



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



In the matter of:)
)
) ISCR Case No. 22-00692
)
Applicant for Security Clearance)

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

January 3, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 13, 2021. On May 11, 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 27, 2022, and requested a hearing before an administrative judge. (Answer.) The Government was ready to proceed on August 15, 2022. The case was assigned to me on August 22, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 3, 2022. The hearing was convened as scheduled via TEAMS video conference on November 3, 2022. Department Counsel offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. I held the record open until November 17, 2022, to give Applicant the opportunity to supplement the record with additional documentation. He timely submitted three sets of documents, which I marked as Applicant Exhibits (AE) A through C. DOHA received the transcript of the hearing (Tr.) on November 10, 2022. (Tr. at 13-18, 64.)

Findings of Fact

Applicant is 49 years old, married and has no children. He graduated from high school in 1992. He owned a tow-truck business for a number of years. He did well until the market in which he conducted business became too saturated with competitor tow-truck drivers. He closed his business and began working for a U.S. Government contractor in June 2020 as a maintenance technician. He is a first-time applicant for a security clearance. (Tr. at 20-23, 37-39; GE 1 at 8, 12-19, 21-23.)

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. The Government alleged that Applicant had failed to pay his Federal tax liabilities for tax years (TYs) 2016, 2017, and 2018 (SOR 1.a). He owes approximately \$90,908 in delinquent taxes. The SOR sets forth a second allegation stating that Applicant is indebted to his local tax authority in the approximate amount of \$2,028 for delinquent taxes for TYs 2016 through 2021. In the Answer, Applicant admitted both allegations.

The current status of the debts alleged in the SOR is as follows:

1.a Failure to pay Federal tax in the approximate amount of \$90,908. While operating his tow-truck business, Applicant fell behind in tax year (TY) 2016 on his Federal taxes related to his business. He acknowledges that he tried to ignore the problem, but his tax debts did not go away. Over the subsequent two years, his delinquent tax debt increased to at least \$90,000 because he was not paying any withholding taxes or quarterly payments on his income from his business. As a first-time business owner, he claims that he did not know what he was doing when it came to his tax responsibilities. In 2020 he hired a tax consultant who negotiated with the IRS an expensive payment plan to pay the delinquent taxes monthly over a number of years. Applicant was dissatisfied that his advisor did not seek a compromise of the debt that would lower his tax debt. He

has not done anything since terminating his relationship with his tax advisor beyond some general research on the process for making an offer in compromise settlement with the IRS. Applicant wants to contact the IRS and seek a settlement in compromise that he can afford.

Applicant and his wife together earn \$200,000, but they live in an area with high living costs. They live paycheck-to-paycheck and have little left over after paying their monthly expenses and debts. Applicant's debts include monthly payments of about \$700 due on a new vehicle he purchased in 2020 and payments on a loan used to purchase a camping trailer. Applicant and his wife are increasing their credit-cards debts to pay their living and very high commuting expenses. Applicant recognizes that he has "to step up and dig [himself] out of this hole." With his wife's income and expenses, their net monthly income after all expenses gives them insufficient funds to make any significant payment on Applicant's delinquent taxes. (Tr. at 23-24, 37-40, 49-50, 53, 57-59; GE 1 at 32-33; GE 2 at 3-8; GE 4 at 3; AE A.)

The IRS diverted a recent Federal tax refund for \$11,748 to pay down taxes Applicant owes for TY 2016. His bookkeeper filed for an extension for the filing of his TY 2021 tax returns. As of the hearing date, he was late in filing the tax return. He recognizes that he has to complete and file the return. He believes he has overpaid his taxes and would receive a refund if he did not have a debt to the IRS for back taxes. As an employee, he has withholding taken out of every paycheck and does not expect to have increased tax problems in the future. Applicant's delinquent Federal income tax debt has not been resolved. (Tr. at 34, 41-43, 59; AE C.)

1.b Failure to pay local taxes for TY 2016 through 2021 in the amount of about \$2,028. Applicant asserts that he paid this debt in late 2021. After the hearing he provided documentary proof of payment. He may owe a small amount of current taxes, but he is not delinquent on these taxes at this time. This debt is resolved. (Tr. at 25-34; GE 2 at 11; AE C.)

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

(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.

Both of these conditions have application under the facts of this case. Applicant has been delinquent on paying his Federal income taxes since TY 2016 and his tax debt significantly increased in TYs 2017 and 2018. The evidence establishes that in 2021 he has paid a relatively small local tax debt. These facts shift the burden to Applicant to provide mitigation of the security concerns raised by his actions.

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.

None of the above Guideline F mitigating conditions fully applies. In 2020 Applicant received counseling and assistance from a credible and legitimate source to negotiate a payment plan with the IRS, but he was unable to make the payments under the payment plan. The problem has not been resolved. Applicant has not since made alternative arrangements with the IRS nor has he initiated a good-faith effort to pay his Federal tax debt.

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. Applicant has unpaid Federal taxes of at least \$91,000 dating back to the 2016-to-TY 2018 period. His tax obligations arose in the first instance for reasons within his control, specifically his failure to pay any withholding or estimated taxes out of the income he was earning operating his towing business. In 2020 a tax advisor negotiated a payment plan for Applicant to repay his taxes over time, but Applicant could not afford to pay it due to his other financial obligations.

Applicant has taken no responsible steps since then to seek a resolution of his delinquent taxes. The potential for pressure, exploitation, or duress has not been resolved. 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

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:

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