



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



In the matter of:)
)
) ISCR Case No. 18-02996
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara K. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

January 27, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 13, 2017, Applicant submitted a security clearance application (e-QIP). (Item 3.) On May 15, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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), as amended (Directive); and the *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 2, 2019. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 23, 2019, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing ten exhibits, was

sent to the Applicant and received on October 2, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM on October 3, 2019 and submitted one document, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. DOHA assigned the case to me on December 5, 2019. Items 1 through 10 are admitted into evidence and hereinafter referred to as Government Exhibits 1 through 10.

Findings of Fact

Applicant is 56 years old. He is unmarried. He holds the position of 3rd Mate with the Merchant Marine and is seeking to obtain a security clearance in connection with his employment. He is currently on disability from his job.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified ten allegations under this guideline concerning Applicant's failure to file his Federal and state income tax returns for tax years 2016, 2017, and 2018; back taxes owed as a result; and a number of delinquent debts that were placed for collection. In his answer to the SOR, Applicant admits allegations 1.a., through 1.d., and he denied the remaining allegations, 1.e., through 1.j., asserting that they have been paid.

Applicant's employment history includes at least two instances of termination and one of resignation prior to his termination. The cause for his termination from employment from his job in 2015 also resulted in suspension of his Merchant Marine License for six months upon agreement with the Coast Guard. (Government Exhibit 3.) He has an extensive history of unemployment, starting most recently and then working backwards, from November 2013 to January 2014; July 2013 to October 2013; April 2013 to June 2013; April 2012 to March 2013; November 2010 to March 2012; August 2009 to August 2010; May 2008 to June 2009; and from February 2007 to July 2007. Applicant began working for his current employer in June 2017. In November 2017, he was injured on his job, and has been unemployed and on disability since then.

Applicant admitted that at one time he owed approximately \$14,656 in back taxes to the State of Delaware for tax years 2010, 2012, and 2013. As a result, in April 2008, the State of Delaware entered a tax lien against him in the amount of \$2,573. Applicant states that in September 2017, he set up a payment plan to pay his Delaware state taxes and was making payments until he suffered a knee injury on the job in December 2017.

In response to the FORM, Applicant submitted a letter from the Delaware state tax authorities indicating that as of August 29, 2019, Applicant had a zero balance owed toward back taxes. (Applicant's Exhibit A.) Applicant also submitted a letter he prepared that stated that as of July 2, 2019, he had paid the debts set forth in allegations 1.f., through 1.j. These debts are mainly delinquent medical bills that total approximately \$600. He did not provide copies of any receipts or proof of payments made to these creditors. There is no documentation in the record to substantiate the fact that his delinquent debts have been paid.

Applicant has not yet filed his Federal income tax returns for tax years 2016, 2017, and 2018. There is also no evidence in the record that he has filed his state income tax returns for tax years 2016, 2017, and 2018. He has no excuse for not timely filing these income tax returns.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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

Guideline F - Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are possibly applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant is a procrastinator who did not file his state or Federal income tax returns on time from 2016, 2017, and 2018. There is nothing in the record to mitigate this violation of the laws and there is no excuse for this misconduct. Applicant has not demonstrated the high degree of judgment, reliability and trustworthiness required to hold a security clearance.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;

(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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

(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;

(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.

It is noted that Applicant has a long history of unemployment and has been terminated in the past on at least two occasions. He also had a knee injury that caused him to miss some work. However, Applicant has not expressed that he understands the importance of filing his income tax returns on time, nor has he been diligent and responsible over the years in filing them. There is no evidence in the record to show that even as of today he has filed his state or Federal income tax returns for 2016, 2017 and 2018. During this period, he established a pattern of not complying with Federal or state law.

Applicant has resolved his state taxes. He also claims that he has also paid his other delinquent medical bills and miscellaneous consumer debt set forth in the SOR. However, in regard to these debts, he has failed to provide sufficient documentation to substantiate his testimony. There is nothing in the record to show that he has actually paid these debts. There has been no receipts submitted from the creditors or other proof of payment offered. Under the circumstances, his failure to file his Federal and state income tax returns for tax years 2016, 2017 and 2018 is sufficient by itself to find

that the Applicant is ineligible for access to classified information. This pattern of conduct has not demonstrated sufficient good judgment and reliability to show that he has earned the privilege to access to classified information, or that he will abide by the rules and regulations required of him while holding a security clearance. Full mitigation has not been established.

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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.b., through 1.d.	For Applicant
Subparagraphs 1.a., through 1.j. (except 1.b., 1.c., and 1.d.)	Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge