



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



In the matter of:)
)
) ISCR Case No. 20-01583
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2021

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 21, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF 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 with an undated letter. A notice of hearing was sent to Applicant on July 12, 2021, setting the hearing for July 20, 2021. This hearing was convened as scheduled using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, 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 exhibit (AE) A. The record remained open until August 6, 2021, and Applicant timely submitted AE B and C. With no objection, those exhibits were admitted. DOHA received the hearing transcript (Tr.) on July 28, 2021.

Findings of Fact

In his SOR answer, Applicant admitted both of 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 40-year-old employee of a defense contractor. He began working at his present job in October 2018. He experienced unemployment for approximately two months in 2014. He served in the Marine Corps for approximately 13 years, before he was honorably discharged. He served a combat deployment to Iraq. He has a high school diploma and has taken some college and technical courses. He married in 2008 and divorced in 2017. He pays child support for his two children. (Tr. at 5, 19, 21-24; GE 1)

The SOR alleged that Applicant owed delinquent federal taxes in the amount of approximately \$10,741 for tax year 2016; that he failed to file his 2017 federal income tax return as required; and that he owed federal taxes in the amount of approximately \$10,067 for tax year 2017. He admitted the allegations in his SOR answer. He supplied documentation when answering interrogatories that supported the late filing of his 2017 federal return and his delinquent tax debts for 2016 and 2017. (SOR ¶¶ 1.a – 1.b). (GE 2; SOR answer)

Applicant attributed his tax problems to a number of things. In 2016 he became employed as an independent contractor rather than a direct employee. This change of status required him to account for and pay his federal taxes directly rather than having his employer do the accounting for him through pay withholding. He did not receive a W-2 tax form from his contractor-employer, but rather a form 1099, which required him to account for his own federal tax liability. For tax years 2016 and 2017, he failed to properly account for his federal taxes, which earned him the large tax delinquencies for both years. His reason for not paying his required taxes for those years was because he was supporting his wife and children and could not afford to pay his taxes with what was left over. He testified that he had no excuse for filing his 2017 federal return as late as he did, which was in May 2019. He also claimed that he contacted the IRS in 2017 and 2019 to set up payment plans, but for some reason neither attempt was successful. He admitted he did not really follow up on that issue. Since then, he claims he timely filed his 2018 and 2020 federal returns, but he testified that he was not sure about his 2019 return. In his post-hearing documents, he provided a 2019 tax return prepared by the tax relief company (TRC) he hired to prepare his tax returns. It appears the return was to be electronically filed, but there is no date on the return or any other evidence indicating when it was filed. He is not sure if he owes federal taxes for year 2019, but he does owe some amount for year 2020. He believes his current federal tax debt is approximately \$36,000. He did not provide documentation to support these assertions. I

will not consider any of the evidence concerning Applicant's late federal filing of his 2019 tax return or his additional amount of delinquent federal taxes owed for disqualification purposes, but I may consider it to help assess his credibility, for the application of possible mitigating conditions, and for the whole-person analysis. (Tr. 19, 24-29, 31; GE 2; AE B)

Sometime earlier this year, Applicant contacted the TRC to assess his tax situation. After that assessment, Applicant hired the TRC in June 2021 to review his past ten years of federal and state tax returns to determine whether there were errors, which could be corrected. The TRC will also contact the IRS to try to work out a payment schedule for him. As of the hearing date, no repayment plan had been established. Other than the TRC, Applicant has not received any financial counseling. (Tr. 20, 30-32; AE A)

Other than his tax issues, Applicant's finances are in good shape. Applicant believes he does a good job at this job. (Tr. 32, 42; GE 5)

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 2017 federal income tax return, and he accrued delinquent tax debt for 2016 and 2017. He provided documentation showing that his

2017 return was filed two years late, but nothing to show that his tax debt has been addressed. I find both of 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 return for 2017. He failed to produce evidence showing that recurrence of his financial problems is unlikely. He testified that he is not sure if he filed his 2019 federal tax return. While he produced evidence that the 2019 return was filed, he failed to produce any evidence indicating when it was filed. His history of non-filing or delayed filing of his federal tax returns calls into question his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's conversion from a direct-hire employee to an independent contractor and the attendant tax ramifications of that move were not conditions beyond his control, nor was providing support for his wife and children. He also failed to act responsibly by not following up with his initial contacts with the IRS about establishing a payment plan. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is not applicable.

Applicant presented no evidence of financial counseling. His delayed efforts to address his tax issues by hiring the services of the TRC can be summed up as, "too little, too late." He presented no documentary evidence that he was working with the

IRS to pay his large tax debt. He failed to put forth good-faith efforts to address his tax issues. AG ¶¶ 20(c) and 20(d), do not apply. AG ¶ 20(g) applies to filing his tax return, but not to the payment of his delinquent taxes.

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, including his combat deployment, his period of unemployment, and the circumstances surrounding his taxes. However, I also considered that he has not addressed his tax delinquencies with a payment plan or payments.

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.b

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