



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01764
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2020

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 September 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 October 9, 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 November 8, 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 9. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on January 7, 2020.

Findings of Fact

Applicant admitted all of the SOR allegations, except ¶ 1.c, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He served in the military from 1985 to 1992 and was honorably discharged. He earned a bachelor's degree in 2002. In 2003, he started an insurance business and was self-employment. He married in 2006 and divorced in 2013. He has two children from the marriage, ages 12 and 11 years old. He also has a 23 year old child from a previous relationship, age 23 years old.. He remarried in 2018.

Applicant worked full time as an insurance agent from March 2003 until November 2013. His business failed, and he sought other employment. He worked from November 2013 to October 2014 at two places of employment, but was underemployed. He was then unemployed from October 2014 to September 2018. He was supported financially by his wife's income and personal savings. He began employment with a federal contractor in 2018. (Item 3)

Applicant admitted in the SOR that he failed to file, as required, his Federal income tax returns for tax years 2010 through 2017. He admitted he was indebted to the Federal Government for delinquent taxes in the amount of approximately \$148,000 for tax years 2008 through 2012. (Item 2)

In his November 2018 security clearance application (SCA), Applicant disclosed that he also failed to pay his 2009 Federal income taxes because he did not have enough money from sales commissions, and he did not have taxes withheld from previous commissions. He stated in the SCA that he was engaging a tax relief firm to begin an offer in compromise (OIC) with the IRS for his 2009 and 2010 tax debt. He estimated he owed \$28,000 for tax year 2009 and \$37,000 for 2010. IRS documents show that he owed approximately \$69,968 for tax year 2009. They also show he had not filed tax returns for 2010 through 2017. He filed his 2018 Federal tax return about a week late and the refund he received was involuntarily applied to a 2005 tax debt. (Items 3, 4, 5, 6, 7)

Applicant filed Chapter 13 bankruptcy in 2004. The documents show he had a debt owed to the IRS for tax year 2003 for approximately \$6,199. He filed Chapter 13 bankruptcy in 2006 and disclosed he owed \$42,710 in delinquent taxes for tax years 2003 through 2005. Both bankruptcies were dismissed prior to completion. In 2009, Applicant filed Chapter 7 bankruptcy and it was discharged later that year. There is no indication he was relieved of his tax obligations from the bankruptcy discharge. (Items 5, 6) (I have not considered any derogatory information not alleged for disqualifying purposes. I may

consider such information for making a credibility determination, in applying mitigating conditions, and in my whole-person analysis.)

In his SCA, Applicant also stated that he now had a steady job and no longer was working on commissioned-based insurance sales. He increased his withholdings at his current job and believed he was on a “path back to good graces with the IRS.” (Item 3) He said, “Before I started the insurance business I had never missed any filings or payments of my federal and property taxes. I simply did not realize how commission based earnings affected taxes.” (Item 3) He further stated, regarding his 2011 and 2012 tax returns, that he was working with a tax relief firm to get them filed and paid. (Item 3)

Applicant was interviewed by a government investigator in January 2019. During his interview he confirmed that he had not filed or paid any taxes from 2009 to the present. He also stated that he was not required to file income tax returns since tax year 2013, because he did not earn enough money. Applicant has not provided any evidence that he was not required to file Federal income tax returns based on his limited income. (Item 4)

Applicant told the investigator that he had not yet contracted with a tax relief firm as he previously stated in his SCA. He said he may eventually use one, but he first needed to research the best way to address his tax issue and then choose the right company. He confirmed that he was not on a payment plan with the IRS for his delinquent taxes and estimated he owed approximately \$128,000 for tax years 2009 through 2012. He told the investigator he failed to pay his Federal taxes from 2009 through 2012, because he did not have enough money set aside to pay them when they were due. Instead, his earnings were invested in his business. (Item 4)

Applicant disclosed in his SCA that he failed to file his 2010 Federal income tax return because he was unemployed and no taxes were withheld from his income, and he could not afford to pay his taxes. He estimated he owed about \$37,000. For his 2011 Federal income taxes, he said his failure to file was because he had medical and health issues and was “frozen from fear from dealing with the IRS at this point.” (Item 4) He estimated he owed about \$35,000. For his 2012 Federal income tax returns, he explained he did not file because he separated from his wife and was going through a divorce. He was aware he would have to negotiate a settlement with the IRS at some point. (Items 3, 4)

Applicant completed Government interrogatories in July 2019. In them he disclosed he also owed Federal income taxes for tax year 2008 (\$20,000). He confirmed he had not filed Federal tax returns for 2013 through 2017 and provided no evidence to corroborate he was not required to do so. He stated, “2014 through 2017 I don’t believe I earned enough to file returns. I am requesting transcripts to get more accurate information. I filed my first clean return since 2008 this year and [the] IRS kept my refund of [\$]1,300 so technically repayment has begun.” (Item 4)

Regarding the debt in SOR ¶ 1.c, Applicant told the investigator that this collection account is for a vehicle that he financed and subsequently wrecked and totaled. He was

behind on payments at the time of the accident. His insurance paid the creditor, but the creditor was still pursuing Applicant for the late payments owed. Applicant disagreed with the manner in which the debt is being handled by the creditor, and he has no intention of paying it. No evidence was provided to show he has disputed the debt. It is unresolved. (Items 2, 4, 8, 9)

Applicant admitted owing the accounts in SOR ¶¶ 1.d through 1.h. They are corroborated by credit reports dated December 2018 and May 2019. Applicant did not provide evidence that he has paid, has payment plans, or otherwise resolved these debts. (Items 2, 4, 8, 9)

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 are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

(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 has a history of failing to file and pay his Federal income tax returns beginning in about 2009 through 2017. He has other delinquent debts that he has not paid or resolved. He is indebted to the Federal Government for approximately \$148,000. His repeated failure to have sufficient income withheld each year to pay his taxes, and his decision to reinvest that money in his business shows an unwillingness to satisfy his tax debts. There is sufficient evidence to support the application of the above disqualifying conditions.

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;

(c) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 repeatedly failed to timely file his Federal tax returns and failed to pay his tax debts for numerous years. He failed to provide evidence that he was not required to file for some tax years. He stated in his SCA that he had engaged a tax relief firm to help him resolve his tax problems, but later admitted during his background interview that he did not do so. He provided no evidence of any efforts he has made to resolve his significant tax debt. No evidence was provided that he has a payment plan, an offer-in-compromise, or made other arrangements with the IRS. His explanations for why he failed to file tax returns are not credible. He had the ability to file them. He may not have had

money to pay, but that was because he did not withhold sufficient income each year to pay his tax liability, which was within his control. He stated that he used the money to reinvest in his business. His explanation that he was unfamiliar with his tax obligations as a self-employed businessman is also not credible. He failed to provide evidence that he has paid or attempted to resolve the other delinquent debts alleged. He did not provide evidence that he has taken steps to dispute any of the delinquent debts. None of the above mitigating conditions apply.

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 53 years old. For numerous years, Applicant failed to comply with the law when he repeatedly failed to timely file his Federal income tax returns. He repeatedly failed to pay his Federal tax obligations. He owes delinquent taxes and debts that are unresolved. Applicant has not met his burden of persuasion. Ignoring one's legal responsibilities for years raises questions about his reliability, good judgment, and trustworthiness. 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-1h.:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge