



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02493
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2021

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On September 30, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 on June 8, 2017.

Applicant answered the SOR on October 12, 2019. A notice of hearing was sent to Applicant on February 28, 2020, setting the hearing for March 17, 2020. Due to the COVID-19 pandemic, that hearing was canceled. A new notice of hearing was sent to Applicant on March 24, 2021. This hearing was convened as scheduled using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The

Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's discovery letter and exhibit list were marked as hearing exhibits (HE) I and II. Applicant testified at the hearing and offered exhibits (AE) A and B. The record remained open until April 30, 2021, and Applicant timely submitted AE C through F to supplement the record. With no objection, those exhibits were admitted. DOHA received the hearing transcript (Tr.) on April 13, 2021.

Findings of Fact

In his SOR answer, Applicant admitted all the SOR allegations with explanations. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He began working at his present job in November 2015. He experienced unemployment for approximately four months in 2015 and from July 2009 to May 2010. He served honorably in the U.S. Navy for 20 years, retiring in 2009 as a petty officer first class (E-6). He has a high school diploma and an associate's degree. He has been married for over 30 years and has two adult children. (Tr. at 6, 38; GE 1; SOR answer)

The SOR alleged that Applicant failed to file his 2014-2016 federal income tax returns as required; his 2014-2015 state income tax returns as required; that he owed delinquent federal taxes in the amount of approximately \$1,932 for tax year 2017; and that he owed delinquent state taxes in the amount of approximately \$2,325 for tax years 2012, 2016, and 2017. He admitted failing to file his federal and state tax returns and owing delinquent taxes to both entities in his June 2017 security clearance application (SCA), as well as in his SOR answer. He supplied documentation when answering interrogatories that supported the delinquent tax debts (SOR ¶¶ 1.a – 1.d). (GE 1-2; SOR answer)

Applicant attributed his tax problems to a number of things. He is the sole income earner for his family because his wife has been unable to work for the past 19 years due to serious medical issues. In 2011 or 2012, he neglected to adjust his wage withholdings when his two children were no longer dependents for tax purposes. He also became the guardian and conservator for his grandfather and his estate. The expenses associated with performing these tasks added a financial burden for him. In May 2015, Applicant had not filed his 2014 federal or state tax returns. He realized that he would owe the IRS a significant amount. Also, his daughter's wedding was coming up later that month. He chose not to deal with his taxes then and paid for the wedding, thinking he would deal with the taxes after the wedding. In August 2015, he was laid off from his job and unable to address his tax issues. In November 2015, he was rehired on a part-time basis, which became full time in April 2016. About the same time, he was involved in a motorcycle accident, which required him to go on short-term disability. The disability payments were late in coming, adding to his financial troubles. He timely filed his 2017 federal tax return, but he did not pay the amount he owed (\$1,931). He disclosed his tax issues when he completed his SCA in June 2017. (GE 1-2; SOR answer)

In answering Government interrogatories in August 2019, Applicant supplied requested documentation concerning his federal and state taxes. For tax year 2014, the IRS filed a substitute tax return for him in December 2018. For tax year 2015, IRS records show no return was filed as of February 2019. For tax year 2016, Applicant filed his federal return late in October 2017, for which he was assessed a penalty. A document from the state department of revenue shows that Applicant had not filed his 2015 state tax return and that he owed \$2,325 in delinquent taxes. Applicant acknowledged that he owed both the IRS and the state for taxes from these unfiled years, but he did not know what that amount was. (Tr. at 28-31; GE 3)

Applicant hired a tax preparation service (TPS) in January 2020 to prepare his 2014 and 2015 federal tax returns. He testified that he also engaged them to file his 2018 and 2019 federal returns because they had not been filed. Documentation indicated that TPS was preparing Applicant's federal tax returns for years 2012-2019 (The untimely filings of Applicant's 2012-2013, 2018, and 2019 federal tax returns will not be used by me for disqualification purposes, but I may use this information to determine credibility, whether mitigating conditions are applicable, and for the application of whole-person factors). Applicant paid an investigation fee of \$495 to TPS. Further fees to TPS would be determined after the investigation. Applicant testified that he paid TPS approximately \$7,000 in monthly payments from February 2020 through November 2020. These payments came from his monthly military retirement pay. He documented the agreement for the investigation fee, but he did not document the monthly payment agreement with TPS. (Tr. at 20, 22-23, 32, 36-37; GE C, F)

Applicant did not provide copies of the federal tax returns prepared by TPS, even though he specifically stated he would do so. He provided IRS account transcripts for tax years 2018 and 2019 showing that his 2018 return was filed in August 2020 and that his 2019 return was filed in October 2020. An email from a TPS representative stated:

We have finished completing your 2018-2019 Tax Returns and received confirmation from the IRS that they have finished processing. We are currently working on the final resolution for Tax Years 2012-2019. At this time your case is being reviewed in the Resolution phase where we will examine your penalties and your final balance.

From this email, it is unclear what is meant by the "final resolution for Tax years 2012-2019." There is no documentation showing that Applicant's 2014 and 2015 federal tax returns have been filed. Additionally, while Applicant's 2019 federal account transcript shows that his refund of \$1,288 was applied to his 2017 tax owed (2017 amount owed was \$1,931 as shown in SOR ¶ 1.b), that amount was insufficient to satisfy the full amount. There is no further indication of payments toward the remaining 2017 tax owed. Applicant provided documentation showing that his 2020 federal and state tax returns were filed and that he is scheduled to receive refunds on both. Nothing shows that the returns have been processed by the IRS or the state. Applicant admitted that he has not done anything toward filing his missing state tax returns for 2014 and 2015 because he is waiting for his federal returns to be processed by the IRS first. He also does not know how much he owes the state for delinquent taxes. (Tr. at 23, 25-26, 28-31; GE D-F)

Applicant provided six letters from coworkers, colleagues, and a former supervisor. All describe his loyalty, dedication, and security worthiness. Several also wrote about some of the difficulties Applicant has experienced in the past several years, including his wife's illness, the stress and financial strain caused by him taking on the conservator duties for his grandfather, and the motorcycle accident he suffered. The authors also pointed out Applicant's involvement in civic duties, such as organizing the local Veterans Day activities and working with a retired military association. Applicant also provided performance appraisals from 2016 through 2020. He was rated at the top rating, either "outstanding" or "superior" on all of them. (AE B; SOR answer)

Policies

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 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(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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

(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 failed to timely file his 2014-2016 federal income tax returns and his 2014-2015 state tax returns; and he accrued delinquent tax debts to both entities. He provided no documentation that his tax returns have been filed or that he resolved his tax debts. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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, 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 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.

Applicant failed to timely file his federal tax returns from 2012 to 2019, excepting 2017. He failed to file his state tax returns for 2014 and 2015 and perhaps longer. He failed to produce evidence showing that recurrence of his financial problems is unlikely. His history of non-filing or delayed filing of his federal and state tax returns calls into question his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's periods of unemployment, medical condition of his wife, unexpected obligations to act as a conservator, and his motorcycle accident were all conditions beyond his control. However, he waited until 2020 to seek professional assistance for his taxes. Even with that assistance, the record is unclear as to whether his 2014-2015 federal tax returns were filed and what amount is owed. His state tax returns and debt have yet to be addressed. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant presented no evidence of financial counseling. His delayed efforts to address his tax issues can be summed up as, "too little, too late." He presented no evidence that he was working with the IRS or the state tax authority to file his tax returns. He failed to put forth good-faith efforts to address his tax issues. AG ¶¶ 20(c), 20(d), and 20(g) do not 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 guideline 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 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.

I considered Applicant's military and federal contractor service, his wife's medical issue, his periods of unemployment, and the circumstances surrounding his taxes. However, I also considered that he waited until 2020 to address his federal and state tax issues and those issues are still unresolved.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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.d	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge