applicant admitted that he had filed his Federal tax returns late for tax years 2008, 2009, 2010, 2012, 2013, 2015, and 2016. The 2008, 2009, and 2010 tax returns were filed in April 2012. The 2012 and 2013 tax returns were filed in February 2015. The 2015 and 2016 tax returns were filed in January 2018. (Item 4 at 10-21.)

Applicant stated in his Answer concerning his failure to file these returns in a timely manner, "this is part of the process when trying to correct issues, also what is known as an ever changing family and sometimes 'LIFE' gets in the way. These issues have been address[ed] and taxes were filed." No further information was provided.

1.c. Applicant admitted that his state tax returns had not been filed for tax years 2004, 2012, 2013, 2014, 2015, and 2016. Applicant stated in his Answer that the reason for the failure is the same as that stated for allegation 1.b, above. No further information was provided.

1.d. Applicant admitted that he filed his state tax returns late for tax years 2006, 2008, and 2010. All three tax returns were filed in April 2012. Applicant stated in his Answer that the reason for the failure is the same as that stated for allegation 1.b, above. No further information was provided. (Item 4 at 22-26, 32-41.)

1.e. Applicant admitted owing \$3,203 in delinquent Federal taxes for the 2008 tax year. He stated in his Answer that this amount is being repaid and decreasing. The account transcript provided to Applicant by the Internal Revenue Service (IRS) in May 2018 indicated that Applicant had not been in an installment agreement program since December 2014 and there was no record of recent payments. No further information was provided. (Item 4 at 10-11.)

1.f. Applicant admitted owing \$2,912 in delinquent Federal taxes for the 2009 tax year. He stated in his Answer that this amount is being repaid and decreasing. The account transcript provided to Applicant by the Internal Revenue Service (IRS) in May 2018 indicated that Applicant had not been in an installment agreement program since December 2014 and there was no record of recent payments. No further information was provided. (Item 4 at 12-13.)

1.g. Applicant admitted owing \$4,144 in delinquent Federal taxes for the 2010 tax year. He stated in his Answer that this amount is being repaid and decreasing. The account transcript provided to Applicant by the Internal Revenue Service (IRS) in May 2018 indicated that Applicant had not been in an installment agreement program since December 2014 and there was no record of recent payments. No further information was provided. (Item 4 at 14-15.)

1.h. Applicant admitted owing \$1,165 in delinquent Federal taxes for the 2011 tax year. He stated in his Answer that this amount is being repaid and decreasing. The account transcript provided to Applicant by the Internal Revenue Service (IRS) in May 2018 indicated that Applicant had not been in an installment agreement program since December 2014 and there was no record of recent payments. No further information was provided. (Item 4 at 16-17.)

1.i. Applicant admitted that he owed a creditor \$675 for a past-due debt. Applicant had not paid this debt as of the date of his Answer. Applicant stated that this debt was the same as that set forth in allegations 1.j and 1.l. He also stated in his Answer, "this account was disputed several times for account activity that was not authorized. Dispute is being drawn out and no assistance from [creditor in 1.i] is given. [Debt] is not accepted by me." The most recent credit report in the record, dated October 26, 2017, stated, "CONSUMER DISPUTES – REINVESTIGATION IN PROCESS." (Item 5.) Based on all

available information, I find that Applicant has disputed this debt, and it is not yet resolved. This allegation is found for Applicant.

1.j. Applicant denied that he owed a medical creditor \$56 for a past-due debt. Applicant had not paid this debt as of the date of his Answer. Applicant stated that this debt was the same as that set forth in allegations 1.i and 1.l. He also stated in his Answer, “this account was disputed several times for account activity that was not authorized. Dispute is being drawn out and no assistance from [creditor in 1.l] is given. [Debt] is not accepted by me.” The most recent credit report in the record, dated October 26, 2017, stated, “ACCOUNT IN DISPUTE.” (Item 5.) Based on all available information, I find that Applicant has disputed this debt, and it is not yet resolved. This allegation is found for Applicant.

1.k. Applicant admitted owing a creditor \$1,116 for a past-due credit card debt. He supplied no evidence that the debt had been paid or disputed. It is not resolved.

1.l. Applicant denied that he owed a creditor \$620 for a past-due debt. Applicant had not paid this debt as of the date of his Answer. Applicant stated that this debt was the same as that set forth in allegations 1.i and 1.j. He also stated in his Answer, “a dispute has been filed several times with no luck.” The most recent credit report in the record, dated October 26, 2017, stated, “CONSUMER DISPUTES – REINVESTIGATION IN PROCESS.” (Item 5.) Based on all available information, I find that Applicant has disputed this debt, and it is not yet resolved. This allegation is found for Applicant.

Policies

When evaluating an applicant’s national security eligibility, 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 national security eligibility.

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. 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, “Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes several conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to file a Federal income tax return, as required, for 2014. He also failed to file, as required, state tax returns for six years. Many other Federal and state tax returns were filed late. He has a substantial Federal tax debt that is not yet resolved. In addition, there are past-due consumer debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's substantial financial issues, including unpaid taxes, failure to timely file tax returns, and unpaid bills:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's unpaid Federal back taxes are still due and owing. Applicant did not supply documentation to show that he has filed all of his past-due Federal and state tax returns. Nor did he submit any evidence to show that he has entered into a current payment arrangement with the IRS or any state taxing authority, and is in compliance with such arrangements if he had filed tax returns and owed taxes. There is no evidence that the debt in allegation 1.k has been resolved. Applicant did not supply any information to support a finding that his financial problems were beyond his control, or that he had acted responsibly under the circumstances. AG ¶ 20(a), (b), (c), (d), and (g) do not apply.

Applicant submitted disputes to the credit reporting services concerning allegations 1.i, 1.j, and 1.l. The disputes had not been resolved as of the date the record closed. AG 20(e) applies to those debts, and the allegations are found for Applicant. With those exceptions, Applicant did not mitigate his tax and other financial issues. Guideline F is found against Applicant.

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(d):

(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 national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 did not provide sufficient evidence to show that the back taxes and other debts were being resolved, or that he had filed all of his tax returns. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's

judgment, eligibility, and suitability for a security clearance. He failed to 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.h:	Against Applicant
Subparagraphs 1.i through 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For 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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge