



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



In the matter of:)
)
) ISCR Case No. 21-00276
)
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Department Counsel
For Applicant: *Pro se*

August 8 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 5, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on November 17, 2021. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On March 17, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant and received by him on March 24, 2022. The FORM notified

Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 6, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 6.

Findings of Fact

Applicant is 58 years old, and unmarried with no children. He has a general equivalency degree (GED). He is employed by a defense contractor as a Shelter Tec 3. He has no military service. 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 timely file his Federal 2012 through 2019, and state 2012 through 2019 income tax returns. He also filed for Chapter 13 Bankruptcy in October 2014. In his answer, Applicant admits the allegations with explanation.

Applicant began working for his current employer in October 2019. (Government Exhibit 1.) His security clearance application shows that he has had steady employment from November 2011 through October 2019. He then started working for his current employer in October 2019, and there have been no interruptions in his employment. Applicant failed to timely file his Federal and state income tax returns for tax years 2012 through 2019. (Government Exhibit 2.)

Applicant states that he has now resolved all of his Federal and state income tax filings. (Government Exhibit 2.) Documentation in the record shows that he filed his 2012 Federal income tax return in October 2014, and his 2015 and 2016 Federal income tax returns in May 2020. (Government Exhibit 4.) Regarding his 2017, 2018 and 2019 Federal income tax returns, the Internal Revenue Service shows no returns have yet been received. (Government Exhibit 4.)

A letter from the state tax authorities dated June 10, 2021, indicates that they have no record of his tax returns for tax years 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019. Applicant asserts that he has no tax liability to either the Federal or state governments. In accordance with Federal and state laws, Applicant states that he understands his responsibility to file annual Federal and state income tax returns in a timely fashion.

Applicant simply forgot to file his income tax returns for the years in question. He stated that he suffers from a health condition that he has had for the last ten years, which causes him to struggle with his memory and the ability to stay on task. He stated that unless it is something that he does routinely, he has difficulty remembering to do it. (Government Exhibits 2 and 4.)

In October 2014, Applicant filed for Chapter 13 Bankruptcy. He stated that he diligently followed the trustee's repayment plan for four and a half years through automatic payments deducted from his paycheck, until he received a bill from the trustee stating that he owed over \$1,000 for lack of payments. Applicant was confused and does not understand how the incorrect amount was deducted from his paycheck. Apparently due to an administrative error caused by the trustee handling the account, there was insufficient monies deducted each month during the five-year plan. Applicant was unable to come up with the lump sum amount of money needed at the end of the five-years to pay off the creditors, and so the Bankruptcy was dismissed in 2019. He states that he ultimately cashed in his retirement account and paid off the remaining collection accounts he was aware of. He believes that he has satisfied all of the creditors involved in the Chapter 13 Bankruptcy. (Government Exhibit 4.)

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant completed a security clearance application dated April 12, 2020. (Government Exhibit 1.) In response to Section 26, Financial Record, he was asked, "In the past (7) seven years have you failed to file or pay federal or state, or other taxes when required by law or ordinance?" Applicant answered, "No", and failed to disclose that information as noted in Guideline F above.

Applicant denies that he did this deliberately. He states that he answered all of the questions to the best of his ability. He indicates that he has a memory problem and sight loss issues brought on by his health problem. (Government Exhibit 2.) Based upon Applicant's memory problem, it is possible that he may not have remembered that he failed to file Federal and state income tax returns at the time he completed the application.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 Federal and state income tax returns for a number of years, and only recently filed some of them when confronted with his security clearance eligibility. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations 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 did not abide by the Federal and state tax laws. He failed to file his Federal and state income tax returns in a timely manner for at least eight years. The failure of Applicant to act in a timely manner shows a defect in character. Circumstances beyond his control, namely his memory problem, may have cause him to forgot to file his annual income tax returns. If so, this would certainly impact his ability to properly protect classified information. Applicant did not file an extension to accommodate his circumstances, nor did he contact anyone to help him file his returns on time. Instead, he ignored the situation until it became a problem. Applicant has not

acted responsibly under the circumstances. There is no justification for his failure to file his income tax returns, or anything else in the record, to mitigate this violation of the tax laws. This demonstrates a lack of judgment and reliability needed to be eligible for access to classified information.

Applicant attributes his health condition as partially responsible for his failure to file his income tax returns on time. Understanding that his health condition impacts his ability to comply with Federal and state tax laws, he should have sought out assistance to help him file his returns on time. As long as he is gainfully employed and earning sufficient monies, he is still required to file his annual income tax returns on time. Voluntary compliance with rules and regulations is essential for protecting classified information. If he cannot follow the tax rules, he very well may not be able to follow the rules required to protect classified information. It was only when his tax delinquencies were an impediment to his security clearance that he took action to get some of his income tax returns filed. Under the circumstances, it cannot be said that Applicant made a good-faith effort to resolve these delinquencies. None of the mitigating conditions apply. This guideline is found against the Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant failed to answer the question correctly in response to whether he had any delinquent income tax filings. Since he is applying for a security clearance, it can be assumed that he understood the question. If his memory problem caused him to answer the question incorrectly, he cannot be found eligible for access to classified information, as he may forget how to properly protect classified information. On the other hand, if he did not answer the question accurately in an attempt to conceal his failure to file his returns from the Government, he is still ineligible for access to classified information for his untrustworthiness. Deliberately concealing material information from the government on a security clearance application raises serious questions about one's credibility and trustworthiness. In either case, Applicant is not eligible for access to classified information. Under the particular circumstances of this case, none of the mitigating conditions are applicable. This guideline is found against the Applicant.

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. Applicant repeatedly failed to timely file his Federal and state income tax returns. His actions do not demonstrate the high degree of judgement and reliability required of person eligible for access to classified information. And then, to provide false information about the filings on his security clearance application is just as troubling. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

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. through 1.c.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge