



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03119
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/21/20201

Decision

Curry, Marc E., Administrative Judge:

Applicant’s failure to file his federal income tax returns from 2012 to 2018 generate financial considerations security concerns that he failed to mitigate. Clearance is denied.

Statement of the Case

On December 7, 2020, 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 interest 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 31, 2020, Applicant answered the SOR, and admitted the allegation. He requested a decision on the written record. On February 24, 2021, Department Counsel prepared a file of relevant materials (FORM). Applicant received a copy of the FORM on February 26, 2021 and was instructed to file

any objections to this information, or any supplemental information within 30 days of receipt. He did not do so. The case was assigned to me on May 27, 2021.

Findings of Fact

Applicant is a 51-year-old married man with six children. He earned an associate degree in 1992 and a bachelor's degree in 1996. (Item 3 at 11) Since 2019, he has been working for a government contractor as a draftsman. (Item 1 at 14)

Applicant failed to file, as required, his federal income tax returns for tax years 2012 to 2018. (Item 2) He contends that he did not file his income tax returns because he was going through difficult financial times during this period. (Item 2) He did not elaborate. He estimates that he owes between \$25,000 and \$70,000 in delinquent taxes. (Item 3, Item 5). Applicant also stated that he is working with a tax resolution company to help him file his tax returns and pay any amount due. (Item 2) He provided no documentation.

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 ¶ 1(d) 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, 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:

Failure or inability 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 risk of having to engage in illegal acts to generate funds.

Applicant failed to file his federal income tax returns between 2012 and 2018 because of what he described as financial hardship. Consequently, AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure to file . . . federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax, as required," apply.

The following migrating conditions are potentially applicable under 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;

(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; 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's income tax returns remain unfiled. He did not elaborate on his explanation for not filing his income tax returns, and his assertion that he is working with a tax resolution expert is not supported by any record evidence. Under these circumstances, none of the mitigating conditions apply.

Whole-Person Concept

Applicant did not merely fail to file timely one or two tax returns late; he failed to file tax returns for several consecutive years. As such, he violated Federal law with impunity. Under these circumstances, the nature and seriousness of Applicant's conduct is significant. He offered no evidence related to the surrounding circumstances of his failure to file his income tax returns, other than a vague, unsubstantiated contention that he was experiencing financial hardship. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has failed to mitigate the financial considerations security concern.

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
Subparagraph 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 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