



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



In the matter of:)
)
-----) ISCR Case: 20-01458
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 4, 2021

Decision

ROSS, Wilford H., Administrative Judge:

Applicant did not file tax returns or pay his Federal or state income tax for tax years 2011 through 2017 in a timely manner. Applicant also had unpaid tax and consumer debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings, exhibits, and testimony, national security eligibility for access to classified information is denied.

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 11, 2019. (Government Exhibit 1.) On September 22, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR 1) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National*

Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position, effective within the Department of Defense on June 8, 2017.

Applicant submitted an undated answer to the SOR, and requested a hearing before an administrative judge. (Answer.) The Government was ready to proceed on December 14, 2020. The case was assigned to me on January 14, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2021. The hearing was convened as scheduled on February 10, 2021. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on March 1, 2021. Applicant requested the record remain open for receipt of additional information. On February 24, 2021, Applicant submitted Applicant Exhibits A through E, which were also admitted without objection.

Findings of Fact

Applicant is 61 years old and married. Applicant has a high school education and is employed by a defense contractor as a Senior Tool Builder. This is Applicant's first application for a security clearance. (Government Exhibit 1 at Sections 13A and 17; Tr. 6-7, 17-18.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR. He also submitted additional information to support the granting of national security eligibility.

1.a. Applicant admitted that he had not filed his Federal income tax returns in a timely manner for tax years 2011 through 2017. Applicant admitted that it was his own poor judgment that resulted in his not filing the subject tax returns. At one point in time he hired a tax relief firm to help him resolve his tax problems. He paid them a substantial amount of money for little or no action. The returns have not been filed as of the date of the hearing. (Government Exhibit 2 and Exhibit 3 at 3-4; Tr. 21-24.)

1.b. Applicant admitted not filing state tax returns for the tax years 2011 through 2017 in a timely fashion. Once again, Applicant admitted that it was his own poor judgment that resulted in his not filing the subject tax returns. At one point in time he hired a tax relief firm to help him resolve his tax problems. He paid them a substantial amount of money for little or no action. Applicant's state tax authority has been attaching 25% of Applicant's pay to resolve his state tax issues. Applicant did not know how much money

he continued to owe the state in back taxes. The subject returns have not been filed as of the date of the hearing. (Government Exhibit 3 at 3-4; Tr. 22-23, 25-26, 28.)

1.c. Applicant admitted that he also continued to owe the IRS approximately \$107,816 in back taxes, as reflected in an unresolved tax lien entered against him in 2006. Applicant has not made any attempt to repay or resolve his back taxes. (Government Exhibit 4; Tr. 24.)

Applicant submitted copies of his 2018 and 2019 tax returns. He testified that he had filed these returns, but did not have sufficient money to pay the taxes. He is also beginning to work with a tax professional to file all of his back taxes. (Applicant Exhibits A through D; Tr. 23, 26-28.)

Turning to the general consumer debts, SOR 1.d to 1.h. Support for the existence and amount of these debts is found in the credit report in the record dated March 2, 2019. (Government Exhibit 5.) The debts total \$3,550. Applicant also admitted the existence of these debts in his Answer and in an interview with an investigator with the Office of Personnel Management on April 9, 2019. (Government Exhibit 3.) Applicant testified that he believed these are all his debts, he has not paid them, but he hopes to do so in the future. (Tr. 18-21.)

Mitigation

Applicant submitted a letter of recommendation from his supervisor. In his letter, this person stated that Applicant is “dependable, responsible, and honest.” (Applicant Exhibit E.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (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 Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state income tax returns, as required, for tax years 2011 through 2017. He owes a considerable amount in back taxes, interest and penalties. He also had unpaid consumer debts. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns, pay his taxes, or his past-due consumer debts:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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 admitted that he has been extremely delinquent in filing his tax returns, paying his taxes, or attempting to resolve his past-due consumer debts. None of those issues are resolved. There is some evidence that Applicant has begun the work to file and resolve his back taxes. However, there is little track record of Applicant resolving his debts. Applicant did not mitigate the concerns over his income tax or consumer debt issues. Guideline F is found against Applicant.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant did not provide sufficient evidence to show that he has resolved his tax and debt issues, or is likely to do so in the foreseeable future. If Applicant is successful in resolving these concerns over an extended period of time he may become eligible for national security eligibility. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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 through 1.h:

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

Wilford H. Ross
Administrative Judge