



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 20-01675
)
Applicant for Security Clearance)

Appearances

For Government: Ross D. Hyams, Esquire, Department Counsel
For Applicant: *Pro Se*

01/04/2022

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the File of Relevant Material (FORM), Items 1-8, I deny Applicant's clearance.

On 30 October 2020 the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.¹ Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 1 April 2021, when Department Counsel stated no objection to Applicant's Response to the FORM. Applicant submitted a written argument and current credit reports. DOHA assigned the case to me 23 April 2021.

¹DoD acted 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 Security Executive Agent Directive 4, effective on 8 June 2017.

Findings of Fact

Applicant admitted failing to timely file his 2017 state and Federal income tax returns, accumulating about \$2,400 in state tax liability for tax years 2017-2019, and about \$2,400 in Federal tax liability for tax years 2017-2018 (SOR 1.a-1.g). He denied the amount of child support arrears (SOR 1.h), documenting that the amount had been reduced to \$876, and denied the debt at SOR 1.i as having been paid, which it had been in January 2020 [Answer (Item 3)].

Applicant is a 31-year-old engineering technician employed by a U.S. defense contractor since January 2019. Before that employment, he had been employed since June 2008 in a series of low skill, low wage jobs, interrupted occasionally by periods of varying-length unemployment. He has never married, although he is currently engaged, and has an eight-year-old daughter from a prior relationship. He has not previously held a clearance (Item 4).

Applicant disclosed on his security clearance application his failures to file and pay his 2017 tax returns (SOR 1.a-1.b), his delinquent child support (SOR 1.h), and the SOR 1.i debt (for which he claimed to have been in a payment plan). The SOR 1.i debt had been reduced to judgment, apparently being enforced by garnishment. However, the SOR debt amount alleged was only \$24, and Applicant documented his January 2020 payment (Item 3) paying off the account. Applicant discussed his failures to file and pay, and all the SOR debts, during his August 2019 interview with a Government investigator (Item 5), based on his July 2019 credit report (Item 6). He attributed his failure to timely file his state and Federal income tax returns for 2017 to not getting his tax information from his two employers that year. He stated that he had not gotten these records until April or May 2019, and intended to file this delinquent return during the 2020 tax season, more than six months away. His child support issues arose because, while he was with the child's mother when his daughter was born in September 2013, they were not together when the mother filed for child support in May 2014, and when child support is awarded retroactively, there is initially never a time when the payer is not delinquent, and the enforcement system garnishes the payer's wages, including an amount for arrears. Nevertheless, Applicant's Answer documents his regular payments and reduction of his outstanding arrears.

In his Answer, Applicant stated he filed the missing returns in July 2020, however, he did not fax his returns to the Internal Revenue Service (IRS) and the state until after he received the SOR in November 2020. His Answer states he used his fiancée's credit cards to pay his tax debts, and his fiancée states that Applicant repaid the amounts advanced (Response).

Applicant's sole character reference (Response) praises Applicant's work, but evinces no knowledge of the SOR issues. He documented no credit or financial counseling, and did not submit a budget. He provided no evidence of community involvement, or other evidence to support a whole-person analysis.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG § 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.²

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant failed to timely file his 2017 state and Federal income tax returns. Accepting that he did not have the necessary records until April or May 2019, he has given no credible reason for waiting until the 2020 tax season, the claimed July 2020 filing, or the actual November 2020 filing, which was after he received the SOR. He documented belated efforts to address his delinquent taxes.³

The Appeal Board has long held that failure to timely file required tax returns may demonstrate a lack of judgment inconsistent with access to classified information.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³§19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so;(c) a history of not meeting financial obligations; (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns of failure to pay annual Federal, state, or local income tax as required;

A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information.⁴

This is true whether the failure to file is willful⁵ or attributed to the press of family circumstances.⁶ As recently as December 2015, the Appeal Board upheld a denial of clearance, in a case notably similar to this, of an applicant who had failed to file Federal or state income tax returns for 10 years.

The filing of tax returns is both a financial and a legal obligation. Applicant's . . . failure to have done so for many years is sufficient to raise a concern that he may be unwilling to follow other rules and regulations, such as those that govern the handling of classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015) (A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information). See also *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Indeed, as the Judge noted, Directive, Enclosure 2 § 19(g) explicitly provides that failure to file tax returns is a circumstance that can raise a security concern. Moreover, the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's eligibility for a clearance. See, e.g., ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015)

Security concerns under Guideline F are not limited to cases in which an Applicant is financially insolvent or is experiencing difficulty in paying debts. Indeed, the Appeal

⁴ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014), reversing Administrative Judge's favorable decision. See, e.g., ISCR Case No. 98-0608 at 2 (App. Bd. Jun. 27, 2000)(failure to file for five years).

⁵See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

⁶See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

Board has ruled that failure to file tax returns by itself can be a reason to deny a clearance.⁷

The mitigating conditions for financial considerations do not fully apply. His failures to timely file his Federal taxes are recent, and may not be demonstrated to be unlikely to recur.⁸ Accepting that Applicant's failure to file was justified because his employers did not provide him the required documentation, there is no record of any efforts to obtain the documentation before 2019. Tax documents for 2017 would have been due by the end of January 2018. Without an extension, tax filings were due in April 2018; October 2018 with extension. Consequently, Applicant was not responsible in addressing his taxes. He knew his taxes were delinquent when he completed his clearance application; he knew his taxes were delinquent when he met with the Government investigator. Yet, he did not act on his promises to address his taxes, and did so apparently only when his clearance was at risk.⁹ However, he appears to have successfully resolved his state income tax issues.¹⁰ Nevertheless, what he has not done is demonstrate a track record of responsibly dealing with his taxes going forward.

The circumstances of this case do not suggest that Applicant would benefit from credit or financial counseling, but his taxes appear to have been resolved to date.¹¹ However, Applicant's tardy contacts with the IRS cannot be considered a good-faith effort to address his taxes,¹² to the extent that this mitigating condition could be considered applicable. Moreover, Applicant had mostly disregarded these tax obligations since at least 2019, when he began applying for a clearance. His documented inaction for at least another year, to 2020, when he filed the delinquent returns raises significant security concerns that Applicant has not addressed by the flurry of activity triggered by his receipt of the SOR. And that flurry of activity fails to mitigate Applicant's overall course of conduct, as it cannot overcome my conclusion that Applicant's track record of procrastination makes it too soon to conclude that his security-significant conduct is behind him. I conclude Guideline F against Applicant.

⁷See, ISCR Case No. 16-03208 (App. Bd. Feb, 28, 2018).

⁸§20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁹§20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

¹⁰§20(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.

¹¹§20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

¹²§20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-g: Against Applicant
Subparagraphs h-i: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

John Grattan Metz, Jr
Administrative Judge