



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



In the matter of:)
)
) ISCR Case No. 20-02736
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2022

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 November 23, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The Department of Defense (DOD) acted under Executive Order (EO) 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 effective June 8, 2017 (AG).

Applicant answered the SOR on March 2, 2021, and he requested a hearing before an administrative judge. The case was assigned to me on May 17, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 10, 2022, and the hearing was convened as scheduled on July 19, 2022. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection.

The Government's discovery letter sent to Applicant was marked as hearing exhibit (HE) I and its exhibit list was marked as HE II. Applicant testified, but did not offer any exhibits at his hearing. The record was kept open until August 19, 2022, to allow him to submit additional evidence. He timely submitted exhibits (AE) A-B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 29, 2022.

Procedural Issue

Based upon Applicant's testimony where he admitted failing to file his federal tax returns for tax years 2019-2021, Department Counsel moved to amend the SOR to add a second paragraph (SOR ¶ 1.b) alleging that Applicant failed to timely file his federal tax returns for tax years 2019-2021. I discussed with Applicant his right to continue the hearing so that he could have time to prepare for the new allegations pursuant to the Directive. I also told him he could proceed with the hearing and he could submit additional documentary evidence showing the status of his tax filings for years 2019-2021. He chose to proceed with the hearing and submit documentation post-hearing. I granted the motion. (Tr. 48-50)

Findings of Fact

Applicant admitted the SOR allegations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the additional findings of fact.

Applicant is 53 years old and an employee who is seeking a cleared position with a defense contractor, whom he formerly worked for in an unclassified position. He worked for his last employer starting in March 2019 and continued until he recently resigned to apply for a cleared position within the company. He is a field service technician. He served in the U.S. Army for eight years until he was honorably discharged in 1996 holding the rank of staff sergeant (E-6). Since his military discharge, he has mostly been employed by defense contractors in some capacity. He has been married 29 years. He has one child. His wife is a nurse. He is involved with youth activities within his community. This is his first request seeking a security clearance. He did not hold a clearance while in the Army. (Tr. 5-6, 18, 20-21, 23; GE 1)

The SOR alleged that Applicant failed to timely file his 2010-2018 federal income tax returns as required (SOR ¶ 1.a). The amendment to the SOR at his hearing added the allegation that he failed to timely file his 2019-2021 federal income tax returns as required (SOR ¶ 1.b).

Applicant admitted the original allegation in his SOR answer and admitted the amended allegation in his hearing testimony. He was straight forward with his explanation as to why he failed to file federal tax returns for 11 years. He stated that he relied on erroneous advice from coworkers who professed that he did not need to file any federal tax returns as long as he was having enough pay withheld via an IRS W-2 wage withholding procedure. If he did this, then the IRS would file his returns for him and if he owed more money, it would send him a bill for what he owed. He apparently

believed this erroneous advice, despite the fact that he had always been a “W-2” employee and had always filed yearly tax returns before 2010. Additionally, his wife filed her separate federal tax returns under the “married filing separate” classification during those years. (Tr. 22, 31, 33, 41; SOR Answer)

Applicant stated that he realized that he was wrong about his tax filing obligations when he received the SOR in November 2020, however that did not prompt him to timely file his 2020 or 2021 federal returns. He claimed that the full implication of his non-filing hit him in September 2021 after people from his company explained the consequences of his actions and how they impacted his chances of receiving a clearance. Before this time, he admitted that filing his tax returns was not a priority for him. (Tr. 30, 46)

Applicant presented documentation supporting his testimony that he hired an accountant to file his missing federal tax returns in June or July 2022. This documentation supports Applicant’s claim that on approximately July 19, 2022, his accountant filed, on his behalf, federal income tax returns for tax years 2012-2021. There is no documentation to support that his 2010-2011 federal returns were filed or an explanation for why they were not filed. (Tr. 22; AE A)

Applicant’s annual salary in his last position was approximately \$118,000. He testified that his credit is good and that he uses a written monthly budget to track his finances. He provided a copy of his budget. (Tr. 34, 47; AE B)

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.

The record evidence supports that Applicant failed to timely file his 2010-2021 federal income tax returns as he was required to do. I find the above disqualifying condition is raised.

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 applies:

(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 relied on “barracks accountancy,” which gave him erroneous advice as to what his federal income tax filing obligations were resulting in him not complying with his legal obligation for 11 years. While, I accept that he truly believed he did not have to file based upon the erroneous lay-persons’ tax advice, there is also an aspect of him sticking his head in the sand because he had always filed his federal tax returns before 2010 and his wife, who filed separately, was filing her returns. He has attempted to rectify his mistake by hiring an accountant and having his 2012-2021 returns prepared and filed in July 2022. He failed to provide documentation regarding the filing of his 2010-2011 returns. His non-filing and delay in filing show a lack of reliability, trustworthiness, and good judgment. While AG ¶ 20(g) has some application, it does not overcome his dilatory actions.

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 relevant facts and circumstances surrounding this case. I have incorporated my

