



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 20-02547 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

November 3, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 20, 2018, Applicant submitted a security clearance application (e-QIP). (Item 1.) On February 10, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on February 2, 2021, and requested a hearing before an administrative judge. The case was assigned to me on July 14, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on August 26, 2021, and the hearing was convened as scheduled on October 5, 2021. The Government offered five exhibits, referred to as Government Exhibits 1 and 5, which were admitted

without objection. The Applicant offered five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 14, 2021.

Findings of Fact

Applicant is 47 years old. He resides with his long term girlfriend. He has one grown child. He has a high school diploma. Applicant is employed by a defense contractor as an Aircraft Material Applicator. He 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 alleges that the Applicant failed to file his Federal and state income tax returns for tax years 2008 through 2017. Applicant admits each of the allegations set forth in the SOR. This is Applicant's first time applying for a security clearance.

In about 2007, Applicant explained that a friend and her two children lived with the Applicant and he provided financial support to her and her children. Applicant claimed one of her children as his dependent on his income tax returns in 2008. The child's mother allowed someone else to claim her child as a dependent. For this reason, Applicant's income tax return was kicked back and not accepted. Applicant intended on hiring an attorney to fight the matter and never did. As the years passed, Applicant felt helpless about his tax situation. He realized that he needed to file his income tax returns, but he did not have the financial resources to pay the taxes, and did not know how to proceed to get his income tax returns filed. Applicant worked in the construction industry that was very unpredictable. His employment was not stable or consistent. In 2014, Applicant tried to resolve his tax issues but was not successful. He met a tax preparer who was going to prepare and file Applicant's income tax returns in exchange for Applicant's painting services. It was during this time that Applicant had a lot of turmoil in his life. Applicant's step-son had mental problems, a drug habit, and tried to commit suicide. He was murdered, and Applicant had to go through the murder trial. Applicant was putting her daughter through private school, in exchange for paying child support, which was expensive. Applicant could not find anyone to prepare his income tax returns who would go back so many years. Applicant was under constant pressure and stress that prevented him from getting his income tax returns filed. (Tr. pp. 25-26, 43, 41, 48-50.)

Applicant filed all of the income tax returns in question in 2020, including his 2019 returns. (Tr. p 41.) Applicant has entered into an installment agreement with the state to resolve his back taxes. Starting January 15, 2021, he agreed to pay \$500 each

month thereafter until the tax liability is resolved. Applicant also borrowed \$12,408.97 from his 401K to pay the IRS to resolve his Federal tax liability. Applicant is paying himself back in the amount of \$58 per week.

Applicant states that his finances are more stable now than they have ever been. He understands the legal requirement and the importance of filing his income tax returns on time and paying his taxes. He has no other delinquent debts and lives within his means.

Policies

When evaluating an applicant's suitability for a security clearance, 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. One is potentially applicable in this case:

(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 file his state and Federal income tax returns in a timely basis for tax years 2008 through 2017. The evidence is sufficient to raise the above disqualifying conditions.

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, 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 failed to file his Federal and state income tax returns as required by law, for at least ten years. Applicant is aware of the legal requirement to file annual Federal and state income tax returns and pay Federal and state taxes in a timely fashion. For many years, Applicant has had other pressures in life that have taken him away from his tax responsibilities. In 2014, he tried to file his income tax returns, but even then, he could not get it done because of distractions. He has now filed all of the income tax returns in question. Currently, he is following an installment agreement to pay the state the back taxes he owes, and he has paid off the taxes he owed to the Federal Government. This shows growth and maturity. However, in this instance, inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. Accordingly, Applicant does not meet the requirements to access classified information.

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

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