



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



In the matter of:)
)
) ISCR Case No. 22-00648
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2022

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 17, 2020. On April 5, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (Exec. Or.) 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 (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on May 26, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on June 27, 2022. On July 5, 2022, a complete copy of the file of relevant material

(FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 14, 2022, but did not respond. The case was assigned to me on October 3, 2022.

Evidentiary Issue

FORM Item 4 is a summary of a personal security interview (PSI) conducted on December 14, 2020. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the PSI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the PSI; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; object on the ground that the report is unauthenticated. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. "Although pro se applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12010810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, he admitted allegations in SOR ¶¶ 1.a-d and denied the allegations in SOR ¶¶ 1.e-f. His admissions are incorporated in my findings of fact.

Applicant is a 66-year-old operations supervisor employed by a federal contractor since September 2017. He attended a community college and a university between 1981 and 1985. He is divorced and has one adult child. His SCA reflects that he held a security clearance from 1983 to 1986. (FORM Item 3 at 35.)

Applicant disclosed in his SCA that he had not filed his state income tax return for tax year for 2017 and his federal and state income tax returns for 2018. In a security clearance interview, he stated that he had not filed his federal and state tax returns for tax year 2020. He admitted he owed an estimated total of \$5,000 in federal taxes and \$2,500 in state taxes. (FORM Item 4 at 2.) In response to DOHA interrogatories, he provided his Internal Revenue Service (IRS) account transcripts which disclosed he failed to file, as required, his federal tax returns for tax years 2018 and 2020; and he is indebted to the IRS in the amount of \$6,800 for tax year 2019. He noted in the interrogatories he had not made an Offer of Compromise or was in any payment arrangement to pay his delinquent taxes. (FORM Item 5 at 2.) His failures to file federal and state income tax returns are alleged in SOR ¶¶ 1.a and 1.c.

A March 2022 credit report reflects a last payment date of February 2022, reducing the debt alleged in SOR ¶ 1.e from \$1,334 to \$949. (FORM Item 8 at 4.) Applicant told the security investigator he disputed the debt alleged in SOR ¶ 1.f (\$1,419), and had made no effort to resolve it. (FORM Item 7 at 2.) In response to DOHA interrogatories

regarding both debts, SOR ¶¶ 1.e and 1.f, he indicated that neither debt had been paid and that payment arrangements had been made.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

Applicant admits he failed to timely file, as required, his federal income tax returns for tax years 2017, 2018, and 2020 and his state income returns for tax years 2017, 2018, 2019, and 2020 (SOR ¶¶ 1.a and 1.c); that he owed \$6,800 in federal taxes for the tax year 2020, an approximate amount of \$2,500 in state taxes for the tax year 2017 (SOR ¶¶ 1.b and 1.d); and collection accounts in the approximate amounts of \$1,334 and \$1,419 (SOR ¶¶ 1.e, and 1.f). In Applicant’s answer to the SOR, he denied these debts. In response to DOHA interrogatories, he indicated that neither debt had been paid and that payment arrangements had been made for both. He provided no documentation of payment to support his statement. The 2022 credit report supports the statement that payments have been made on the one debt. The security concern under this guideline 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his IRS account transcripts establish the following disqualifying conditions under this guideline: AG ¶ 19(c) (“a history of not meeting financial obligations”) and AG ¶ 19(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”). The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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.

None of the above mitigating conditions are established for SOR ¶¶ 1.a-d. Applicant's failures to timely file his tax returns are numerous, recent, and did not occur under circumstances making recurrence unlikely. He submitted no evidence of conditions largely beyond his control. He has not engaged the IRS or the state regarding his tax problems, and they remain unresolved. Notwithstanding his statements of intent to file his tax returns, he submitted no evidence that they have been filed.

AG ¶ 20(d) is potentially applicable for SOR ¶¶ 1.e and 1.f. There is no evidence that either debt has been paid in full or that payment arrangements have been made. Applicant's March 2022 credit report shows payment activity for the debt alleged in SOR ¶ 1.e. This mitigating condition is established for the debt alleged in SOR ¶ 1.e. Because he has not provided documentation to support his assertion that payment arrangements have been made, this mitigating condition is not established for SOR ¶ 1.f.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d) Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge