



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02021
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2020

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his failure to file his federal and state income tax returns, his failure to pay his delinquent federal and state income taxes, and his delinquent home mortgage account. Clearance is denied.

Statement of the Case

On December 11, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On December 27, 2019, Applicant answered the SOR, denying all of the allegations except subparagraphs 1.b and 1.k. He requested a decision without a hearing. On April 30, 2020, Applicant received a copy of the Government’s File of Relevant Materials, and he was instructed to file any

objections, or to supplement the file within 30 days of receipt. On June 5, 2020, Applicant filed a response. Department Counsel did not object, whereupon the case was assigned to me on June 18, 2020. Applicant's response was incorporated in the record as Applicant Exhibit (AE) A.

Findings of Fact

Applicant is a 67-year-old married man with three children, ages 22, 19, and 15. He is a veteran of the U.S. Navy, serving honorably from 1971 to 1977. He is a high school graduate with a certification in radar technology, and has been working in the field of radar technology for various defense contractors since 2004. (Item 2 at 10)

Applicant failed to file his federal and state income tax returns for tax years 2013 through 2018, resulting in delinquent debts totaling more than \$100,000. In addition, he filed for Chapter 7 bankruptcy relief in April 2018, requesting the discharge of approximately \$482,000 of debt, and he was evicted from his home in January 2019 after a foreclosure proceeding. (Item 2 at 2; Item 5 at 21; Item 1 at 5)

In November 2018, the IRS contacted Applicant and notified him that he was claiming exemptions on his Employee's Withholding Certificate (W-4 form) to which he was not entitled. Moreover, the IRS instructed his employer not to honor Applicant's W-4 form or any new W-4 forms completed by Applicant. (Item 3 at 199, IRS letter to Applicant's employer, dated November 29, 2018).

Applicant contends that he has no legal responsibility to pay federal income tax because the U.S. Constitution limits the federal government's authority to levy income taxes to residents of the District of Columbia and the U.S. territories or possessions. (Item 1 at 5) Moreover, Applicant characterizes the IRS' collection of income tax payments from citizens who have no Constitutionally-mandated responsibility to pay federal income taxes, as "the largest financial crime in the history of the world." (Item 3 at 26) By extension, Applicant contends that any IRS garnishment of his pay is not valid. There is no record evidence of Applicant having pursued his arguments in the U.S. Tax Court.

Applicant contends that the state taxing authority's notice of tax lien was invalid because it was filed using the wrong form and that absent "a valid assessment and verified proof of claim under perjury and signed by someone who has authority to perform this function," the state taxing authority has not established its contention that he owes any delinquent tax debt. (Item 1 at 6) There is no evidence that Applicant pursued this argument in the state tax court.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 shall be resolved in favor of 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

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 An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Applicant's history of delinquent debts generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Also, his failure to file his federal and state income tax returns for tax years 2013 to 2018 and pay taxes owed triggers the application of 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."

Application of the aforesaid disqualifying conditions requires consideration of the following mitigating conditions:

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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

According to the U.S. Supreme Court, the belief that income tax law is *per se* unconstitutional and does not legally impose any duty is "unsound," "not objectively reasonable," and "frivolous." (*Cheek v. United States* 498 U.S. 192, 205-206 (1991)) Moreover, DOHA proceedings are not the proper fora to entertain tax-protester arguments. (ISCR Case No. 01-24356 at 3 (App. Bd. Feb 26, 2003)) Applicant provided

no evidence that he pursued his arguments in U.S. Tax Court or in his state tax court. Moreover, there is no track record of financial reform, particularly given the recency of the foreclosure of his home mortgage and the filing of his bankruptcy petition. Under these circumstances, Applicant has not met the burden of proving that his delinquencies and his failure to file his tax returns do not pose a security concern, and none of the mitigating conditions apply. I conclude that Applicant has failed to mitigate the financial considerations security concerns.

Whole-Person Concept

I considered the whole-person concept factors when I evaluated the disqualifying and mitigating conditions under Guideline F, and they do not warrant a favorable conclusion.

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.l:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge