



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



In the matter of:)
)
) ISCR Case No. 21-00878
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: Brittany Forrester, Attorney At Law

August 8, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 3, 2020, Applicant submitted a security clearance application (e-QIP). On June 22, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 15, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 22, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on April 25, 2022, and the hearing was convened as scheduled on June 21, 2022. The Government

offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. Applicant offered sixteen exhibits, referred to as Applicant's Exhibits A through P, which were admitted without objection. Applicant testified on his own behalf. The record remained open following the hearing, until close of business on June 28, 2022, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted nothing more. DOHA received the final transcript of the hearing (Tr.) on June 30, 2022.

Findings of Fact

Applicant is 44 years old. He is married, and has two children. He holds the position of Fleet Support Engineer. 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 alleged that Applicant failed to file his Federal income tax returns for tax years 2015, 2016, 2017, 2018 and 2019. In his answer, Applicant admits the allegation with explanations. (Applicant's Answer to SOR.)

Applicant served in the U.S. Marine Corps on active duty from April 1998 to August 2003. He was deployed mostly in Asia. He advanced to the enlisted rank of Corporal, E-4. He received a Good Conduct Medal, and an honorable discharge. During his military career he held a security clearance without incident.

In 2001, while in the military, Applicant met his wife, a Japanese national, in Japan. They married in 2002, and have raised two children in Japan. After his military service, Applicant began working for defense contractors. In 2015, he and his wife began having serious marital problems. They separated and were living apart, as Applicant moved out of the family residence.

Applicant understood his responsibility to file annual income Federal income tax returns, but was confronted with several obstacles. Some of the documentation Applicant needed to prepare his income taxes was located at his wife's house, the family residence, and it was not a good time for him to try to get it. Applicant missed the filing date for his 2015 Federal income tax returns. As time passed, this situation continued, and Applicant failed to file his Federal income tax returns for tax years 2016, 2017, 2018, and 2019. Applicant explained that in order for him to file the Federal income tax returns, he would need his wife to sign off on the returns. Even though she is not a U.S. citizen, her signature is necessary on all tax documents. Since they were

living apart, this was difficult for him to obtain. Applicant just let things snowball. (Tr. p. 45.)

Between 2015 and 2016, with the intention of divorcing his wife, Applicant contacted a Japanese attorney to have him prepare a separation agreement for him and his wife. (Applicant's Exhibit B.) Applicant struggled with a language barrier and was uncertain about this process. In 2017, Applicant reconciled with his wife. Before moving back in with the Applicant, his wife, who was moving her household to be with the Applicant, went through all of Applicant's paperwork that he had left at the house and got rid of it, which included some documentation he needed to prepare his income tax returns.

In January 2020, Applicant contacted and hired a professional tax preparer to assist him in getting his delinquent Federal income tax returns filed. (Applicant's Exhibits C and G.) Due to the fact that Applicant lives abroad, coupled with COVID 19 and its restrictions, and the fact that the IRS had incorrect information on record for the Applicant, it has taken longer for him to obtain information he needed to properly prepare his returns. With the assistance of the professional tax preparer, Applicant was eventually able to file all of the income tax returns in question. (Applicant's Exhibit A.)

On August 2, 2021, Applicant filed his Federal income tax returns for tax year 2015; on July 26, 2021, Applicant filed his Federal income tax return for tax year 2016; on July 19, 2021, Applicant filed his Federal income tax return for tax year 2017; on July 5, 2021, Applicant filed his Federal income tax return for tax year 2018; on July 5, 2021, Applicant filed his Federal income tax return for tax year 2019. All of Applicant's Federal income tax returns alleged in the SOR have been filed with the IRS. Applicant states that he received about \$12,000 in tax refunds as a result of filing his Federal income tax returns. (Tr. p. 33.) Applicant testified that he filed his most recent Federal income tax returns for tax years 2020 and 2021 in a timely fashion, or that an extension was filed on his behalf. (Tr. pp. 27-28.)

Applicant testified that his relationship with his wife has improved and he now considers their marriage to be in good standing. There is no longer a problem with having her sign any tax documentation, and going forward Applicant plans to file all of his Federal income tax returns on time.

Applicant has been working for his current employer since March 2020. He is a hard worker and excellent performer on the job. Applicant has received a number of awards, commendations and accolades for his work performance. He has also received two raises and two bonuses. (Applicant's Exhibits D and I.)

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 Federal income tax returns for five years from 2015 through 2019 due to living abroad, being involved in a marital separation and pending divorce, difficulty in being able to access information he needed to prepare his returns, and COVID 19 restrictions. Even so, his actions or inactions both demonstrated a history of not addressing his responsibility to file his Federal income tax returns. 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.

(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 has now filed all of the Federal income tax returns in question and received about \$12,000 in tax refunds as a result of his filings. However, Applicant has no good reason as to why he was so delinquent in filing his returns. A pattern of responsibility and good judgment has not been shown. He failed to file Federal income tax returns for 2015, 2016, 2017, 2018 and 2019. This shows irresponsibility. Even though there were obstacles he encountered, like living overseas, marital problems, and

COVID 19 and its restrictions, he must still adhere to Federal laws and regulations that require him to file his Federal income tax returns in a timely fashion. He has been derelict and irresponsible, not once, but at least five consecutive times. He filed these Federal income tax returns just last year. Furthermore, the record was left open to allow the Applicant the opportunity to provide additional mitigating evidence to show that he has filed his most recent Federal income tax returns for tax years 2020, and 2021, in a timely fashion. Applicant failed to submit anything. It can be inferred that these returns, like the others, were not filed in a timely fashion. Under the circumstances, he has not demonstrated sufficient responsibility, good judgment, reliability, or trustworthiness. Mitigating Conditions 20(a), 20(b), and 20(d) do not show full mitigation.

There is evidence in the record to show that Applicant's Federal income tax returns alleged in the SOR have been filed, and he is current with his obligations to the IRS. However, there is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline F.

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. Applicant is commended for his service in the military. Going forward, he must follow Federal law that requires him to file annual Federal income tax returns in a timely fashion without distractions or excuses.

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 concern.

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.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge