



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



In the matter of:)
)
) ISCR Case No. 18-02004
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O'Reilley, Esquire, Department Counsel
For Applicant: Eric A. Eisen

03/02/2020

Decision

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

Statement of the Case

On January 28, 2019, the Department of Defense (DOD) Consolidated Adjudications 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. On February 22, 2019, Applicant admitted both allegations raised and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on June 4, 2019.

A notice of hearing was issued on July 11, 2019, setting the hearing for August 14, 2019. The hearing was convened as scheduled, during which time the Government offered two exhibits (Exs.), noted as Exs. 1-2. Applicant testified gave testimony and offered four documents, accepted without objection as Exs. A-D. He was given until September 20, 2019, to submit any additional materials. The transcript of the proceedings (Tr.) was received on August 21, 2019. ApplicantHe timely submitted a package of materialsitems that offered without objection and accepted on Ex. E on

September 20, 2019. was marked and admitted without objection as Ex. E. The record closed on September 20, 2019. In the interim, t The transcript (Tr.) of the proceedings was received on August 21, 2019. On September 20, 2019, a package of documents was submitted by Applicant and accepted into the record without objection as Ex. E. The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant mitigated security concerns. [Suggested re-draft]

Findings of Fact

Applicant is a 62-year-old logistics analyst who has worked in that capacity for 23 years. He completed high school. He was honorably discharged from the United States military after 22 years, he retiringed at the rank of master sergeant. He lives well within his means. [Otherwise sounds like he spent 22 yrs at that rank]

For tax years (TY) 2012 and 2014-2015, Applicant failed to timely file, as required, his state and Federal income tax returns. He also failed to timely file, as required, state income tax returns for those same tax years. Usually, he used a popular tax preparation software to file his tax returns. (Tr. 24, 31) In preparation for filing his TY 2012 returns, he got frustrated downloading updates to the software “because [his] computer was too old.” (Tr. 24) He replaced his computer, but still had problems updating the program. Increasingly frustrated, he gave up, feeling confident that at least he owed no taxes for TY 2012. (Tr. 25)

At the time, Applicant did not know it was against the law to not file tax returns. (Tr. 26) He said, “from the past, I’ve always received a refund. So I thought that would still be in the same category as getting a return [sic], for state and federal.” (Tr. 26) He felt monies owed to him as refunds were being held for him with the tax authorities and he could “stockpile” them for later deposit into his savings or 401k accounts. (Tr. 25)

The following year, in early 2014, Applicant timely filed tax returns, both federal and state, for TY 2013. (Tr. 25-26, 35, 38; Ex. E) In Applicant’s case, one cannot complete a state tax return without first finishing a federal return. He did not, however, file his late TY 2012 tax returns at that time because he “didn’t have all [his] documentation.” (Tr. 25) He was working at home and managing physical conditions that would ultimately warrant knee surgery later that year and a heart procedure in 2015, issues that would distract him from taxes. (Tr. 35-37) No tax returns were then filed for TY 2014-2015. (Tr. 42-43)

In early 2017, Applicant timely completed his TY 2016 tax returns, a practice he now continues to perform annually. (Tr. 43-44) While completing his security clearance application (SCA) in 2017, Applicant admitted he had failed to file some tax returns. (Tr. 28) In that year he had filed his He filed his TY 2014 and TY 2015 tax returns, years for which he was issued refunds. (Tr. 42) He forgot about the need to file his tax returns for TY 2012 during his health issues and over time later in 2017. (Tr. 42). Since that time, Applicant has used an accountant to prepare his tax returns. (Tr. 48)

By 2018, Applicant had retained the services of an accountant to handle his taxes. (Tr. 48) Applicant's filed his TY 2012 tax returns were ultimately filed by in early 2019. (Tr. 32-33, 45; Ex. B) No refund was issued because he had missed the deadline for late filing, thus losing the approximately \$4,000 he had been owed. He discovered he had waited too long to file those TY 2012 tax returns in order to receive the approximately \$4,000 in refunds he had been owed. (Tr. 28; Ex. B) His sister mentioned a credit repair service that could help him get his finances in order and give him "peace of mind,." which he then contacted (Tr. 27, 49) It was always his intention to have all tax requirements reviewed and completed appropriately, it just never seemed urgent to him since refunds were always owed and he was unaware there were time limits for claiming refunds. His credit and financial situation have been improved and With help, later refunds were received from the taxing authorities and his financial situation rectified to the point that his credit score is now 792. (Tr. 30) Applicant has no outstanding taxes due to any taxing authority. (Tr. 29)

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, 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 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 failed to file, as required, federal and state income tax returns for multiple years. This is sufficient to potentially 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.

[If you say "potentially" you should address each AG and find what does and does not apply]

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(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's initial delay in filing for tax returns (for TY 2012) was many years ago and due, in part, to his ignorance. With only a high school education, he was unaware that a tax filing was required regardless of whether one owed taxes or, as here, was due a refund. He was not trying to evade paying his share of taxes; indeed, there is no evidence that he was experiencing any form of financial distress or was overextended. This initial failure was later compounded when he simply forgot about the neglected tax year.

Now aware that the administrative action of filing is required annually, Applicant took remedial action, sought professional guidance, has since been timely with this function since 2013, and now relies on a professional to oversee his taxes and accounts. Federal and state tax returns have been filed for all tax years at issue. This has been a beneficial learning experience for Applicant, one which will not be repeated and one for which he is truly contrite. Consequently, I find AG ¶ 20(a), AG ¶ 20(c), and AG ¶ 20(g) apply.

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 62-year-old logistics analyst with a high school education. He has worked in that capacity for 23 years. He was honorably discharged from the United States military after 22 years, retiring at the rank of master sergeant.

With limited education and sophistication, Applicant was unaware that he was legally obligated to file federal and state tax returns annually, regardless of whether additional taxes were owed. Frustrated with his tax preparation software, he noted that he was due a refund and did not owe additional taxes, and chose to forego timely filing his TY 2012 tax returns for the moment. This delay was ultimately protracted, and he failed to timely file federal and state tax returns for TY 2014-2015, as well.

Once apprised of his error, Applicant sought financial guidance and took corrective action. He filed the TY 2014-2015 previously neglected, but initially forgot about those for FY 2012. returns and, When the TY 2012 returns were filed, he discovered he had missed a deadline to recoup the approximately \$4,000 tax refund he had been owed. Consequently, he learned a costly lesson. He took the lesson to heart. due to the length of time that had passed, suffered the loss of a sizeable refund. He has since retained a tax preparation specialist to annually file his returns on his behalf. Applicant now understands his legal obligations and assures that they are timely executed. Sufficient time has passed to reflect he has learned his lesson, and there has been sufficient evidence to show he is capable to meet his financial obligations. I find that Applicant has mitigated 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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge