



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01126
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 4, 2017. On April 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on July 1, 2019. Applicant received the FORM on July 11, 2019. The Government's evidence, included in the FORM, and identified as Items 1

through 4, is admitted without objection. Applicant provided a response to the FORM, which is marked as AX A. The case was assigned to me on August 13, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial considerations security concerns.

Findings of Fact

Applicant is a 28-year-old employee of a federal contractor. He reported no military service. Applicant obtained his GED in December 2008. (Item 3) He never married and has no children. He has not held a security clearance and is sponsored by the defense contractor with whom he has been employed since July 2017. (Items 3, 4) He disclosed his financial issues on his security clearance application.

Financial

The SOR alleges in 1.a-1.b that Applicant failed to file as required, Federal income tax returns for tax years 2015 and 2016 and failure to file, as required, state income tax returns for tax years 2015 and 2016. (Item 1, 3, and 4) Applicant admitted the allegations listed on the SOR. He noted in his answer to the SOR, that he failed to file his 2014 income tax returns. (Item 2)

Applicant provided various reasons for not filing his income tax returns, to include, that he prefers filing every three years, but in this case, he lost track of the years that he filed. He blamed immaturity and not being organized, but stressed that he is now mature and takes full responsibility for his actions. Applicant stated that it will not occur again. (Item 2)

On Applicant's 2017, security clearance application he stated that he would file by the end of that year. He noted that he was going through hard times financially, but he did not elaborate. He stated that he paid his property taxes. He estimated that he owed about \$750 total for his income tax. (Item 3) For the year 2016, Applicant stated on his SCA that he never received his W-2 tax return in the mail, but believed he owed about \$1,000. (Item 3) During his subject interview, Applicant also acknowledged failure to file the required income tax returns, but would do so by the end of 2018. (Item 4) He stated that his financial situation was "pretty good," as he has a higher paying job.

Applicant responded to the FORM and provided updated information about filings with respect to SOR 1.a and 1.b. He recently submitted his income tax returns for the tax years 2014-2018. He spoke to an IRS specialist and stated that he did not understand why the 2015, 2016, 2017 and 2018 were filed "all at once" through a third party. He knew that it was urgent to file his federal and state taxes after reading the subject interview and the effect on a security clearance. (Answer to FORM AX A) Applicant submitted client copies of Federal income tax returns for tax years 2014, 2015, and 2016. The copies were signed by the tax preparer on July 22, 2019, but they were not signed by Applicant. He also submitted the state income tax returns for the same years. The record is not clear if the returns were actually filed or if the tax owed was paid. (AX A)

Applicant also submitted information concerning his property tax payment and his current credit score. He stated that he has also paid four collection accounts that were recently on his credit report. (AX A) There is no information in the record concerning his salary, financial counseling, or use of a budget.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria

listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and other documentation in the record reflect non-filing of Federal and state income tax returns for years 2014-2018. Three disqualifying conditions under this guideline are established: AG ¶ 19(a) ("inability to satisfy debts"), 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").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 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

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

Applicant provided various reasons for not filing his Federal and state income tax returns. He admitted that he preferred to file every three years, but then became disorganized and lost track of filings. He has not provided information on financial counseling, his salary, or his actual filings or payments. In response to the FORM, Applicant submitted client copies of income tax returns for Federal and state signed by a third party preparer, dated July 22, 2019. The documents were not signed by Applicant. It is not possible to ascertain whether they were actually filed. He also did not have information to show that he paid any tax that was owed. He has been steadily employed, but according to the record has not taken action on the filings until 2019. On his 2017 SCA, he noted the failure to file and stated that all would be filed by the end of the year. He was aware for at least two years of the tax issue, but did not make a good-faith effort until July 2019. Applicant has furnished insufficient information to meet his burden. None of the mitigating conditions apply.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

Applicant has never held a security clearance. He has worked for a number of years as a contractor. He responded to the FORM, and admitted that he did not file his Federal or state income tax returns for the years in question. He did not provide solid information that the client copies of the Federal and state income tax returns were indeed filed on July 22, 2019. He repeatedly failed to fulfill his legal obligations, as required by law. I find that he has not demonstrated good judgment or reliability.

The record does not provide sufficient information to mitigate the security concerns in this case. Applicant provided various reasons for not filing the income tax returns, but none of them are sufficient to mitigate the case. The information that he submitted does not establish that the filings are complete or that he has paid any tax owed. He did provide information that he paid his property tax and several collection accounts. Applicant has not has mitigated the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.b

Against Applicant:

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge