



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



In the matter of:)
)
) ISCR Case No. 22-00824
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esquire, Department Counsel
For Applicant: *Pro se*

November 21, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 21, 2020. On May 20, 2022, the Department of Defense Consolidated Adjudications Facility (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 May 25, 2022, and requested a hearing before an administrative judge. (Answer.)

The Government was ready to proceed on July 21, 2022. The case was assigned to me on July 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 11, 2022. The hearing was convened as scheduled via TEAMS video conference on September 28, 2022. Department Counsel offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf and offered nine exhibits, which he had attached to his Answer. I marked the exhibits as Applicant Exhibits (AE) A through I, and admitted them without objection. Prior to the hearing, he also submitted three additional exhibits. I marked them and AE J through L and admitted them without objection. DOHA received the transcript of the hearing (Tr.) on October 5, 2022.

Findings of Fact

Applicant is 66 years old, married and has two adult children. He graduated from high school and earned a bachelor's degree. He was also awarded a certificate in 2004. He enlisted in the U.S. Navy in 1981 and served until 1986, when he was honorably discharged. He then enlisted in the Navy Reserve and served until 2013. At the time of his discharge from the Reserve, he held the rank of Command Master Chief (E-9). He has been employed by a defense contractor as an engineer since December 2012. He has held a Secret security clearance continuously since 1992. (Tr. at 25-28, 31-33; GE 1 at 8, 12-19, 21-23.)

Paragraph 1 - Guideline F, Financial Considerations

The Government alleged in this paragraph of the SOR 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 three of the five allegations in the SOR. He also submitted additional information to support the granting of national security eligibility.

The Government alleged that Applicant had failed to timely file his Federal tax returns for tax years (TYs) 2014, 2016, 2018, 2019, and 2020 (SOR subparagraph 1.a) as well as TY 2017. (SOR subparagraph 1.b) Subparagraph 1.c alleged that Applicant failed to timely file his state tax returns for TYs 2014 through 2020. The SOR further alleged past-due state income taxes of \$5,821 (SOR subparagraph 1.d) and past-due county property taxes of \$204 for TY 2019. (SOR subparagraph 1.e). In the Answer, Applicant denied the allegations in SOR 1.a and 1.c and admitted the other allegations.

He provided additional information with respect to each SOR subparagraph:

1.a Failure to timely file Federal tax returns for TYs 2014, 2016, 2018, 2019, and 2020. Despite Applicant's denial, the record established that this allegation was accurate. Applicant filed his Federal tax returns for TYs 2019 and 2020 in or about May 2022, one

or two years late. He advised that his tax preparer was in the process of preparing Federal tax returns for the three earlier years. (Answer at 1; Tr. at 30-54; AE J and AE K.)

Prior to the hearing Applicant provided IRS Account Transcripts for TYs 2019 and 2020. These transcripts reflect that Applicant paid in 2022 substantial sums due with each return, specifically \$19,239 for 2019 and \$17,214 for TY 2020. They also reflect additional taxes and penalties owed in the amounts of \$3,693 and \$1,213 for TYs 2019 and 2020, respectively. Applicant planned to pay the amounts due on or before October 2, 2022. The tax deficiencies were due to under withholding on his and his wife's combined annual income of about \$300,000. Applicant did not file his TYs 2019 and 2020 returns on time because he did not have a tax preparer that he trusted until after the TY 2020 return was due in 2021. (Answer at 1; Tr. at 30-54; AE A, AE B, AE C, AE J, and AE K.)

Applicant has been delayed filing his Federal returns for TY 2018 because he needs a specific tax document to prepare his tax return. He wants his recently hired tax preparer to complete the return with an estimate of the missing information. He expects to have the TY 2018 Federal return filed shortly after the hearing date. The IRS had assessed taxes for that tax year in the amount of \$20,469, and he paid the assessment. He had purchased tax preparation software for TYs 2014, 2016, and 2018, but he did not feel confident that he was properly using it. (Answer at 1; Tr. at 30-54, 58; AE C.)

Applicant filed for an extension in 2017 for TY 2016 and paid an estimated tax due of \$19,319. He failed to file his return thereafter because he had no tax professional he could trust. His current tax professional has not yet had the time to prepare the TY 2016 Federal return for Applicant. He trusts that his tax professional will eventually file the return for TY 2016. Applicant admitted that he has been lax about dealing with his tax filing responsibilities. He expects the TY 2016 return to be filed before the end of 2022. (Answer at 1; Tr. at 55-59; AE B.)

Applicant used commercial tax preparation software to file his TY 2015 tax return. The return was timely filed. TY 2014 was the first year when Applicant failed to file his federal tax return. The tax professional who had prepared his prior returns had retired, and Applicant did not identify a new person to help him. His new tax professional will prepare this return when he has the time available to do so. Applicant has a goal to file the return by yearend 2022. (Answer at 1; Tr. at 59-65; AE A.)

1.b Failure to timely file Federal tax return for TY 2017. Applicant wrote in the Answer that he will file his TY 2017 Federal tax return once his tax preparer has completed it. As of the hearing date, the return had not been filed. Applicant attached to the Answer an Account Transcript from the IRS for TY 2017. It reflects that the IRS prepared a substitute return on April 27, 2020, for this year and assessed additional taxes in the amount of \$30,929. Applicant made a payment on February 8, 2021, in the amount of \$24,964. He intends to have his tax professional file his own tax return for TY 2017. (Answer at 1; Tr. at 65-70; AE F.)

1.c Failure to timely file state tax returns for TYs 2014 through 2020. In the Answer Applicant wrote that he has filed his State A tax returns for TYs 2019 and 2020. He also wrote that the returns for the other years will be filed once his tax preparer has completed the returns. For TY 2019 he owed \$613, and he received a small refund for TY 2020. The state tax authority reassessed his taxes for TY 2019 and determined that Applicant owed an additional \$4,049. Applicant intends to file his other state tax returns when he files his Federal tax returns for the TYs 2014 and 2016 through 2018 and will pay any taxes he is assessed for those years. He filed his TY 2015 state tax return when he filed his Federal return for that year using tax preparation software. (Answer at 2; Tr. at 70-76.)

1.d Delinquent state tax debt in the approximate amount of \$5,821. In the Answer Applicant wrote that this tax debt arose because he filed separately from his wife in 2019. He has refiled an amended joint return with his wife. When his return was filed, he paid taxes due per the amended return of \$613. Shortly before the hearing he paid additional state tax in the amount of \$4,048, which is the amount he calculated after the state makes an adjustment of over \$6,000. The state has not yet determined if Applicant's recent payment satisfies his tax obligations. (Answer at 2; Tr. at 76-79.)

1.e Delinquent county property tax debt for TY 2019 in the approximate amount of \$204. Applicant did not receive the county tax bill for one year on a timeshare he owns. He became aware of the tax delinquency when he received the SOR and paid this debt on June 9, 2022. (Answer at 2; Tr. at 79-81; GE 4; AE G.)

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 three conditions that could raise security concerns and may be disqualifying in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (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 his Federal income tax returns, as required, for TYs 2014 and 2016 through 2020. He also failed to timely file his state income tax returns for the same tax years. The SOR does not allege that Applicant has any outstanding Federal or state income tax obligations other than a state tax delinquency of \$5,821. Applicant testified without any documentary evidence that he has resolved that tax debt with the possible exception of some additional interest or penalties. Applicant also had a delinquent property tax debt. These facts establish the foregoing disqualifying condition and shift the burden to Applicant to mitigate those concerns.

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

- (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;
- (d) the individual initiated and is adhering to a good faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 Federal and state tax returns for most years since TY 2014 due to his dilatory conduct. He blames the retirement of his former accountant and his lack of confidence that he was correctly using self-preparer software. He has no persuasive excuse for not hiring a new tax preparer in 2014 to prepare his tax returns or for not seeking advice on how to use the commercial tax preparation software properly. As of the date the record closed, he had only filed his tax returns for the two most recent years. He claims that he only has confidence in the tax preparer he has recently hired. Applicant has not submitted sufficient mitigation to overcome the adverse evidence of his long-term pattern of delinquent tax filing. No Guideline F mitigating conditions fully apply.

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. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis. I have weighed Applicant's 33 years of service in the Navy with two deployments and his achievement of retiring from the Navy Reserve as a Command Master Chief. I have also weighed the fact the despite his extraordinary military career, he has been unable to cope with the basic rules our country requires of its citizens to file and pay taxes annually in a timely manner. Moreover, Applicant has not provided sufficient evidence to show that he has resolved his tax filing delinquencies and has not established that filing delinquencies will not recur in the future. Applicant's failure to show responsible behavior in timely preparing his tax returns for a number of years raises concerns about his reliability and trustworthiness. Also, the potential for pressure, exploitation, or duress has not been resolved at the present time. Overall, the evidence creates 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.

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 through 1.d:	Against Applicant
Subparagraph 1.e:	For 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.

John Bayard Glendon
Administrative Judge