



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



In the matter of:)
)
-----) ISCR Case: 22-00265
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2023

Decision

ROSS, Wilford H., Administrative Judge:

Applicant has filed all of his Federal income tax returns for tax years 2014 through 2016. He has resolved the income tax situation with State A. His dilatoriness was due to a prolonged depression during and after a divorce, rather than an intent to avoid taxes. Resulting security concerns were mitigated. Based upon a review of the pleadings, exhibits, and testimony, national security eligibility for access to classified information is granted.

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 2, 2021. (Government Exhibit 1.) On May 20, 2022, the Department of Defense Consolidated Adjudications Facility (DoD 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 undated answer (Answer) to the SOR with three attachments (Attachments 1 through 3) soon thereafter, and requested a hearing before an administrative judge. The Government was ready to proceed on September 19, 2022. The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 3, 2022. The hearing was convened as scheduled on November 8, 2022. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and offered Applicant Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 2022. Applicant requested the record remain open until December 2, 2022, for receipt of additional information. On November 28, 2022, Applicant submitted Applicant Exhibits B through N, which were also admitted without objection. The record then closed as scheduled.

Findings of Fact

Applicant is 44 years old and married for the third time. He has two children from his first two marriages. He has a bachelor's degree and is employed by a defense contractor as a Manager Network Services. (Government Exhibit 1 at Sections 13A, 17, and 18; Applicant Exhibit J; Tr. 7, 37, 39-40.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph 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. Specifically, the Government alleged in the SOR that Applicant had not filed his 2014 through 2016 Federal (allegation 1.a.) and State A (allegation 1.b.) tax returns as of the date of the SOR, May 20, 2022. He denied allegation 1.a. and admitted allegation 1.b. He also submitted additional information to support the granting of national security eligibility.

Applicant's tax problems began in 2014 when his second wife left the country with their young son and returned to her country of residence. The following acrimonious divorce was finally resolved in 2017. He became bitter and depressed over the situation. He stated, "I just sort of gave up, and I paid my taxes through my deductions, through my employer, every year. So, I felt that I was doing my duty, as a Citizen, to pay my taxes. So, I was not avoiding taxes." He has now filed all of the subject Federal tax returns, and fully resolved State A tax issues, as described below. (Government Exhibit 1 at Section 17; Exhibit 3 at 1; Tr. 19, 22-23.)

1.a Turning to the specific tax years at issue with the IRS:

Applicant filed his 2014 Federal tax return in February 2022. As prepared, he was due a refund in the amount of \$1,491. He did not sign the return and the IRS returned the document to him for signature on October 6, 2022. He signed the form and returned it to the IRS immediately. IRS records dated November 28, 2022, show that Applicant's 2014 Federal tax return was "secured" on November 22, 2022. (Applicant Answer Attachment 1; Applicant Exhibits A and N; Tr. 25, 27-35.)

Applicant filed his 2015 Federal tax return in February 2022. As prepared, he was due a refund in the amount of \$1,674. The IRS informed him that he had not signed this return either. He signed the form and returned it to the IRS along with the 2014 return in October 2022. IRS records dated November 28, 2022, show that Applicant's 2015 Federal tax return was "secured" on November 22, 2022. (Applicant Answer Attachment 2; Applicant Exhibit L; Tr. 25, 27-35.)

Applicant filed his 2016 Federal tax return in February 2022. As prepared, he was due a refund in the amount of \$1,215. He testified that he did not sign this return either and anticipated that it would also be returned by the IRS. He signed the form and returned it to the IRS along with his 2014 and 2015 tax returns in October 2022. IRS records dated November 28, 2022, show that Applicant's 2016 Federal tax return was "secured" on November 22, 2022. (Applicant Answer Attachment 3; Applicant Exhibit M; Tr. 25, 27-35.)

Applicant has filed all of his Federal income tax returns in a timely fashion starting in tax year 2017. This is supported by IRS account transcripts for tax years 2017 through 2021. (Applicant Exhibit C; Tr. 25-26, 36.)

1.b. Applicant has resolved his State A 2014 through 2016 tax liability through a garnishment issued by State A in approximately 2018. Tax records from State A's taxing authority dated February 14, 2022, indicate that Applicant has no balance owed to State A for tax years 2014 through 2020. In fact, he has a credit balance for the 2016 tax year. He moved from State A in 2020. (Government Exhibit 2 at 15-16; Exhibit 3 at 2; Tr. 19-22, 25, 29, 35-36, 45.)

MITIGATION

Applicant submitted his employee evaluations for years 2016 through 2021. The evaluations show him to be an excellent employee who exceeds expectations. He is valued by management and respected by the people he supervises. (Applicant Exhibits D through J.)

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 one condition that could raise security concerns and may be disqualifying in this case:

(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 Federal and State A income tax returns, as required, for tax years 2014 through 2016. These facts establish prima facie support for the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

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

(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 tax returns due to being depressed over the end of his second marriage when his wife took his young child out of the country. He also had a good-faith, but mistaken, belief that if he did not owe taxes he did not have to file a tax return. He filed the subject tax returns in February 2022, before issuance of the SOR. Unfortunately, he forgot to sign the returns and they had to be refiled in October 2022. The returns are now with the IRS and, as filed, he does not owe any taxes. His State A tax issues were resolved by a garnishment instituted by the State A taxing authority. He indicated a credible intent not to allow this situation to recur in the future.

He fully mitigated the concerns over his income tax return issues. Guideline F is found for Applicant.

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. Applicant provided sufficient evidence to show that he has resolved his tax issues, and that they will not recur in the future. The potential for pressure, exploitation, or duress has been resolved. Overall, the evidence does not create substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. Applicant has 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:

FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge