



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



In the matter of:)
)
) ISCR Case No. 19-04076
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

July 16, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On May 10, 2019, Applicant submitted a security clearance application (e-QIP). (Item 3.) On March 6, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 27, 2020. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 4, 2020, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing five exhibits, was

sent to the Applicant and received on May 22, 2020. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM on June 12, 2020, and submitted an eighteen page document, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. DOHA assigned the case to me on July 7, 2020. Items 1 through 5 are admitted into evidence and hereinafter referred to as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 34 years old. He is married a second time. He has three children. He has a high school diploma and a certificate of completion of the Automotive Technology Program. He holds the position of heavy equipment operator and is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified three allegations under this guideline concerning Applicant's failure to file his Federal and state income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017; and a delinquent medical debt that was placed for collection. In his answer to the SOR, Applicant admits allegations 1.a. and 1.b, and he denied allegation 1.c., asserting that the debt has been paid. Applicant has no prior military service. He has primarily worked as an automobile technician from September 2005 to July 2011; and from September 2011 to the present.

1.a., and 1.b. Applicant explained that during his marriage to his ex-wife, from September 2006 to February 2014, she would file their income taxes each year claiming only herself and their children in order to receive a tax refund. She would keep the refund for her spending. Instead of filing and owing taxes, Applicant simply did not file income tax returns. Applicant stated, "I failed to take adequate action to curb her [his wife's] behavior." (Government Exhibit 2.) For eleven years, Applicant allowed her to continue these false tax filings during and after their marriage. Applicant was aware that her false tax filings would cause him future tax problems. Applicant and his wife divorced in 2014. At some point, due to his ex-wife's drug addiction, Applicant filed for custody of his children. The divorce and child custody matters caused Applicant serious financial hardship which delayed his ability to address his tax issues. In May 2017, at the conclusion of the child custody case, Applicant was awarded full legal and physical custody of their two children. At that time he began to explore his options on how to address his tax issues.

On June 13, 2018, Applicant hired a tax relief company to guide and direct him on how to resolve his tax issues. (Government Exhibit 5 and Applicant's Exhibit A.) In February 2019, when Applicant had completed payments for their services, the tax relief company began working to resolve Applicant's tax problems. Applicant contends that he was advised by the tax relief program that he did not have to file his state or Federal income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013. Applicant submitted no documentation for this assertion. Applicant states that he was required to file his state and Federal income tax for tax years 2014, 2015, 2016, 2017, and 2018. He provided copies of those income tax returns, which were filed in November 2019. (Government Exhibit 2.) Applicant was told by the tax relief company that he would owe approximately \$3,000 for each tax year that he did not file a tax return. They are currently negotiating a settlement with the tax authorities to help Applicant begin a repayment program.

Applicant provided several documents that are not definitive concerning his delinquent tax indebtedness to the state. A copy of a check to the state tax authorities dated November 26, 2019, shows that he made a payment in the amount of \$373. (Applicant's Exhibit A.) An installment bill from the state dated February 18, 2020, reflects a balance due of \$3,186.19, with a required monthly payment of \$102.42. Applicant's bank records show that he has made at least four payments toward this debt. (Government Exhibit 2.) He also submitted a remittance notice showing a refund of \$732.39 was issued to him on May 19, 2020 by the state. (Applicant's Exhibit A.) Applicant has also filed his 2018 income tax returns. Applicant submitted a payment agreement which sets forth a payment plan of \$191.35 per month for 36 months, the first payment being due on June 15, 2020.

Regarding his federal back taxes, Applicant submitted a bill from the IRS dated February 17, 2020, indicating that he owes \$1,146.07 for tax year 2017. (Applicant's Exhibit A.) Applicant stated in his response to the FORM that he initially wanted to negotiate a payment plan of \$150 monthly, but the IRS requested \$250 monthly, which he agreed upon. At that time he was waiting for the finalized agreement from the IRS in order to begin this payment plan. (Government Exhibit 2.) There is nothing in the record that confirms the total amount of back taxes owed to the federal government.

1.c. A delinquent medical debt in the amount of \$114 that was sent to collection was paid in full on June 26, 2019, in the amount of \$120.89. A transaction record from Applicant's Capital One account reflects this payment. (Government Exhibit 2.)

Applicant admits his mistakes of the past and states that they will not be duplicated. He states that this tax situation has caused him much grief, anxiety and money. He also states that he started rectifying his tax situation well before he applied for a government position. (Government Exhibit 2.)

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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 clearance 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 as to 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. 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are possibly applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file state or Federal income tax returns for eleven years, from 2007 through 2017. During this period, he knew his spouse was improperly filing her tax returns in order to obtain a tax refund. For over ten years, Applicant did nothing to correct this situation. In fact, he continued to allow her to do this during his marriage and even three years post-divorce. This shows poor judgment and unreliability. Applicant has not acted responsibly under the circumstances, nor is he the type of individual to be trusted with the national secrets. There is nothing in the record to mitigate this violation of the laws and there is no excuse for this misconduct. Applicant has not demonstrated the high degree of judgment, reliability and trustworthiness required to hold a security clearance.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;

(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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

(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;

(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.

Although Applicant went through a divorce, and a lengthy and expensive child custody case, he is not excused from failing to file his income tax returns for eleven years. Applicant knew that his wife was submitting false tax filings to both the state and Federal tax authorities and did nothing about it. As a result, Applicant has no meaningful track record of resolving his tax obligations or following rules and regulations.

Applicant has made some recent changes in his life to correct his past income tax problems. He is commended for filing some of his delinquent income tax returns and for beginning to pay his back taxes. He has filed his state and Federal income taxes for tax years 2014 through 2018. He states that he is no longer required to file returns for tax years 2007 through 2013, but provides no supporting documentation from the tax authorities for the basis of this contention. He states that he is resolving his state tax liability, and is in the process of entering into a payment plan with the Federal government to resolve that tax liability. He has also paid his delinquent medical bill.

Despite these recent efforts, by failing to file his income tax returns in the first place, Applicant has participated in a fraudulent scheme, and has created a situation that imposes an undue burden on the taxing authorities. He has been completely irresponsible under the law. Applicant has not demonstrated a track record of diligence, responsibility, or even common sense. In fact, his past record shows poor judgment, unreliability and untrustworthiness. He has failed to show that he has earned the privilege to access to classified information, or that he will abide by the rules and regulations required of him while holding a security clearance.

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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a., and 1.b:	Against Applicant
Subparagraph 1.c.:	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge