



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX.) ISCR Case No. 18-02010
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

05/20/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s clearance.

On 12 December 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 11 April 2019, when Applicant’s response to the FORM was due. Applicant submitted no additional documents. DOHA assigned the case to me 7 May 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-9.

²DoD acted 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 Security Executive Agent Directive 4, effective 8 June 2017.

Findings of Fact

Applicant admitted failing to timely file his 2011-2013 Federal income tax returns, and his 2009, 2011, and 2012 state income tax returns, and accumulating almost \$10,000 delinquent debt (SOR 1.a-1.d); he claimed to have brought his delinquent mortgage current (SOR 1.e). He is a 61-year-old flight mechanic employed by a U.S. defense contractor since August 2003. He seeks to renew a security clearance first issued in June 2000, and reissued in April 2004 (Item 2).

Applicant disclosed his failure to file his 2010-2013 Federal income tax returns on his March 2016 clearance application (Item 2), and discussed those returns, as well as his 2014-2015 returns, and eight delinquent debts not alleged in the SOR, during his August 2017 interview with a Government investigator (Item 3), based on his June 2016 credit report (Item 7). He attributed his failure to file his Federal income tax returns to having to care for his ill mother. His Answer to the SOR (Answer) also recounts six significant surgeries—most work related—between January 2011 and July 2018. Each of these surgeries incurred significant, largely unpaid, time off from work.

Applicant's 29 October 2018 response to DOHA interrogatories (Item 4) stated that he had now filed his 2009-2012 state and Federal income tax returns. He provided Internal Revenue Service (IRS) account transcripts for 2009-2017, but has not provided any state documentation. His account transcripts showed that his 2009-2010 tax returns were timely filed, his 2011-2012 returns were each filed three years late, his 2013 return had not been filed as of February 2017, and his 2014-2017 returns were filed late, albeit within periods ranging from two weeks to two months after they were due. Several of these returns resulted in refunds which were seized to satisfy taxes due for earlier tax years.

Applicant's February 2019 Answer (Item 1) stated, without corroboration, that he had paid the past-due amount on his mortgage (SOR 1.e) in full. He provided no evidence of a resolution for SOR debt 1.d.

Applicant documented no credit or financial counseling, and did not submit a budget. He provided no work or character references, or evidence of community involvement. He submitted no current credit reports which might have corroborated his claimed payments.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to

classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant's multiple surgeries and time off from work explain why he fell delinquent on various credit accounts, including those alleged in the SOR. However, these financial pressures do not explain his failures to timely file his state and Federal income tax returns. Applicant failed to timely file his 2011-2013 Federal income tax returns and his 2009 and 2011-2012 state income tax returns. He has stated no credible reason for his failures, and while his IRS tax transcripts chronicle his 2009-2017 tax filings, he did not otherwise corroborate any efforts to reach any repayment agreement other than having future tax refunds seized. Moreover, his 2013 Federal income tax return has still not been filed, and he did not document the filing of his state income tax returns. Finally, he did not document his claimed catch-up payments on his delinquent mortgage, and provided no information on his single largest debt.⁴

The Appeal Board has long held that failure to timely file required tax returns may demonstrate a lack of judgment inconsistent with access to classified information.

A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information.”⁵

This is true whether the failure to file is willful⁶ or attributed to the press of other circumstances.⁷ As recently as December 2015, the Appeal Board upheld a denial of clearance, in a case notably similar to this, of an applicant who had failed to file Federal or state income tax returns for 10 years.

The filing of tax returns is both a financial and a legal obligation. Applicant’s . . . failure to have done so for many years is sufficient to raise a concern that he may be unwilling to follow other rules and regulations, such as those that govern the handling of classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015) (A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information). See also *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff’d*, 367 U.S. 886 (1961). Indeed, as the Judge noted, Directive, Enclosure 2 ¶ 19(g) explicitly provides that failure to file tax returns is a circumstance that can raise a security concern. Moreover, the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. See, e.g., ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015).

Security concerns under Guideline F are not limited to cases in which an Applicant is financially insolvent or is experiencing difficulty in paying debts. In this case his failure to timely file his Federal returns for at least eight years has created significant tax debt that he has not addressed.

Applicant meets none of the mitigating conditions for financial considerations. His failures to timely file his Federal returns are multiple, recent, and the circumstances are

⁵ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014), reversing Administrative Judge’s favorable decision. See, e.g., ISCR Case No. 98-0608 at 2 (App. Bd. Jun. 27, 2000)(failure to file for five years).

⁶See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

⁷See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

not demonstrated to be unlikely to recur.⁸ Moreover, he has not demonstrated that his failures to timely file and his subsequent failures to timely pay or make pay arrangements were due to circumstances beyond his control, and it is clear that he has not been responsible in addressing his taxes.⁹ Similarly, while his delinquent debts are arguably due to his medical issues, they are all recent and are either not addressed at all, or not documented, and thus cannot be considered to have been responsibly addressed.

Applicant has not had any credit or financial counseling, and he has not documented that the debts are being resolved.¹⁰ The absence of documentation means Applicant cannot demonstrate that he has made a good-faith effort to resolve his debts.¹¹ The missing details of his current tax status requires the same conclusion regarding his taxes.¹² Moreover, he submitted no work or character evidence which might support a whole-person assessment to overcome the security concerns raised by his conduct. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-e	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

⁸¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁹¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

¹⁰¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

¹¹¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

¹²¶20(x) the individual did something or other with the tax authorities and is complying with those arrangements:

JOHN GRATTAN METZ, JR
Administrative Judge