



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01860
)
Applicant for Security Clearance)

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2019

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 July 2, 2019, 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 August 19, 2019, and requested a hearing before an administrative judge. The case was assigned to me on October 8, 2019.

The hearing was convened as scheduled on October 23, 2019. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE H through J (AE H consists of e-mails; AE I is a series of character letters; and AE J is tax return information) and admitted without objection.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since August 2016. He is also a reserve officer in the U.S. military, where he has served since 1983. He has been serving on active duty since May 2017. He seeks to retain a security clearance. He has a bachelor's degree and additional post-graduate education. He has never married, and he has no children. (Transcript (Tr.) at 22, 25, 34-37, 51; GE 1-3; AE A-G)

Applicant did not file his federal and state income tax returns when they were due for tax years 2013 through 2018. He stated that he was dealing with the medical problems and deaths of his father in 2007, his mother in 2013, and his uncle in 2015. Additionally, his financial records were in a different state after he was activated in 2017, and his brother moved his records to the cellar. (Tr. at 21-25, 44-46; GE 1-3; AE B)

Applicant reported his failure to file tax returns on a Questionnaire for National Security Positions (SF 86) in September 2017. He wrote that there was "no reason" for why he failed to file the returns. He also wrote that he was "in the middle of getting them done." He was interviewed for his background investigation in January 2018. He told the interviewer that he did not have a reason for his failure to file his returns, but that when he filed his returns before 2013, he did not owe any income taxes. He stated that he was in the process of gathering all his documents to file the returns. (GE 1, 2)

Applicant responded to DOHA interrogatories in May 2019. He wrote that he was "working on these tax returns as we speak." He included a copy of a letter to the IRS dated May 22, 2019, in which he wrote the "issue should be resolved within a month." (GE 3; AE B)

Applicant responded to the SOR in August 2019. He wrote that the returns would "be completed by the time the administrative hearing is held." The returns had not been filed as of his October 2019 hearing. (Tr. at 37)

Applicant filed the back income tax returns in December 2019. (AE H, J) His returns indicated that he was due refunds for each year, as follows:

- **2013** - \$3,025 from IRS and \$754 from state
- **2014** - \$5,311 from IRS and \$967 from state
- **2015** - \$2,198 from IRS and \$636 from state
- **2016** - \$3,428 from IRS and \$997 from state
- **2017** - \$104 from IRS and \$1,298 from state
- **2018** - \$5,551 from IRS and \$1,638 from state (AE J)

Applicant did not truly appreciate the significance of his failing to timely file his tax returns. He is now aware that he placed his security clearance, civilian job, and military career in jeopardy. There are no other issues about his finances. (Tr. at 27-34, 52-53)

Applicant deployed to Iraq from 2004 to 2005; Iraq again from 2007 to 2008; and Afghanistan from 2010 to 2011. He submitted numerous documents and letters attesting to his strong moral character and excellent performance of duties in the military. He is praised for his trustworthiness, honor, professionalism, dedication, honesty, dependability, reliability, work ethic, leadership, patriotism, and integrity. (Tr. at 22, 35; AE C, G, I)

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.

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

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 2013 through 2018 federal and 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 is potentially applicable:

(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.

I found Applicant to be honest and truthful, but lax about his legal requirement to file his tax returns. His failure to file his tax returns when required raises some questions about his judgment and willingness to abide by rules and regulations. It took some effort, but all the returns are filed. His returns indicated that he was due refunds for each year. He will likely forfeit thousands of dollars in refunds because some of the returns were filed beyond the statute of limitations on refunds. He also realizes that his neglect could have an adverse effect on his security clearance, as well as his civilian employment and military service. I am satisfied that Applicant’s tax issues will not be repeated. AG ¶ 20(g) is applicable. See additional discussion below under the Whole-Person Concept.

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 have incorporated my comments under Guideline F in my whole-person analysis.

Applicant's tax returns are filed, but that does not end the discussion. An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 16-03187 at 4 (App. Bd. Aug. 1, 2018). The differentiator in this case is Applicant's military service and particularly his deployments to Iraq and Afghanistan. That has earned him some additional good will. He has learned a valuable and costly lesson. I am convinced all future returns will be filed on time.

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