



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



In the matter of:)	
)	
)	ISCR Case No. 22-01998
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

03/27/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On December 1, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 on June 8, 2017.

On December 20, 2022, Applicant answered the SOR, and he requested a hearing before an administrative judge. The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2024. I convened the hearing as scheduled on March 12, 2024. The Government

offered exhibits (GE) 1 through 3. Applicant offered Applicant Exhibits (AE) A through Q. There were no objections to any exhibits, and they were all admitted into evidence. The record was held open until March 26, 2024, to allow Applicant to submit additional documents. He did not provide any documents and the record closed. DOHA received the hearing transcript (Tr.) on March 22, 2024.

Procedural Matters

In accordance with DOD Directive 5220.6, I amended the SOR to render it in conformity with the evidence admitted. There was no objection to the amendment. Applicant was afforded an opportunity to continue the hearing, which he declined. He requested the record remain open to allow him an opportunity to provide additional evidence. The record remained open until March 26, 2024. The SOR amendment is included in Hearing Exhibit I. The SOR was amended as follows:

1.c. You failed to timely file, as required, Federal tax returns for at least tax years 2015, 2016, and 2017.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a and provided explanations for the allegation in ¶ 1.b but failed to admit or deny it. I will consider his response to SOR ¶ 1.b as a denial. I have incorporated his explanations and admissions into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He earned an associate degree. He has completed numerous certifications for various technical programs and completed various security training programs. He married in 2008 and has two children, ages 12 and 9. He has worked for his current employer for about eight years. He holds a top-secret clearance with access to sensitive compartmented information. (Tr. 18-22; GE 1; AE I, J)

Applicant failed to timely file his 2014, 2015, 2016, and 2017 federal income tax returns. He failed to timely file his 2014 through 2017 state income tax returns. He disclosed this information on his January 2020 security clearance application. He was interviewed by a government investigator in June 2020 and explained he failed to timely file his federal and state income tax returns because in previous years he had received refunds, and he was lazy in filing the returns. (Tr. 22, 41; GE 1, 2, 3; AE A, B, C, D, E)

In April 2019, Applicant timely filed his 2018 federal and state income tax returns and also filed his delinquent 2014, 2015, 2016, and 2017 returns. He contacted a commercial tax preparer and had them prepare the federal and state tax returns. They filed his 2016, 2017, and 2018 federal and state returns electronically. He did not owe taxes for these tax years. The tax preparer was unable to file the 2014 and 2015 federal and state returns electronically due to their age. Applicant credibly testified that he mailed the 2014 and 2015 federal and state tax returns to the IRS and his state tax office. He

said he would have been due refunds for both federal and state for both tax years. Applicant was unable to produce an IRS tax transcript for tax year 2014 despite numerous attempts to get it from the IRS. He did not keep a hard copy of the 2014 return and his tax preparer only keeps copies for a limited number of years. He testified he believes he mailed both returns at the same time. Applicant provided a wage and earning statement from the IRS for tax year 2014. Tax transcripts for 2015, 2016, and 2017 show he was entitled to a refund each year, and he did not owe federal income taxes. Based on the evidence that his 2014 state income tax return was filed, I find the evidence is sufficient to conclude his 2014 federal tax return was also filed. He was told by the tax preparer he was entitled to receive a refund for his 2014 taxes but forfeited it because he did not file within three years of the required date. (Tr. 23-31, 41-46; GE 3; AE A, B, C, D, E)

Applicant provided documents from his state tax office that reports he owed state income taxes for tax year 2014, which also included penalties and interest. In 2019, he entered into an installment agreement to pay the 2014 taxes and made a couple monthly payments. When the state completed the review of the delinquent returns for 2015, 2016, and 2017, along with his 2018 return, it determined he was entitled to refunds for those years. The state tax office applied the refunds to the total balance owed. After this application of refunds, there are no delinquent state income taxes owed as of January 2023. (Tr. 31-39, 50-55, 62-66; AE E, F)

Applicant was questioned about why he failed to timely file his federal and state income tax returns and what prompted him finally to do so. He explained that when he was applying to participate in a special project that required him to complete a new security clearance application (SCA), he told his facility security officer about his delinquent tax returns. He was advised to take care of the matter, which he did. (Tr. 39-40, 55-56)

Applicant further explained that he believed because he likely was to receive a refund for each tax year that he was not hurting anyone by not filing his tax returns on time. He acknowledges what he did was a mistake. Applicant testified that he now has an appreciation for the importance of filing his income tax returns as required by law. He apologized and took full responsibility for his conduct. He has timely filed all subsequent years' federal and state income tax returns and received refunds. Applicant has no financial delinquencies or other financial problems. (Tr. 39-40, 58 AE G)

Applicant provided evidence of awards and recognition he received, along with performance evaluations. He provided character letters in which he is described as reliable, supportive, meticulous, honest, hardworking, qualified, and dedicated. He is a leader who willingly trains other and is committed to the accomplishment of the mission. (AE N, O, P, Q)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline,

the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 that "[a]ny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(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.

Applicant failed to timely file his 2014 through 2017 federal income tax returns. He failed to timely file his 2014 through 2017 state income tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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 filed his 2014 through 2017 federal and state income tax returns in April 2019. He did not owe federal income taxes for those years. He resolved his 2014 state tax debt through the application of subsequent tax years refunds and a couple installment payments. I have considered that Applicant failed to comply with the rules and regulations pertaining to tax filings. I have considered that because he had consistently received refunds, he was lazy and did not fulfill his legal obligation. Applicant resolved his delinquent tax filings and state tax debt before he received the SOR. He was unable to provide his 2014 federal income tax transcript, but I am confident that he filed the return based on his state tax return. Applicant has timely filed his federal and state income tax returns since 2018. I believe future issues regarding his income tax returns are unlikely to recur. He has resolved his tax issues. I believe he has learned an important lesson and will be diligent regarding his legal responsibilities in the future. The above mitigating conditions 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 the 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant 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

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

Carol G. Ricciardello
Administrative Judge