



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01231
)
Applicant for Security Clearance)

Appearances

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

01/08/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On June 10, 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. 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on June 29, 2019, 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), and Applicant received it on October 3, 2019. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Subsequent to the 30-day rule, Applicant submitted a response to the FORM and documents for consideration, which are marked as Applicant's Exhibits (AE) A through H (each with multiple pages). Administrative exhibits are marked as Hearing Exhibit I. There were no other objections by Applicant or the Government to any of the Items or exhibits and they are admitted into evidence. The case was assigned to me on November 21, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 63 years old, married, and has 3 adult children. He received a bachelor's degree in 2004, and served in the military from 1974 to 1979, at which time he was honorably discharged. (Item 3)

Applicant completed a security clearance application (SCA) in July 2017. During his April 2018 background interview with a Government investigator, he was asked if he had failed to file or pay Federal, state, or other tax returns when required by law. Applicant admitted to the investigator that he failed to file and pay his taxes from 2014 to 2017. He stated that his reason for failing to do so was because he was having difficulty with his wife's Social Security Disability payments and the fact that taxes were not being withheld from the payments. He told the government investigator that in addition to owing Federal taxes, he also owed state taxes to State A, and possibly State B. He indicated he was seeking assistance from a tax preparer to rectify the situation. (I will not consider any derogatory information that was not alleged. I may consider it when applying the mitigating conditions, making a credibility determination, and applying the whole-person concept.) (Items 2, 4)

Applicant completed government interrogatories in May 2019. He indicated in them that he filed his 2013, 2014, and 2015 Federal income tax returns on February 25, 2019. He indicated that he filed his 2016 and 2017 Federal income tax returns on May 5, 2019. He stated he filed an extension request for his 2018 Federal tax returns, and they were filed by October 15, 2019. (Item 4)

Applicant also stated in his answer to Government interrogatories that he filed his 2013, 2014, 2015, 2016, and 2017 State A income tax returns on February 25, 2019. Because he also worked in State B in 2013, 2014, and 2015, he was required to file income tax returns with that state. He failed to do so timely and filed them on February 25, 2019. He did not work in State B other tax years. (Item 2)

In Applicant's answer to the SOR, he stated the reason he failed to timely his Federal and State A and B income tax returns was because "I got stupid then overwhelmed." (Item 2)

In Applicant's answer to the SOR, he provided proof that he paid his 2013 Federal tax debt in June 2019 (\$3,415). He stated: "I am caught up on Federal Taxes." (Item 2) In his Response to the FORM, he provided Internal Revenue Service transcripts showing he has zero balances owed for tax years 2013 through 2018. He stated in his Response the following: "The reason for being late is large medical bills due to wife's illness. And long wait for getting her on disability." (AE A) No other information was provided regarding how these facts impacted his ability to file his tax returns. (Item 2, AE A, G)

Applicant provided a copy of an installment agreement he has with State A executed in May 2019. It shows he owes a balance for tax year 2015 to State A of \$5,034. The agreement requires him to pay \$152 a month beginning in June 2019 and completing the agreement in May 2022. He provided proof he made a payment to State A for \$170 in June 2019. He also provided a "Certificate of Tax Clearance" from State B dated June 2019 to show "tax clearance valid through 09/22/2019." (AE G)

Applicant provided exhibits documenting his military service and accomplishments during that period. He provided copies of performance appraisals; his resume and job history, and an Internet article on financial issues. (AE B, C, D, E, F, H)

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 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, 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 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an 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 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(g) 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 failed to timely file his 2013, 2014, 2015, 2016, and 2017 federal income tax returns. He failed to timely file his 2013, 2014, 2015, 2016, and 2017 State A tax returns. He failed to timely file his 2013, 2014, and 2015 State B tax returns. He was indebted to the Federal Government, State A and State B for delinquent taxes. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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.

Applicant failed to provide a reasonable explanation for his failure to timely file his federal income tax returns for five years or his state income tax returns for numerous years. His explanation, during his 2018 background interview that taxes were not withheld from his wife's Social Security Disability payments is not persuasive and does not justify his repeated failure to file tax returns on time. He stated in his answer to the SOR that his reason for failing to timely file was because "I got stupid and overwhelmed." His later explanation in his Response to the FORM was that he was late because of his wife's illness and a long wait for her disability. All of his defenses fail to adequately explain why he did not timely file his tax returns. It was not until after he was interviewed by a Government investigator as part of his background investigation in 2018 that he filed the returns in February and May 2019.

Applicant paid his 2013 federal tax debt in June 2019. He also paid his State B tax debt in June 2019. In May 2019, he executed an installment agreement with State A to pay his delinquent 2015 tax debt, which will be completed in 2022. There is insufficient evidence that Applicant's ability to file his tax returns each year was beyond his control.

His failure to do so until after he was interviewed by a government investigator does not show he acted responsibly. AG ¶ 20(b) does not apply.

Applicant completed filing his delinquent tax returns in February 2019 and May 2019. He also has paid his delinquent federal income taxes, and paid the taxes owed to State B; and is in a payment plan with State A. Although Applicant has taken action to pay his delinquent tax debts, he failed to do so until after he disclosed the information to a Government investigator, which diminishes his good-faith actions in resolving his delinquent tax debts. AG ¶¶ 20(d) has limited application. AG ¶ 20(g) applies.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960),

aff'd, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant is 63 years old. He served honorably in the military and has a good work record. For five years, Applicant failed to comply with the law when he repeatedly failed to timely file his federal income tax returns and also failed to file state returns for numerous years. After he disclosed this information to a Government investigator, he began taking action to resolve these issues and pay his delinquent federal tax debt, State B tax debt, and execute an installment agreement with State A. Applicant has not met his burden of persuasion. Ignoring his legal responsibilities for years raises questions about his reliability, good judgment, and trustworthiness. At this time, he has not established a track record of responsibly managing his legal obligations related to filing and paying federal and state taxes. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c.:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge