



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



In the matter of:)
)
) ISCR Case No. 18-01260
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

06/25/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On September 28, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on October 22, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 20, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 14, 2019, scheduling the hearing for April 5, 2019. The hearing was rescheduled, with proper notice, for April 12, 2019. Initially, Applicant retained private counsel, but he decided to represent himself. (Tr. 5) The Government offered Exhibits (GE) 1 through 4, which were admitted. Applicant testified on his own behalf. He submitted Applicant

Exhibits (AE) A through G, without objection. The record was left open until June 17, 2019, and Applicant timely submitted one document, which was marked as AE H, and was accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on April 26, 2019.

Findings of Fact

Applicant, age 39, is single and has no children. He obtained his undergraduate degree in 2005, and his master's degree in 2017. He served in the United States Army Reserve from 1997 until 2005. Applicant completed his security clearance application (SCA) on October 3, 2014. (GE 1) He has worked for his current employer since May 2018. He also owns and operates an IT company, which began in 2017. He has held a security clearance since 1997. (GE.1)

The SOR alleges in 1.a through 1.c, that Applicant failed to timely file, as required, his Federal income tax returns for tax years 2011, 2012, 2013, 2015, and 2016; that he failed to timely file, as required, state income tax returns for tax years 2011, 2012, 2013, and 2015; and finally that he failed to timely pay, as required, his state income tax returns for tax years 2011, 2012, 2013, and 2015. Applicant admitted the allegations but explained that his failure to file or pay was due to a long-term overseas deployment in a combat zone.

Applicant attributed his tax problem to extraordinary circumstances. (Tr.16) He worked as a project manager for a contracting company abroad in conflict areas and war zones from November 2008 until May 2016. He submitted letters of authorization to confirm his claim. (Documents with Answer) His trips home throughout the term of his employment were brief and infrequent. He was home about twice a year for about a week. While Applicant worked for the same defense company from 2008 until 2016, he was on the move to various conflict zones. (Tr. 61) However, in tax year 2016, Applicant was a part-time independent contractor abroad earning about \$10,000, so he did not initially file a tax return. (Tr. 30) He relied on the applicable tax code section and submitted a copy. (Tab D) Applicant returned to the United States permanently at the end of 2016. (Tr. 68)

In Applicant's 2014 SCA he disclosed his difficulty in filing tax returns due to the time it took to collect all necessary documents. Applicant explained that he self-filed Federal tax returns for tax years 2011 and 2012 and paid the tax due in September 2013. (Tr. 80) In 2013 he attempted to work with a tax preparer, but they stated the issue was too complex for them. (Tr. 32) In 2014, he hired a CPA to resolve the issues of filing while he was deployed. (Tr. 32) For tax year 2015, he filed for an extension, then filed and paid taxes within a timely manner. (Tr. 19. GE 2) During his 2015 investigative interview, he explained the tax situation. (GE 2)

As to SOR 1.a, Applicant submitted tax transcripts from the IRS that show he filed his Federal tax returns from 2011 to 2016 within the time allotted for someone who is working in a combat zone. He presented tax transcripts that show the date filed and the amount of tax he paid. He owes not tax for that period. (AE, Tab D) He has filed his 2016 and 2017 Federal tax returns.

As to SOR 1.b, and 1.c, Applicant stated that there was confusion as to which state he owed taxes, and which state was his official residence while abroad. (Tr. 81) He believed because he had a driver's license from state A and had lived there prior to deployment that it was his state of residence. His parents live in state B. State B contacted his parents via telephone. (Tr. 81) He did not have a license in state B and did not believe it was his state of residence. He left state A and gave his mailing address as his parent's residence. (Tr. 96) Applicant learned about the state B tax issue and turned things over to a tax person. Although no one was certain that he really owed state B, he filed and paid all taxes for the years in question. (GE 3) Applicant stated that he and his tax agent are working with the state treasury to resolve, if indeed, Applicant owed tax to state B. He now believes he may owe state taxes to state A, but they are trying to resolve any issue. Applicant also believed after three years of living overseas, he gave up residence to state A. (Tr. 120) It is in the record that Department Counsel agreed to the confusion about owing taxes to state B. (Tr. 128)

Applicant submitted various awards that he received while overseas and certificates of appreciation. (Tab B). The vast majority of his professional career has been working for DoD. It reflects an extraordinary career.

Applicant submitted seven character letters, including one from his FSO, an enrolled tax agent, supervisor, colleagues and others who have known him for about 20 years and served with him on deployments abroad. (AE Binder, Tab A). Each letter attests to his outstanding qualities and ability to handle classified information. One supervisor stated that Applicant has never violated security rules or regulations. (Tr. 48)

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

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

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 personnel 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his testimony, establish one disqualifying condition under this guideline: AG ¶ 19(f) ("failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.")

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted that some of his Federal and state taxes were not filed timely. However, he was deployed in a combat zone from 2008 to 2016. Several of his Federal returns were timely. He obtained help from a CPA to file the Federal tax returns as he was not home for a sufficient period of time to do so himself. During two years, he was self-employed abroad. He relied on his understanding of the tax code. He had an extension for one year in 2015. He tried to file his Federal income tax returns as best he could while he was deployed, even though he had the 180 day extension for working in a combat zone for the years in question. He acted reasonably and responsibly. He provided the IRS transcripts to show that all taxes were filed and paid. He does not expect to be in a similar situation in the future.

As to state B taxes, there was confusion. Applicant believed that he was a resident of state A for the first few years of deployment. He did not believe since his parent's residence was in state B that he owed state tax or had to file. When he learned of the situation from his parents, he hired a tax agent and began to address the issue. Although he was not certain that he owed those state taxes, he presented documentation that he has filed and paid state B in full. All mitigating conditions apply in the case.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his credibility and openness at the hearing, and his extraordinary career, Applicant had circumstances that occurred beyond his control and he has acted reasonably and responsibly. He did not ignore the tax situation and attempted from the beginning to address the issues. In light of his many years of deployment in a combat zone and his infrequent time in the United States he acted reasonably. He even filed some Federal tax returns early despite his deployment in a combat zone which allowed him 180 days extension. Since he was never back in the States for a long period, when he returned to the combat zone his 180 days started again. As to the state tax issue, there was confusion. However, he has filed and paid all taxes. He has also filed all his Federal income tax returns and paid the taxes at time of filing. I am persuaded that Applicant's judgment is suitable. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge