



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



In the matter of:)	
)	
)	ISCR Case No. 20-03172
)	
Applicant for Security Clearance)	

Appearances

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

04/21/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 30, 2021, 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. Department of Defense (DOD) 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 effective June 8, 2017 (AG).

Applicant answered the SOR on August 7, 2021, and he requested a hearing before an administrative judge. The case was assigned to me on October 21, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 5, 2021, and the hearing was convened as scheduled on December 14,

2021. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I) and the discovery letter sent to Applicant was marked as HE II. Applicant testified, but did not offer any exhibits at his hearing. The record was kept open until January 14, 2022, to allow him to submit additional evidence. He did not submit any documentary evidence and the record closed. DOHA received the hearing transcript (Tr.) on December 22, 2021.

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are adopted as a findings of fact. After a review of the pleadings and evidence, I make the additional findings of fact.

Applicant is a 59-year-old employee of a defense contractor. He began working for his current employer in August 2019. He is a software engineer. He is seeking his first security clearance. From December 2016 to August 2019, he worked either temporary jobs or was unemployed. From February 2011 to December 2016, he worked for a different defense contractor. Before 2011, he struggled to maintain steady employment. He is a high school graduate with some college credits. He is single, never married, and has no children. (Tr. at 6, 17-18; GE 1)

The SOR alleged that Applicant failed to timely file his 2012-2019 federal income tax returns, his 2012-2018 state income tax returns for state A, and his 2018-2019 state income tax returns for state B. (SOR ¶¶ 1.a-1.c).

Applicant admitted all allegations in his SOR answer. He also disclosed his non-filing of income tax returns to a defense investigator during his May 2020 background investigation interview. At some point, Applicant submitted to the Government documents showing that he hired a tax preparation service (TPS) to prepare his non-filed federal and state income tax returns. A July 2020 letter from the TPS indicates that it had prepared Applicant's 2018 federal and both state returns and instructed him on the filing procedure he was to follow. There is no further documentation showing that the 2018 returns were filed. Neither Applicant nor the TPS provided documentation concerning the filing status of the remaining tax years, i.e., 2012-2017, 2019. (Tr. at 19-20, 27-28; GE 2; SOR answer)

Applicant explained that his tax situation really began in 2008-2009, when he realized he had a tax problem. This was during the time he was either unemployed or he was working low-paying temporary jobs. In 2011, he was hired by a defense contractor for an information technology position. During tax year 2012, he failed to file his federal or state tax returns because he did not have the money to pay his tax debt. Once he did not file for tax year 2012, he continued not to file in succeeding years because he did not know how to make up for the earlier non-filed years' returns. He claims that he filed all the missing returns with the help of the TPS between May and June 2020. He failed to produce documentation supporting his assertion. I kept the

record open by 30 days to allow Applicant to provide the documentation, but he failed to do so. (Tr. at 18-21, 25, 39; GE 2)

Applicant testified that he is not a tax protestor and feels much better now that he has filed his tax returns. He intends to file all future tax returns in a timely manner. He claims he paid whatever amount of taxes he owed once the returns were filed and processed. He current job pays him an annual gross salary of approximately \$70,000. (Tr. at 23, 33-34)

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 concerns 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 applies:

(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 2012-2019 federal and two state’s income tax returns. I find the above disqualifying condition is 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:

(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; 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 stated that he failed to file his 2012 tax returns because he could not afford the tax debt. From there things snowballed on him. He did not file the succeeding years' returns because he had not filed the previous returns. He claimed that part of the reason he had tax problems was because of his years of underemployment and unemployment. However, he failed to establish how that directly impacted his decision not to file multiple years of federal and state tax returns. He provided documentation showing that he hired a TPS to prepare his delinquent federal and state tax returns, but his documentation only showed that tax year 2018 had been prepared, not filed. There was no documentation concerning the remaining tax returns. His non-filing and delay in filing show a lack of reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(g) do not apply.

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 work history, including his periods of underemployment and unemployment, his voluntary disclosure of his unfiled tax returns to the defense investigator, and his intention to timely file his returns in the future. However, his handling of his tax issues over a multi-year period causes me to question his trustworthiness, reliability, and good judgment.

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.

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.c: 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