



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



In the matter of:)
)
) ISCR Case No. 18-02861
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On March 18, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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), implemented by DOD on June 8, 2017.

Applicant responded to the SOR on April 11, 2019, and elected to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on April 26, 2019. A complete copy of the file of relevant material (FORM) was

provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the Government's FORM on May 2, 2019. He responded with documentation I have marked collectively as Applicant's Exhibit (AE) A. The case was assigned to me on June 14, 2019. The Government's documents identified as Items 1 through 6 and AE A are admitted in evidence without objection.

Findings of Fact

Applicant admitted both of the SOR allegations. He is 53 years old. He is married and he has two adult children. He has owned his home since 2006. (Items 3-4).

Applicant graduated from high school in 1984. He earned a bachelor's degree in 1990. He was unemployed from January to March 2012 and January to June 2016, and self-employed from approximately November 2005 to December 2012. As of his March 2017 security clearance application (SCA), he worked as an engineer for a DOD contractor since June 2016. He has never held a DOD security clearance. (Items 4-5).

The SOR alleges that Applicant failed to file his federal and state income tax returns for tax years 2010 and 2011, as required. He listed and discussed his failure to file his 2010 and 2011 federal and state income tax returns on his 2017 SCA, during his April and June 2018 interviews with a background investigator, and in his January 2019 response to interrogatories. (Items 1, 3-6).

Applicant attributed his failure to file his relevant income tax returns to the sale of his failing business in December 2011. He was overwhelmed with the associated record keeping and he was unable to provide his certified public accountant (CPA) with the information necessary to timely file his relevant tax returns. IRS account transcripts reflect that he was granted until October 2011 and October 2012, respectively, to file his 2010 and 2011 federal income tax returns, but he failed to do so. He indicated that he paid his income taxes quarterly then so he did not believe he owed any taxes, but acknowledged that he potentially faced penalties for failing to timely file. He also indicated that he was working with his CPA to resolve his unfiled tax returns. (Items 4-6; AE A).

In his January 2019 response to interrogatories, Applicant stated that he timely filed his federal and state income tax returns for tax years 2012 through 2017. He stated that he did not owe any federal taxes for tax years 2012 through 2016 and he paid \$4,266 in federal taxes that he owed for tax year 2017. He provided copies of IRS account transcripts for tax periods 2012 through 2017 to corroborate his claim. He stated that he did not owe any state taxes for tax years 2012 to 2013, and he paid \$351, \$242, \$1,280, and \$1,975 in state taxes that he owed for tax years 2014 through 2017, respectively. He stated that he understood the importance of filing his unfiled tax returns, and he hoped his "demonstrated tax conformance since 2012" and his "willingness to correct" his unfiled returns would be considered. (Item 6).

Applicant filed his 2010 and 2011 federal and state income tax returns in May 2019. His 2010 and 2011 federal and state income tax returns reflect that he is due federal refunds of \$3,374 and \$621, and state refunds of \$607 and \$76, respectively. He acknowledged that it was irresponsible of him to fail to timely file these relevant tax returns and he should have corrected his failure sooner. He cited to his timely filing of his federal and state tax returns for tax years prior to 2010 and subsequent to 2011 as evidence of his tax compliance. (AE A).

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 list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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(a), 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 access to classified information 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.

Under Directive E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG 18 expresses the security concern pertaining to financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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 failed to timely file his 2010 and 2011 federal and state income tax returns, as required. AG 19(c) and 19(f) apply.

I have considered all of the mitigating conditions under AG 20 and considered the following relevant:

(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;

(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 filed his outstanding federal and state income tax returns for 2010 and 2011 in May 2019. An applicant's eventual compliance with his tax obligations does not end the inquiry. A security clearance adjudication is not a tax enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that an applicant has filed his past-due tax returns does not preclude careful consideration of his security worthiness based on longstanding prior behavior evidencing irresponsibility. ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). In addition, a person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017).

Applicant's failure to timely file his federal and state income tax returns was confined to the two year period, in 2010 and 2011, when he was dealing with his failing business. He acknowledged his error in failing to timely file these tax returns, and in failing to file them sooner than he did. He does not have any other unfiled tax returns, and he does not have any outstanding tax obligation. He has complied with all of his tax responsibilities since then. I find that AG 20(a) and 20(g) are established.

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 the 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. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance.

For all these reasons, I conclude that 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.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge