



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



In the matter of:)
)
-----) ISCR Case No. 19-00032
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esquire, Department Counsel
For Applicant: *Pro se*

08/29/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 7, 2019, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017. In a response notarized on March 15, 2019, Applicant admitted both allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on May 10, 2019.

On June 25, 2019, DOHA issued a notice setting the hearing for July 11, 2019. The hearing was convened as scheduled. The Government offered four exhibits (Exs.), noted as Exs. 1-4, and Applicant presented eight exhibits, marked as Exs. A-H. With no objections, all exhibits were accepted into the record. Applicant was granted through August 19, 2019, to submit any additional materials. The transcript of the proceeding (Tr.) was received on July 19, 2019. Documents accepted without objection on August 11, 2019, and August 19, 2019, were marked and accepted as Exs. I-J, respectively.

The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant mitigated all security concerns.

Findings of Fact

Applicant is a 29-year-old mechanical engineer who has been in the same position for five years. In 2014, he graduated with a mechanical and electrical engineering technology degree from a leading U.S. university. He is presently preparing to defend his master's thesis in the same discipline at a nearby university. He is single and has no children. He recently bought his own home. At issue are delinquent Federal and state taxes owed for tax years 2016 and 2017, amounting to about \$32,500.

During his first year as a defense contractor at his present job, Applicant was paid by a governmental entity:

an untaxed, unreported monthly stipend with stipulations, strict stipulations, that [he] was not employed in any way and [he] was not receiving a wage. When [he] tried to file [taxes] in 2017, [he] tried to file for an extension, but because [he] had missed the 2016 deadline, [he] wasn't able to file that extension. And that compounded the problem. This made filing taxes very difficult and confusing for an engineer, and [he] ended up missing a 2016 tax deadline. (Tr.9)

In 2017, Applicant hired a CPA to complete his 2016 and 2017 tax year filings and set up payment plans. (Tr. 9) In the interim, Applicant became an employee of a different employer that provides regular tax documentation and withholdings. During this time, he was applying for a security clearance. As noted below, he ultimately instituted automatic payments on his tax obligations in the autumn of 2018.

With regard to the approximately \$21,148 Applicant owed to the Internal Revenue Service (IRS) for Federal taxes for tax years 2016 and 2017, Applicant has paid this tax liability. (Tr. 19-23; Exs, F-G) He first began addressing the balances on or before October 2018 through automatic monthly installment payments. (Tr. 22-23) Payments were thus made until April 2019, at which point the reduced balance was completely satisfied by one payment made with the proceeds of a personal loan. That loan is to be repaid over the next 15 years at the rate of \$700 a month. (Tr. 21) Applicant has had a zero balance owed to the IRS since April 2019.

As for the delinquent debt owed to his state for tax years 2016 and 2017 reflecting a balance of about \$11,572, Applicant provided a July 2, 2019, state tax document reflecting that the tax years at issue have no outstanding balance, and that he owes no state taxes. (Tr. 24; Ex. E) This sum was also satisfied from the proceeds of his loan after he made regular monthly installment payments from October 2018 through March 2019, with his receipt of the SOR occurring between the last two monthly \$1,000 installments. (An April 2019 installment for \$1,000 was refunded when it was deposited after the personal loan had already satisfied the debt. (Tr. 46))

When all his tax balances were satisfied in March 2019 with proceeds from his personal loan, Applicant searched for a house. He was pre-approved for a mortgage in April 2019. (Tr. 46) He also timely filed his Federal and state tax year 2018 obligations, for which he owed approximately \$6,000 and \$5,500, respectively. (Ex. 26-27) In June 2019, he bought a home valued at about \$200,000 with around \$8,000 down, then satisfied his tax year 2018 tax liabilities. (Tr. 29; Exs. I-J)

Every two weeks, Applicant is paid a salary of about \$2,000. His monthly mortgage is almost \$1,600, all inclusive of taxes, insurance, and fees. He has no car payment on his hybrid vehicle. He spends about \$250 for food and utilities, \$400 on his student loan, and up to \$500 a month on any credit card balances. Consequently, he has about \$300-\$700 a month to reserve for savings. (Tr. 36-37) He presently has almost \$9,000 in his checking and savings accounts, plus an actively open 401(k) account. While recommended, he has not pursued financial counseling through a free or commercial entity. Going forward, he plans to pay off his personal loan, make progress on his student loans, and seek a refinance on his home mortgage to seek better terms. To do so, he uses a budget. (Tr. 40) Both parties in this matter agree that he has mitigated the security concerns raised under ¶ 20(b) of Guideline F. (Tr. 47)

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. 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(c), the entire process is a conscientious scrutiny of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant had delinquent Federal and state income taxes owed for tax years 2016 and 2017. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(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.

Four conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit

counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

The delinquent debt at issue was the result of Applicant's misunderstanding as to how to treat his work-related income based on a stipend system Applicant did not understand. He apparently made no contemporaneous strides to better understand his tax position or how to proceed in terms of tax filing. Therefore, his situation cannot be said to have truly occurred because of conditions beyond his control. While he now understands the relative complexity of that scheme for tax preparation purposes, it is also noted he now has his taxes deducted through his employer's payroll office, thus assuring this scenario will not be repeated.

Furthermore, Applicant provided documentary evidence that the entire delinquent Federal and state tax debt for tax years 2016-2017 has been satisfied. His evidence indicates that he was already in the process of paying off the debts through monthly installments when the SOR was issued. After he received the SOR, he immediately expedited the payment process by switching from a monthly installment plan to simply paying all balances yet owed with one time payments. Although he has not yet received formal financial counseling, his efforts raise AG ¶ 20(a) and AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 29-year-old mechanical engineer who has been in the same position for five years. He is presently completing a master's degree program in mechanical engineering. He is single and has no children.

Because of the way his employer handled his stipends in tax years 2016 and 2017, Applicant was deemed delinquent on his Federal and state taxes for those tax years. He began satisfying his Federal and state tax obligations in 2018 through monthly installment payments. Several months later, Applicant received the SOR and expeditiously satisfied his entire tax debt with single payment to the IRS and his state after taking out a personal loan. His decision to so expedite matters was at his option. This process only requires an applicant to have a reasonable plan for debt repayment and documentation showing it had been successfully implemented, which he did. Going the extra step, however, hastened the process of satisfying his taxes.

Applicant now lives within a budget and the delinquent debts at issue have been satisfied. Home ownership should help him by both reducing his monthly housing expenses, and giving him a potentially lucrative investment vehicle. While his monthly net remainder may seem modest, it is not inappropriate for a man his age and in his field. Moreover, his income otherwise seems to well suit his monthly needs. Given all these considerations, I find financial considerations security concerns are mitigated. Clearance is granted.

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-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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge