



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-00900
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
 For Applicant: *Pro se*
 02/28/2020

Decision

MARINE, Gina L., 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 July 14, 2016. On September 5, 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 (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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on September 24, 2019, and requested a decision on the written record without a hearing. On November 13, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 4. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on November 18, 2019, and did not respond. Items 1 and 2 are the pleadings in the case. I

admitted Items 3 and 4 into evidence. The case was assigned to me on January 22, 2020.

Findings of Fact

Applicant, age 63, is divorced without children. He received his GED in 1975. He graduated from a police academy in 1979. He received a HAZMAT technician certification in 1991. He earned two electrician certifications in 2004. Most recently, he has been employed as an electrician by a defense contractor since July 2016. This is his first application for a security clearance. (Item 3)

In his July 2016 SCA, Applicant reported that he failed to file his federal and state income tax returns for tax years 2012 through 2014. He asserted that his certified public accountant (CPA) was in the process of preparing them for filing. He also stated that he expected to receive refunds. (Item 3 at 46-47)

During his June 2017 security clearance interview (SI), Applicant revealed that he had not yet filed his returns for tax years 2012 through 2014. He claimed to have provided his CPA with the information necessary to file them sometime in 2017. He promised to file them by the end of 2017. He asserted that his 2015 and 2016 federal and state income tax returns had been filed on unspecified dates, without providing any corroborating documentation. Without providing any details, he attributed his delinquent filings to being a single man working overtime and caring for his ailing mother, who passed away in November 2016. During his June 2018 SI, he acknowledged that he had not yet filed any federal or state income tax returns for tax years 2012, 2013, 2014, 2016, and 2017. He declared that he misspoke during this 2017 SI due to "human error" when he stated that he already filed his 2016 return. (Item 2 at 3; Item 4 at 3, 9-10)

In his July 2019 responses to interrogatories, Applicant claimed that his 2015 and 2018 federal and state income tax returns were filed in April 2019. He asserted that he planned to file his 2017 returns in July 2019, and his 2016 returns at a future unspecified time. He claimed that he did not owe any taxes for tax year 2015, and paid approximately \$1,075 to the IRS and state for tax year 2018. He did not clearly articulate a plan for filing his 2012 through 2014 returns. He mentioned that it was beyond the three years during which he would have been eligible for a refund for those tax years, and then suggested that he might believe that he would not be required to pay any taxes after that three-year period. He maintained that he was unable to file all of the delinquent returns at the same time because he did not have sufficient funds to pay his CPA's fees all at once. He did not provide any documents corroborating the return filings or tax payment for tax years 2015 and 2018. (Item 4 at 13-14)

In his September 2019 SOR response, Applicant reaffirmed that his 2015, 2017, and 2018 federal and state income tax returns had been filed. For unspecified reasons, he had not received the full refund he was expecting from either the IRS or the state for tax year 2015. He claimed to have paid an unspecified amount for taxes, late fees, and penalties for tax year 2017. He did not provide any documents corroborating the return filings or tax payments for tax years 2015, 2017, and 2018. He proffered the schedule

by which he planned to file the remaining delinquent returns. Although he was expecting refunds, he understood that he will not know the status of his tax liability, which could include late fees and penalties, until after the returns are filed and processed. He planned to file his 2014 and 2016 returns first, within 30 to 45 days from the date of his SOR response. Then, he would file his 2012 and 2013 returns within 30 to 45 days from the date he resolved any tax liability for tax years 2014 and 2016. The purpose of the staggered scheduling was to ensure that he had sufficient funds to pay any tax liability owed. He also vaguely suggested that he may not yet have provided all of the information necessary for his CPA to file the delinquent returns. (Item 2)

Applicant was unemployed for unspecified reasons from April 2010 through 2012, and six times between September 2012 and February 2015 for one to three-month periods each. He supported himself with unemployment compensation and savings. In June 2017, he described his financial status as “tight.” The record did not otherwise specify details about his ability to meet his expenses, including CPA fees and taxes. (Item 4 at 5-6, 10)

Applicant is a patriot who believes strongly in supporting the United States. He is dedicated to his craft. He desires to serve his country and vowed that he would be diligent in protecting any classified information to which he is entrusted. Numerous members of his family have served in the U.S. military with distinction, including his father who was among the first to train as a member of the U.S. Navy underwater demolition team and an uncle who was a WWII fighter pilot. (Item 2; Item 4 at 15)

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.” *Egan* 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.” EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. *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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). 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. 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; AG ¶ 2(b).

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 establish the following disqualifying condition: 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). None of the following potentially applicable mitigating conditions under this guideline are established:

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; 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 failed to clearly establish that he filed his delinquent federal and state income tax returns for tax years 2015, 2017, and 2018, or that he has no outstanding tax liabilities for those tax years. Even if I were to accept, without corroborating evidence, that he filed his returns and resolved his tax obligations for tax years 2015, 2017, and 2018, he has not yet filed his federal and state income tax returns for tax years 2012 through 2014 and 2016. Moreover, the associated tax liability for those years remains unknown. There is insufficient information in the record to establish that Applicant's initial failure to timely file his returns resulted largely from circumstances that were beyond his control, or that he acted responsibly to address the issue in the years that followed.

The fact that Applicant expected refunds or may not have been able afford to pay his taxes does not absolve him of the obligation to timely file his income tax returns, without justifiable reasons. He repeatedly failed to follow through on his promises to file his delinquent returns and resolve his unknown tax liability at multiple stages of the security clearance process. This persistent procrastination and avoidance surrounding his tax obligations calls into question his suitability for access to classified information.

A person who fails repeatedly to fulfill his or her legal obligations, such as filing income tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge