



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



In the matter of:)
)
) ISCR Case No. 18-02406
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

05/29/2019

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 October 23, 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 November 14, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 28, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 12, 2019, scheduling the hearing for May 10, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He has worked for his current employer since 2015. He seeks to retain a security clearance, which he has held with some breaks for many years. He attended community college for a period in the 1980s, but he did not earn a degree. He is married without children.¹

Applicant lived overseas for a number of years before 2000 and did not have to file state income tax returns. He always prepared his own federal income tax returns. He moved to his current state in about 2000. He found the state returns to be more difficult to prepare than his federal returns. He admitted that he is not good with numbers, and he was too embarrassed to ask for help. He also thought that he had enough withheld from his pay that he would not owe the state any additional taxes. He filed all his federal returns as required, but he did not file his state income tax returns when they were due for tax years 2001 through 2014.²

Applicant reported his failure to file his state income tax returns on his May 2016 Questionnaire for National Security Positions (SF 86), and he discussed the matter during his background interview in October 2017. He hired H&R Block; and he filed his 2001, 2006, and 2012 through 2014 state income tax returns in 2016. He filed his 2015 through 2018 state income tax returns in October 2016, July 2017, March 2018, and March 2019. His remaining state returns were filed in 2018 and 2019. His state imposed \$50 penalties for not filing the older returns, even when there were no taxes due. All of his state income taxes are paid, including \$730 in penalties and \$576 in interest.³

Applicant testified that he did not truly appreciate the significance of his failing to file his state returns. He does now. He plans to continue using H&R Block to prepare his returns. He credibly testified that he will file all future state and federal income tax returns and pay any taxes owed when they are due. There are no other issues about his finances.⁴

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.

¹ Tr. at 26, 28, 36; GE 1, 2.

² Tr. at 21-22, 26-27, 30-35; Applicant's response to SOR; GE 1, 2; AE A.

³ Tr. at 22-26, 30-31; Applicant's response to SOR; GE 1, 2; AE A.

⁴ Tr. at 25-27, 37; AE B-D.

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 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 is potentially applicable in this case:

(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 did not file his 2001 through 2014 state income tax returns when they were due. The evidence is sufficient to raise the above disqualifying condition.

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;

(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

(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 admitted that he is not good with numbers. He filed all his federal returns as required, but he found the state returns to be beyond his capabilities, and he was too embarrassed to ask for help. He also thought that he had enough withheld from

his pay that he would not owe the state any additional taxes. His failure to file his tax returns when required raises some questions about his judgment and willingness to abide by rules and regulations.

I found Applicant to be honest and truthful, but unsophisticated in regard to his finances and other matters. He reported his failure to file his state income tax returns on his May 2016 SF 86, and he discussed his taxes during his background interview in October 2017. He hired H&R Block; and he started to file the returns in 2016, more than two years before the SOR was issued. All of his state tax returns have been filed, and all of his taxes paid. Applicant knows it is his legal obligation to file his tax returns and pay his taxes, and that failure to do so in the future could cost him his security clearance and his job. He credibly stated that he will file all future returns when they are due. I am satisfied that Applicant's finances are now in order and that his tax issues will not be repeated. AG ¶ 20(g) is applicable. AG ¶¶ 20(a) and 20(c) 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

Subparagraph 1.a: For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge