



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



In the matter of:)	
)	
-----)	ISCR Case: 21-02627
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 9, 2020. (Government Exhibit 1.) On January 12, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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; Department of Defense 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*, effective within the Department of Defense on June 8, 2017. Applicant submitted an answer to the SOR dated January 28, 2022, and requested a hearing before an administrative judge. (Answer.)

The Government was ready to proceed on March 4, 2022. The case was assigned to me on March 17, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 21, 2022. The hearing was convened as scheduled via TEAMS between the United States and Foreign Country (FC) on April 6, 2022. The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on April 15, 2022. Applicant requested the record remain open for receipt of additional information. Applicant submitted Applicant Exhibits A through D in a timely fashion, which were also admitted without objection. The record then closed.

Findings of Fact

Applicant is 33 years old and married with three children. He has a high school education and has been employed by a defense contractor since November 2020 in a FC. (Government Exhibit 1 at Sections 13A, and 17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted both allegations in the SOR. He also submitted additional information to support the granting of national security eligibility.

The Government alleged in paragraph 1 of the SOR that Applicant had not filed his 2017, 2018, or 2019 Federal tax returns. Paragraph 2 of the SOR alleged that Applicant had not filed his 2017, 2018, or 2019 State A tax returns.

Applicant is a native-born American citizen. He was also a citizen of FC because his mother is a citizen of FC, where she currently lives. He lived in the United States until December 2017, when he moved to FC for better employment opportunities and to be close to his family. Applicant worked for different FC firms from January 2018 until November 2020, when he began working for his current employer. During the period he was employed by FC firms Applicant was paid in the local currency. (Tr. 14; Government Exhibit 1 at Section 13A.)

Applicant admits that he was at fault for not filing his 2017 Federal and State A tax returns in a timely fashion. He further stated that he did not know he was required to file Federal tax returns for 2018 and 2019. He thought that since he was employed in FC, was a dual citizen of FC, and was paid in local currency, he did not have to file tax returns. Applicant eventually determined that his belief was in error. (Tr. 13-15; Government Exhibit 3 at 13, 25-26.)

All or most of the salaries of Americans who are working and living full-time overseas are exempt from Federal taxes. See Internal Revenue Service, *Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad*, <https://www.irs.gov/forms-pubs/about-publication-54> (accessed September 21, 2022). The maximum Foreign Earned Income Exclusion rose from \$104,100 in 2018 to \$107,600 in 2020. According to Applicant this exclusion would have covered all of his income from his FC employers. Such a situation does not, however, obviate the requirement to timely file a tax return every year. Applicant stated that he simply did not know of this requirement, (Tr. 23-24; Government Exhibit 3 at 13.)

Applicant did not have access to tax forms for tax year 2017 until recently. He accessed his W-2 Wage and Tax Statement for 2017 from the IRS website on December 4, 2021. He testified that he prepared and mailed his Federal tax returns for 2017 through 2019 to the Austin, Texas IRS service center on February 8, 2022, which were received on February 28, 2022. He did not report any income for 2018 or 2019 on his Federal tax forms because he believed income earned overseas in a foreign currency was exempt. He did not present any evidence supporting that statement. Applicant did not retain copies of these tax returns. As of the date the record closed Applicant had not received any response from the IRS as to whether his returns were correct or processed. (Tr. 16-17, 23-26, 38; Government Exhibit 3 at 5-12.)

Applicant had issues getting his State A tax returns to the proper office. It appears that he has now sent them to the proper address on April 20, 2022. (Tr. 20-21; Applicant Exhibits A at 1-2 and D at 6.)

Applicant forwarded a copy of his State A tax returns for 2017, 2018, and 2019 that were prepared by him. They properly show that he was no longer a resident of State A in 2018 or 2019. The 2017 form submitted to me is incomplete. The form shows Applicant owed \$2,224 in taxes. However, there is no information that Applicant has actually made arrangements to pay the taxes. Therefore, based on this record, I cannot find that he has successfully filed his 2017 State A tax return. (Tr. 26-28; Applicant Exhibit C.)

Applicant appeared to have retained a tax service firm on April 7, 2022, to file his 2017, 2018, and 2019 tax returns. No further information was received as to whether the firm has actually filed any of Applicant's Federal or State A tax returns for the subject years. (Applicant Exhibit A at 2.)

Mitigation

Applicant submitted a recent performance review from his supervisor, which stated he meets or exceeds expectations in every area. In conclusion his supervisor stated, "**HE IS JUST AN OVERALL OUTSTANDING MEMBER AND GREAT ADDITION TO THE . . . TEAM!!!!**" (Applicant Exhibit B.) (All emphasis in original.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal income tax returns, as required, for tax years 2017 through 2019. He failed to timely file his State A income tax return for tax year 2017. These facts establish *prima facie* support for the foregoing disqualifying condition and shifts the burden to Applicant to mitigate those concerns.

The guideline includes one condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(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 had been delinquent in filing his 2017 Federal and State A tax returns due to his own dilatory conduct. With regard to 2018 and 2019 tax returns there was confusion over the requirement to do so since he lived and worked overseas as an FC citizen. There was no requirement to file State A tax returns for 2018 and 2019 because he was no longer a resident. It appears that Applicant may have submitted all the subject tax returns to both the IRS and State A. However, there is little to no evidence that he has filed them properly. As stated above, his 2017 State A tax return was incomplete since it was missing essential payment information. As of the date the record closed he had received no information from the IRS as to his tax status for 2017, 2018, or 2019. In

addition, it is noted that Applicant has retained an income tax service to file the subject returns again. Therefore, it appears that Applicant is not sure he has filed all the subject returns correctly. At the present time Applicant has not submitted sufficient mitigation to overcome the adverse inference of his tax situation. Guideline F is found against 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not provided sufficient evidence to show that he has resolved his tax issues, and that they will not recur in the future. If Applicant is able to resolve his tax issues with the IRS and State A he may be eligible for national security eligibility in the future. The potential for pressure, exploitation, or duress has not been resolved at the present time. Overall, the evidence does create substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. Applicant has not met his burden to mitigate the security concerns arising under the guideline for financial considerations at this time.

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

Wilford H. Ross
Administrative Judge