



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-02997
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
 For Applicant: *Pro Se*
 07/15/2019

Decision

HOGAN, Erin C., Administrative Judge:

On January 9, 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 (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); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On April 2, 2019, Applicant answered the SOR and requested a decision based on the administrative record. On April 22, 2019, Department Counsel prepared a File of Relevant Material (FORM). On April 23, 2019, the File of Relevant Material was sent to the Applicant. On April 30, 2019, Applicant acknowledged receipt of the FORM. Applicant had 30 days to submit additional matters in response to the FORM. He did not submit a response to the FORM. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 48-year-old employee of a DoD contractor seeking a security clearance. He has worked for his current employer since September 2015. The highest level of education Applicant has achieved is a general equivalency degree (G.E.D.) He is not married. He has two daughters, ages 23 and 17. (Item 2)

On June 8, 2016, Applicant submitted a security clearance application in conjunction with his new employment. (Item 2) A subsequent security clearance background investigation revealed Applicant failed to timely file federal income tax returns for tax years 2014, 2015, 2016 and 2017. (SOR ¶ 1.a and SOR ¶ 1.b: Item 4 at 6-12) The SOR also alleged Applicant failed to file his state income tax returns for tax years 2014 and 2016. (SOR ¶ 1.c: Item 4 at 5) Applicant admits all of the allegations. (Item 1: Response to SOR)

Applicant encountered financial problems when he lost his job in December 2013 because his employer went out of business. He did not find full-time employment until he was hired by his current employer in September 2015. He received several months of unemployment benefits and worked several part-time jobs until he was hired by his current employer. (Response to SOR; Item 4) The status of the SOR debts are:

SOR ¶ 1.a: Applicant failed to file his 2016 federal income tax return because of some confusion as to how to input his affordable care act tax number into the program. He claims the tax program rejected his number. He is in the process of correcting the situation. Applicant did not respond to the FORM. In other words, he did not provide an update on the status of his 2016 federal income tax return. It remains unfilled. (Response to SOR)

SOR ¶ 1.b: Applicant did not timely file his federal income tax returns for tax years 2014, 2015 and 2017. He filed his 2014 federal income tax returns on October 24, 2016. He owed no taxes. (Item 4 at 6-7) He filed his 2015 federal income tax return on August 29, 2016. He owed no taxes. (Item 4 at 7-8) He filed his 2017 federal income tax return on June 4, 2018. He owed no taxes. (Item 4 at 11-12) All of the these returns were filed after the April 15th deadline.

SOR ¶ 1.c: Applicant failed to file his state income tax returns for 2014 and 2016. In his answer to the SOR, Applicant indicated that he had a difficult time during this period because of his period of unemployment in 2014. He did not find full-time employment until his current employer. Applicant indicated that he was in the process of correcting the situation. He did not response to FORM. He did not provide an update on the status of the filing of his 2014 and 2016 state income tax returns. The returns remain unfilled. (Response to SOR)

Applicant states he is a model citizen and very good employee. He admits that he has not been as diligent with filing his taxes. He is working on getting the matter resolved. (Response to SOR)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 information.

Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline 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. 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 notes several disqualifying conditions that could raise security concerns. The disqualifying condition that is relevant to Applicant's case is:

(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 failing to file his federal and state income tax returns. At the close of the record, he still had not filed his federal income tax return for 2016 and his state income tax return for 2014 and 2016. AG ¶ 19(f) applies to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill

his or her legal obligations, such as paying taxes 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. 17-01382 at 4 (App. Bd. May 16, 2018).

With regard to Applicant's federal tax debts, the emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.")

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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.

AG ¶ 20(a) does not apply because Applicant's tax issues remain unresolved for the 2014 and 2016 tax years. The status of Applicant's federal tax return for tax year 2016 and his state tax returns for tax years 2014 and 2016 remain uncertain.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his period of unemployment/underemployment from late 2013 to September 2015. However, he has been employed full-time since September 2015. Applicant had several years to file his 2014 and 2016 state income tax returns and his 2016 federal income tax return. I cannot conclude that he acted responsibly under the circumstances. For this reason AG ¶ 20(b) is given less weight.

AG ¶ 20(d) applies pertaining to Applicant's 2014, 2015 and 2017 federal income tax returns alleged in SOR ¶ 1.b. Although, he filed his returns late, he filed them within a reasonable time period. He did not owe any income taxes for those years. He made a good-faith effort regarding those tax returns. Unfortunately, he did not actively pursue filing his 2014 and 2016 state income tax returns and his 2016 federal income tax return. As a result, a question remains because of Applicant's negligence in filing his outstanding state and federal tax returns.

AG ¶ 20(g) applies in that Applicant has filed all of his federal tax returns for tax years 2014, 2015 and 2017. SOR ¶ 1.b is found for Applicant. However, at the close of the record, Applicant provided no proof that he filed his 2016 federal income tax return or his 2014 and 2016 state income tax returns. Failure to timely file all of his state and federal income tax returns raises questions about Applicant's reliability, trustworthiness, and ability to protect classified information.

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. I considered Applicant's favorable employment history as a federal contractor. I considered the adverse affect Applicant's period of under-employment between late 2013 to September 2015 had on his finances. While Applicant filed several of his late income tax returns, several of his state and federal income tax returns remain unfiled. As a U.S. citizen, Applicant had a duty to be proactive in timely filing his federal and state income returns. At the close of the record, he provided no proof that he filed his 2016 federal income tax return or his 2014 and 2016 state income tax returns. Security concerns under financial considerations are not mitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c	Against Applicant
Subparagraph 1.b	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge