



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



In the matter of:)
)
) ISCR Case No. 19-01794
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Jacob Ranish, Esq.

07/28/2020

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on November 13, 2019, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 2, 2020, and reassigned to me on June 16, 2020.

The hearing was convened as scheduled on July 13, 2020. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The documents attached to Applicant's response to the SOR (Atch A through J) are also admitted without objection.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since about October 2019. He served on active duty in the U.S. military from 1978 until he was honorably discharged in 1982. He held a security clearance while in the military and for a few years thereafter, but this is his first application for a security clearance since about 1986. He has a General Educational Development (GED) high school equivalency certificate, and he has taken graduate-level classes from a prestigious university. He is married for the third time, but he and his wife are separated. He has four children. (Transcript (Tr.) at 16-19, 22, 47-48; Applicant's response to SOR, Atch A, C, D; GE 1, 2)

Applicant did not file his federal and state income tax returns when they were due for tax years 1995 through 1997 and 2009 through 2015, and he also did not pay all the taxes for those periods when they were due. He worked for a car dealer in the 1990s, and he stated that he thought he had filed the returns for those years. (Tr. at 30-31, 49-50; Applicant's response to SOR; GE 1-7)

Applicant worked as an independent contractor (IRS Form 1099) for a company from 2002 through 2016. He attributed his failure to file the returns from 2009 through 2016 to a series of events. His second wife kidnapped their two children in 2001. He did not see either of his children for more than 15 years. He indicated that there is a federal warrant for his second wife's arrest. Applicant also suffered from serious health problems, including a stroke in 2003 and heart attacks in about 2009 and 2011. Finally, the company he contracted for was financially unstable. It did not pay well, and it would go months without paying what it owed to Applicant. It also failed to provide Applicant with the appropriate IRS Form 1099s that he felt that he needed to file the tax returns. He also admitted that he did not have the money to pay whatever taxes he owed. (Tr. at 22-30, 35-37, 56-60; Applicant's response to SOR, Atch E; GE 1, 2)

Applicant stayed with the company far longer than he should have. The company went bankrupt in 2016 and closed its business. Applicant stated that he had low self-esteem, and with his health issues, he did not have the confidence to seek another job. He also stated that he was afraid that if he left, he would never receive all the back payments owed to him. (Tr. at 24-26, 54)

Applicant decided that he needed to rectify his tax issues in about 2015. He contacted the IRS and his state taxation authority. He gathered his documents as best he could, and he purchased the software to file the tax returns on his own. He paid the state \$901 in 2015, which was applied to his 2010 taxes. He reported his failure to file state tax returns and that he owed taxes for tax years 2009 through 2011 on a Questionnaire for National Security Positions (SF 86) that he submitted in September 2016. (Tr. at 32-33, 40, 51, 55, 61; Applicant's response to SOR, Atch G, H; GE 1)

Applicant filed his 1995 through 1997 state and federal income tax returns in 2017. It is unclear if the IRS accepted the federal returns, as the IRS does not expect individuals to file returns from that long ago. Applicant paid the state more than \$1,600

in 2018 to pay his tax debt in full. The state released three tax liens in 2018. (Tr. at 32-36, 50-53; Applicant's response to SOR, Atch F, G; GE 6, 7)

The IRS prepared substitute tax returns for tax years 2009 through 2011. Applicant filed his 2009 through 2011 federal and state income tax returns in 2017. He filed his 2012 through 2015 federal and state income tax returns in May and June 2019. (Tr. at 32, 38; Applicant's response to SOR; GE 7)

Applicant filed his 2016 through 2019 federal and state income tax returns on time. The IRS transferred \$2,731 from his refund for 2016 to his 2008 taxes. The IRS transferred \$4,666 from his refund for 2017 to his 2009 taxes. He paid the IRS \$200 per month from September 2019 to January 2020, and a final payment of \$170 in February 2020, for a total paid of \$1,170. Of that amount, \$31 went to his 2019 taxes, and the rest went to pay his 2012 and 2013 taxes. The IRS certified that he does not owe any additional taxes. (Tr. at 41; Applicant's response to SOR, Atch F-H; GE 4-7; AE A)

Applicant accepted responsibility for his poor judgment. He has a good job with a stable income. He took financial management courses. His finances are currently in good shape, and he is aware that neglecting his tax obligations in the future could jeopardize his security clearance and his job. He credibly stated that he has learned a valuable lesson, and all future tax returns and taxes will be filed and paid on time, even if he does not receive a security clearance. (Tr. at 38, 42-47, 60, 68-72; Applicant's response to SOR, Atch H-J; GE 3, 4)

Applicant submitted documents and letters attesting to his moral character and excellent job performance. He is praised for his judgment, discretion, reliability, dedication, honesty, trustworthiness, patriotism, and integrity. (Applicant's response to SOR, Atch B, D; AE B)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 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.”

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

(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 did not file his federal and state income tax returns for multiple tax years when they were due, and he did not pay all of his federal and state income taxes when they were due. AG ¶ 19(f) is applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

(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 decided that he needed to rectify his tax issues in about 2015. He contacted the IRS and his state taxation authority. He gathered his documents as best he could, and he purchased the software to file the tax returns on his own. He paid the state \$901 in 2015, which was applied to his 2010 taxes. He filed his 1995 through 1997 and 2009 through 2011 state and federal income tax returns in 2017. He paid the state more than \$1,600 in 2018 to pay his tax debt in full. He filed his 2012 through 2015 federal and state income tax returns in May and June 2019. From September 2019 to January 2020, he paid the back taxes owed the IRS. He has filed all federal and state tax returns and paid any taxes owed on time since tax year 2016. All required federal and state tax returns are filed, and all taxes paid.

AG ¶ 20(g) is applicable, but that does not end the discussion. Applicant's failure to file his tax returns and pay his taxes when required raises questions about his judgment and willingness to abide by rules and regulations. I found Applicant to be honest and truthful, but lax about his legal requirement to file his tax returns and pay his taxes in a timely manner. I am convinced that he has learned a valuable and costly lesson, and that all future returns and taxes will be filed and paid on time. Security concerns about Applicant's finances are mitigated.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence and honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge