



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 19-01938

Applicant for Security Clearance

Appearances

For Government: Brittany White, Esq., Department Counsel

For Applicant: *Pro se*

01/09/2020

Decision

LYNCH, Noreen A., Administrative Judge:

On July 3, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in June 2017.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM) dated October 2, 2019.¹ Applicant received the FORM on October 8, 2019. He submitted an additional response to the FORM. The case was assigned to me on December 13, 2019. Based on a review of the case file, submissions, and exhibits, eligibility for access to classified information is denied.

¹The Government submitted four items for the record.

Findings of Fact

In his answer to the SOR, Applicant stated that the only allegation in the SOR did not apply. However, he acknowledged that he did not file his income tax returns within one year of the required legal time frame. However, he stated that he filed for extensions. (Item 2)

Applicant is 59 years old. He obtained his undergraduate degree in May 1983. He is divorced, but he remarried in 1994. He has four children. He has worked for his current employer since 1995. He reports no military service. Applicant has held a security clearance since 2010, but he has been in the contracting field since at least 2013. He completed his security clearance application (SCA) in 2018. (Item 3)

The SOR alleges that Applicant has failed to file his Federal income taxes for tax years 2016, 2017, and 2018. (Item 1) There is nothing in the record to establish requests for any tax extensions.

Applicant provided a letter dated June 6, 2019, that explains when he received the SOR, he was in the middle of completing his taxes. He elaborated that he files jointly and he has a small business. (Attached to answer in file) He admitted that he was late after filing for extensions. He submitted receipts for other unalleged accounts that have been paid in full. (Item 4)

In response to the FORM, Applicant stated that he has provided proof of income and proof that he filed his income tax returns for 2016, 2017, and 2018. He noted that he was not a good bookkeeper and that he started a business in 2013 after being laid off. He noted that his bookkeeping skills are improving. (Response to FORM)

Applicant submitted copies of federal and state income tax returns for the following years: 2016, 2017, and 2018. He owes \$45,580 for tax for the year 2016. The document submitted stated that the payment is scheduled. (Item 5) It appears that the payment was made under the schedule. He provided documentation on the status of the tax has been paid. For other years, Applicant was owed an overpayment. (Response to FORM)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(a), this process is a conscientious scrutiny of a number of variables

known as the “whole-person concept.” An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 Executive Order 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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 judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individuals' reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus be a possible indicator of, other issues of personnel security concerns such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at a 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 Government provided credible evidence that Applicant did not timely file his federal and state income tax returns for the years 2016, 2017, and 2018, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(f) applies. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Financial Considerations Mitigating Condition (FC MC) 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) does not apply. Applicant provided insufficient information that would allow this MC. There is no sufficient explanation from Applicant concerning the payment process. None of the remaining mitigating conditions apply in this case.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 59 years old. He has worked for his current employer since 2017, but possessed a security clearance and has been in the contracting field since about 2010. He did not provide sufficient evidence to mitigate not filing his federal and state income tax returns in a timely manner. He submitted records that he filed in 2019. He paid his federal income tax at that time, but his delay does not mitigate the financial considerations security concern. He filed his state income tax returns in 2019 and was given overpayments. (Response to FORM)

He has not met his burden of proof in this case. I have doubts about his judgment and reliability. Any doubts must be resolved in favor of the Government. Applicant failed to meet his burden in this case. He did not mitigate the security concerns under the financial considerations guideline.

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:	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 Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge

