



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



In the matter of:)
)
) ISCR Case No. 21-02443
)
)
Applicant for Security Clearance)

Appearances

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

06/10/2022

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 January 13, 2022, the Defense Counterintelligence and Security Agency (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On January 20, 2022, Applicant answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 24, 2022. The evidence

included in the FORM is identified as Items 2-3 (Item 1 includes pleadings and transmittal information). The FORM was received by Applicant on March 23, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any evidence in response to the FORM, or submit objections to it. Items 2-3 are admitted into evidence. The case was assigned to me on May 13, 2022.

Findings of Fact

Applicant denied one SOR allegation (§ 1.a) and admitted the second SOR allegation, with explanations (§ 1.b). His admission is adopted as a finding of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 59 years old. He has worked for his current employer, a federal contractor as a surveyor since February 2018. He is a high school graduate. He served in the Air National Guard from 1984 to 1990, when he was administratively discharged under other than honorable conditions. He married in 1983 and divorced in 1987. He has one adult child. (Items 2, 3).

The SOR alleged Applicant failed to timely file his 2013 through 2019 federal income tax returns, as required, and that he also failed to file his 2015-2017 state income tax returns, as required. (§§ 1.a-1.b). Applicant admitted in his August 2020 security clearance application (SCA) that he failed to file his 2014-2017 federal income tax returns. There is no record evidence to support that Applicant failed to timely file his 2013, 2018, or 2019 federal tax returns as alleged. I find for Applicant on those specific years within SOR § 1.a. During his August 2021 background investigation interview, he confirmed that he failed to timely file his federal tax returns for 2014-2017. (Items 1 (Applicant's answer), 2, 3)

Applicant admitted in his security clearance application (SCA) that he failed to timely file his state income tax returns for 2015-2017. He confirmed his SCA admissions during his background interview in August 2021. He also admitted that as of August 2021, he had not yet filed his state tax returns for 2015-2017. (Items 2, 3)

Applicant claimed that the reason that his 2014-2017 federal tax returns and his 2015-2017 state tax returns were not filed was because the person he had preparing and supposedly filing all his returns failed to do so. During his background interview, the investigator asked Applicant for the name of his tax preparer, which Applicant refused to give. Applicant further claimed that he mailed all of his delinquent federal tax returns (2014-2017) to the IRS in November 2021, but he cannot get verification from the IRS about the filing of these returns. He presented no documentation to support his claimed actions with the IRS. Concerning his state tax returns for 2015-2017, Applicant claimed he filed the tax returns for 2016 and 2017 in January 2022 and that he now disputes having to file a state tax return for 2015. He provided no supporting documentation. He

attributes part of his filing delays to not being able to obtain copies of his W-2 wages statements in a timely manner. (Items 1-3)

Applicant did not provide information about his current budget. There is no documented evidence showing that he sought any financial counseling. In his SOR answer he asserted that he lives within his means, paid for a new truck in 2019, and saved enough to buy a new home. (Items 1-3)

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 2014-2017 federal income tax returns and his 2015-2017 state income tax returns. He claimed that he remedied this by filing his delinquent federal returns in November 2021 and by filing his 2016-2017 delinquent state returns in January 2022. He now believes that he was not required to file a state tax return for 2015. He provided no supporting documentation for these assertions. Even if he had provided documented proof of his late filings, his years of inaction is a sufficient reason by itself to support disqualification. I find AG ¶ 19(f) applies.

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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 claimed that he initially failed to timely file his federal and state tax returns because his tax preparer failed to prepare his tax returns and submit the filings. Applicant provided no corroboration for this assertion. He even declined to name who the tax preparer was when asked by his background investigator to do so. While his tax preparer's misfeasance may have been a condition beyond his control, his years of delaying to correct the issue was not responsible action. He failed to document that he actually filed his tax returns with the IRS and the state tax authority. He also failed to document his dispute concerning his requirement to file a state income tax return for 2015. His non-filing and delay in filing show a lack of reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) partially applies, but 20(e) 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 the facts and circumstances surrounding this case. I considered his claimed financial

stability as reflected by his paying for a 2019 truck and buying a new home, but I also considered his failure to timely file his 2014-2017 federal income tax returns, and his failure to timely file his 2015-2017 state income tax returns. Applicant has not established a track record of tax responsibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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.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