



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



In the matter of:)
)
) ISCR Case No. 18-02064
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/03/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 11, 2018, and requested a hearing before an administrative judge. The case was assigned to me on December 18, 2018.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 21, 2018, scheduling the hearing for January 25, 2019. The hearing was convened as scheduled.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1, 2, and 4 through 7 were admitted in evidence without objection. The objection to GE 3 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE F and G and admitted without objection.

Motion to Amend SOR

Department Counsel's motion to amend the SOR by adding an allegation was granted without objection. SOR ¶ 1.e reads as follows:

You are indebted to the state of [redacted] for delinquent taxes in the amount of at least \$4,000 for tax year 2017.

Findings of Fact

Applicant is a 44-year-old self-employed consultant for a defense contractor. He has a bachelor's degree, which was awarded in 1996. He is married with two children.¹

In about 2004, Applicant decided to invest in real estate. He bought condominiums in about 2004 and 2006, before the real estate market crashed. He had periods of unemployment and underemployment and renters who did not pay their rent. He was unable to pay the mortgage loans and other debts. Both properties were lost to foreclosure in about 2014 (SOR ¶¶ 1.b and 1.c). There is no evidence of any deficiency balances owed on the properties. An April 2015 credit report lists both mortgage loans as account closed with a foreclosure and a \$0 balance.²

The April 2015 credit report lists several debts that had been paid or settled. It also lists a credit card that was \$4,943 past due with a \$5,012 balance (SOR ¶ 1.d). The credit union obtained a judgment against Applicant in 2010. Applicant paid and satisfied the judgment in September 2015.³

Applicant always worked as a salaried employee (W-2) until he started working as a consultant and an independent contractor (1099) in 2015. As a salaried employee, taxes were withheld from his paycheck during the year. As an independent contractor, he was responsible for his own taxes, including paying quarterly estimated taxes. He was not as educated about the tax laws as he should have been, and he did not pay the

¹ Tr. at 41, 51; GE 1.

² Tr. at 18-20, 33-39; Applicant's response to SOR; GE 2, 5.

³ Tr. at 20; Applicant's response to SOR; Applicant's response to SOR; GE 1, 2, 4, 5; AE B, C.

quarterly taxes in the mistaken belief that he could pay the taxes by the standard April 15th deadline.⁴

In 2017, Applicant paid the taxes owed for tax year 2016. He received a pay raise in 2017, and he still did not pay the quarterly taxes. Applicant had a professional prepare his and his wife's joint tax returns for 2017 in February 2018. The federal return indicated that their tax liability for 2017 was \$31,062. There was \$6,507 withheld during the year from his wife's paychecks, leaving a balance of \$24,766. Their state tax return indicated they owed \$5,967.⁵

Applicant's and his wife's tax liability for 2017 was much higher than he expected, and he was unable to pay it when their tax returns were filed. He paid the IRS \$500 with the return and \$3,500 in April and May 2018. He hired a different tax professional who filed amended returns on their behalf in June 2018. The IRS reduced their tax liability by \$7,123. He paid an additional \$3,000 to the IRS in August and September 2018. He established an installment agreement with the IRS in September 2018. The agreement called for payments of \$1,000 per month. Between September 2018 and February 2019, he paid the IRS an additional \$12,000, to completely pay his tax liability for 2017. He received a \$492 refund.⁶

Applicant paid the IRS \$13,044 in March 2019 for his 2018 taxes. In January 2019, he paid his state \$4,742 for taxes owed for 2017. He paid his state \$4,928 in March 2019 for his 2018 taxes.⁷

Applicant's current finances are in order. He is now aware of his requirements to pay quarterly taxes. He credibly testified that he will comply with all his tax responsibilities in the future.⁸

Policies

This case is adjudicated under Executive Order (EO) 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 the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 list potentially

⁴ Tr. at 20-28; Applicant's response to SOR; GE 1.

⁵ Tr. at 24, 44; Applicant's response to SOR; GE 7; AE A.

⁶ Tr. at 24-31; Applicant's response to SOR; GE 7; AE A, D, F, G.

⁷ Tr. at 22, 35-36, 44-45, 68; AE F, G.

⁸ Tr. at 36-37, 40, 65-69; Applicant's response to SOR; GE 6; AE C, E-G.

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, administrative judges apply the guidelines in conjunction with the factors listed in 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "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 security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable 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 annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including two foreclosed properties, a delinquent credit card debt, and unpaid taxes. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 non-tax financial problems resulted from unemployment, underemployment, renters who did not pay their rent, and the collapse of the real estate market. Those events were beyond his control. His tax problems were not.

Applicant's investment properties were lost to foreclosure in about 2014. There is no evidence of any deficiency balances owed on the properties. He paid and satisfied the judgment for the debt alleged SOR ¶ 1.d in September 2015. He also paid or settled several debts that were not alleged in the SOR.

Applicant always worked as a salaried employee, and he was unsophisticated in the tax requirements of independent contractors. He fell behind on his federal and state income taxes, which raises some questions about his judgment. However, he started addressing the matter before the SOR was issued. All federal and state income taxes have been paid. His current finances are in order. He credibly testified that he will comply with his tax responsibilities in the future.

Applicant had a plan to resolve his financial problems, and he implemented that plan. AG ¶¶ 20(d) and 20(g) are applicable. AG ¶¶ 20(a) and 20(b) are partially applicable. Security concerns about Applicant's finances are mitigated.

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.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.e: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge