



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



In the matter of:)	
)	
)	ISCR Case No. 22-01612
)	
Applicant for Security Clearance)	

Appearances

For Government:
Andre M. Gregorian, Esquire, Department Counsel

For Applicant:
Pro se

March 15, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on November 17, 2020. On August 29, 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 CAF acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on September 16, 2022, and requested his case be decided on the written record in lieu of a hearing. On October 4, 2022, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 through 4, was provided to Applicant, who received the file on October 17, 2022.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to respond to the FORM or to submit any additional information. The Government's evidence is admitted into the record. The case was assigned to me on January 19, 2023. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 43 years old, unmarried, and has no children. He served in the U.S. Navy from August 1997 until his medical discharge in October 1997. He has been employed by a U.S. Government contractor as a project manager since December 2013. Applicant has held a security clearance in the past and seeks to renew his national security eligibility in connection with his employment. (Item 2 at Sections 1, 12, 13A, 17, 18, 25; Item 4 at 1.)

Guideline F, Financial Considerations

The Government alleged that Applicant is ineligible for clearance because he is financially irresponsible, which is evidenced by his failure to file his Federal tax returns for tax years (TYs) 2013 through 2017, as required (SOR ¶ 1.a), and his failure to file his state tax returns for TYs 2009, and 2013 through 2017, as required (SOR ¶ 1.b). In the Answer Applicant admitted both of the SOR allegations. In the e-QIP, Applicant wrote that he "forgot" to file his Federal and state tax returns for TYs 2013 through 2017. During his security interview, he admitted that his untimeliness in filing his tax returns was due to laziness and forgetfulness. (Items 1 at 27; Item 4 at 6.)

The record evidence regarding the two SOR allegations is as follows:

1.a. Failure to file in a timely manner, as required, Federal income tax returns for TYs 2013 through 2017. Applicant submitted with his September 2022 Answer copies of his Federal tax returns for TYs 2014 through 2017. The returns were self-prepared and are undated and unsigned. All four of the returns reflect that Applicant was entitled to refunds ranging in amounts of \$573 to \$774. Applicant failed to provide a date or dates when he filed these tax returns. If the returns were in fact submitted, they had to have been filed after the November 2020 e-QIP and before the September 2022 Answer. Not only were the returns submitted after their due dates, but Applicant is also likely barred

from claiming any refunds due the three-year statute of limitations on refund claims. 26 U.S.C. § 6511(a). (Item 1, Answer at 3, 5, 8,11.)

With respect to his 2013 Federal tax return, Applicant wrote in his Answer that “2013 was a mistake I made when filling out the form . . . 2013 was lost in a hard drive failure.” It appears that he is stating that he mistakenly included TY 2013 on the e-QIP as a year in which he had not filed his Federal tax return. It further appears that he is stating that he cannot provide a copy of the return due to a computer problem. Applicant provided no documentation to support a finding that he in fact filed his TY 2013 Federal tax return, or that his return was filed as required, *i.e.*, on or before April 15, 2014. Though not alleged in the SOR, Applicant also disclosed in the e-QIP that he had not filed his Federal tax return for TY 2009. He provided no comments about that Federal tax return.

1.b. Failure to file in a timely manner, as required, state income tax returns for TYs 2009 and 2013 through 2017. Applicant responded to the Government’s interrogatories in February 2022 and provided notices from his state government, dated September 9, 2021. The notices covered the TYs 2014 through 2017. In the notices, the state government advised Applicant that he was not eligible to receive refunds for these tax years because his returns were filed more than three years after they were due. The notices do not reflect when the returns for those tax years were filed, but they were likely filed after his submission of the e-QIP in November 2020 in which he disclosed that his state returns for the same years had not yet been filed. Applicant did not provide any information about his tax returns for TYs 2009 and 2013, which were both alleged in the SOR to have been filed untimely. He wrote in his response to the Government’s interrogatories that he lost the document for TY 2013. With his response, he also provided documentation evidencing that he had paid a state tax lien in the amount of \$2,221. The documentation does not reflect what tax year the lien covered, though it noted the date of the lien as February 13, 2016. The SOR does not allege the existence of a state tax lien. (Item 3 at 7-14.)

In the November 2020 e-QIP, Applicant wrote that, “2018 has been mailed to both state and federal, 2019 has been received by both state and federal.” He provided no filing dates for any of those returns. The vague information provided does not confirm that any of the returns were timely filed. By not responding to the Government’s FORM, Applicant provided no more recent information regarding his subsequent tax returns to demonstrate that he has changed his past practice of untimely tax filings. Applicant also elected not to submit any information about his work performance or ability to safeguard classified information.

Policies

When evaluating an applicant's suitability for 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 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.

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.

As of the date the SOR was issued, Applicant's admissions in the Answer and the e-QIP establish the above potentially disqualifying conditions. Accordingly, the burden of proof shifts to Applicant to mitigate the security concerns raised by his conduct.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

(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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; 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.

AG ¶ 20(a) and 20(b) are not established. Applicant's untimely filing of tax returns were frequent and did not occur under any unusual circumstances. In fact, the circumstances were entirely under his control. He admitted that he was lazy and forgetful when it came to filing his tax returns on time for several years in a row. Applicant presented no evidence to show a change in his behavior. His written statements about his tax filings in 2018 and 2019 do not establish that he timely filed those returns. He provided no evidence that untimely filings are unlikely to recur. His behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(g) is only partially established. Applicant provided notices from his state government that he had filed his tax returns for the TYs 2014 through 2017. The copies of his Federal tax returns for the same years were undated and unsigned and were not accompanied by any documentary evidence to establish that they had been submitted, even if they were untimely. In fact, he provided no positive assertion that the returns had indeed been filed. Also, Applicant claimed without any supporting documentary evidence that he filed his TY 2013 Federal and state tax returns. His assertion that he lost the state notice with respect to TY 2013 while retaining the notices for the four subsequent years is not credible. Overall, the evidence is insufficient to show that Applicant is willing to comply with a basic rule, applicable to all U.S. taxpayers, to file tax returns in a timely manner.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the 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 mitigated the concerns regarding his financial considerations. He has also not shown that there is little likelihood of recurrence. The record evidence does not convince me that Applicant is reliable and has good judgment. Overall, the record evidence creates doubt as to Applicant's present suitability for national security eligibility and a security clearance.

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge