



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



In the matter of:)	
)	
)	ISCR Case No. 23-00712
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro Se.*

11/16/2023

Decision

HOGAN, Erin C., Administrative Judge:

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 16, 2021. On April 5, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR on date uncertain, and requested a decision based on the written record in lieu of a hearing. On May 18, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 6. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on May 25, 2023, and timely submitted his response on July 7, 2023. The

Government did not object to Applicant's Response to the FORM on July 7, 2023. Applicant did not object to the Government's evidence. The case was forwarded to the DOHA Hearing Office on July 25, 2023, and assigned to me on September 27, 2023.

Evidentiary Matters

Items 1 and 3 contain the pleadings in the case and are part of the record. Items 4 through 6 are admitted into evidence. Applicant's Response to Form is part of the record.

Findings of Fact

Applicant, age 44, is an employee of a DOD contractor seeking to obtain a security clearance. He has worked for the same employer since October 2021. This is his first time applying for a security clearance. He is single and has two adult children. (Item 4)

The SOR alleged that Applicant failed to timely file his federal income tax returns for tax years 2019 and 2020 (SOR ¶ 1.a: Item 4 at 34; Item 5); he failed to timely file his state tax returns for tax years 2019 and 2020 (SOR ¶ 1.b: Item 4 at 34; Item 5); and he owes the Internal Revenue Service (IRS) approximately \$5,945 in delinquent taxes. (SOR ¶ 1.c: Item 5 at 25) In his SOR answer, Applicant admits to all SOR allegations. (Item 2)

On his security clearance application dated December 16, 2021, Applicant listed that he failed to file his 2019 federal income tax returns. The reason for not filing was due to procrastination. He mentioned that he was working with a new tax agent to resolve and bring current all necessary taxes. (Item 4 at 34) In Response to Interrogatories, dated August 25, 2022, Applicant discovered he did not file federal and state income tax returns for tax years 2019 and 2020. He mentioned he was unable to file his income tax returns because he had COVID-19. A tax professional was currently working on his tax issues. He also provided documentation indicating he owed the IRS, \$5,945 in delinquent taxes. In February 2023, he applied for an installment agreement with the IRS. He paid the IRS \$3,000 up front in conjunction with this installment agreement application. (Item 5)

Applicant indicated that he understands the importance of filing his taxes and admits he failed to file his tax returns for 2019 and 2020. In the future, he intends to file his tax returns in a timely manner unless a natural disaster or illness prevents him from filing his tax returns. He understands the importance of timely filing his income tax returns and is aware that failure to do so may affect his eligibility for a security clearance. He mentioned that he filed his taxes for 2021 and hired a tax professional to help with his 2019 and 2020 income tax returns. (Item 5 at 8)

The state tax board where Applicant works and resides provided a statement dated February 15, 2023, indicating Applicant filed state tax returns for 2018, 2021, and 2022 and that he has no liability or pending assessments for those years. He did not file state income tax returns for tax year 2019 and 2020. (Item 5 at 33)

In his Answer to the SOR, Applicant provided IRS transcripts which indicate his 2019 and 2020 tax returns were received on February 3, 2023. The 2019 federal income tax return was filed on April 24, 2023. He did not owe federal income taxes for tax year 2019. The 2020 federal income tax return was filed on March 27, 2023. He did not owe federal income taxes for tax year 2020. Both federal income tax returns were received by the IRS before the date of the SOR. (Item 3)

In his Response to the FORM, Applicant states he was unable to file his federal and state income tax returns because he was ill with COVID 19. He had a severe case of COVID and struggled to survive. He was working with tax professionals to file his returns. His first tax professional passed away. In February 2022, he hired another tax professional who did nothing for him. Applicant then hired another tax professional who was reliable and filed his federal income tax returns and then his state income tax returns. Applicant provided a statement from his state tax board, dated June 19, 2023, which indicated he filed state income tax returns for tax years 2019, 2020, 2021 and 2022 and he does not have pending assessments for those tax years. (Response to FORM; Item 5 at 7)

Regarding his installment agreement for delinquent taxes, Applicant mentions that he paid \$3,000 on February 3, 2023, at the beginning of the installment agreement. (Item 5 at 26) After this occurred, he received an unexpected monetary bonus from his employer. He applied the bonus towards his remaining Federal tax debt. Applicant paid the IRS \$4,338 on May 31, 2023. He provided a receipt showing proof of payment. The receipt revealed that the installment agreement related to tax year 2017. In the future, Applicant intends to file all federal and state income tax returns in a timely manner. (Response to FORM)

Policies

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

(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.

AG ¶ 19(f) is the applicable disqualifying factor regarding Applicant's failure to file federal and state income tax returns for tax years 2019 and 2020. AG ¶ 19(f) also applies regarding Applicant's \$5,945 federal income tax debt as alleged in SOR ¶ 1.c.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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.

AG ¶ 20(b) applies because Applicant suffered a serious case of COVID in 2020 which prevented him from filing his 2019 and 2020 income tax returns. Once his health improved. He hired a tax professional to help with him file the 2019 and 2020 federal and state income tax returns. It took longer than expected because his first tax professional passed away. The second tax professional did nothing to help him so he retained a third tax professional who was finally able to help with filing his tax returns. Based on what he encountered, Applicant acted responsibly under the circumstances. I also note that he filed his 2021 and 2022 income tax returns.

AG ¶ 20(d) applies because Applicant initiated a good-faith effort to resolve his tax debts. It took some time, but he diligently pursued resolving his tax situation. All delinquent taxes are resolved.

AG ¶ 20(g) applies because Applicant filed his federal and state income tax returns for 2019 and 2020. He entered into an installment agreement with the IRS to resolve his delinquent tax debts. He paid \$3,000 towards the debt initially in February 2023. On May 31, 2023, he was able to resolve tax debt in full when he received a bonus from his employer.

Applicant bears the burden of production and persuasion in mitigation. He successfully met this burden, by filing his state and federal income tax returns for 2019 and 2020 and resolving his delinquent tax debt. Applicant worked on resolving his tax issues for several years. The first two tax professionals did not work out for Applicant. He finally found a tax professional who assisted him with filing his federal and state income tax returns for 2019 and 2020. He timely filed his federal and state income tax returns for tax years 2021 and 2022. He resolved his delinquent tax debt. Applicant mitigated the concerns raised under Financial Considerations.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised under financial considerations. Applicant is fully aware that he must timely file all state and federal income tax returns. He is aware that failure to timely file his federal; and state income tax returns will result in the loss of his security clearance. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Erin C. Hogan
Administrative Judge