



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



In the matter of:)
)
) ISCR Case No. 23-01401
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

07/16/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 5, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations; and the Amendment to the Statement of Reasons dated February 13, 2024, detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR and the Amended SOR on January 22, 2024; January 23, 2024; and March 11, 2024. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On February 21, 2024, Department Counsel submitted the Government’s written case. A complete copy

of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant and received by him on March 4, 2024. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 4, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 4.

Amendment to the Statement of Reasons

Department Counsel, pursuant to paragraph E.3.1.17 of DoD Directive 5520.6, amended the Statement of Reasons on February 13, 2024, which added an additional security concern, Guideline E, Personal Conduct, under paragraph 2, and one allegation under paragraph 2, Guideline E, referenced as allegation 2.a. Applicant admitted the allegation set forth in 2.a., and he had no objection to the amendment.

Findings of Fact

Applicant is 35 years old, and never married with no children. He has a high school diploma and some college. He is employed by a defense contractor as an Apprentice in the shipbuilding industry. He has no military service. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR alleged that Applicant failed to timely file his Federal and state income tax returns for tax years 2015 through 2020; and that he failed to pay as required his Federal and state taxes for tax years 2015 through 2017. As a result, he is indebted to the Federal Government for unpaid taxes in the amount of \$7,763.38; and to the state for unpaid taxes in the amount of \$1,950. In his answer, Applicant admits the allegations with explanations. (Government Exhibit 1.)

Applicant began working for his current employer in August 2017. His security clearance application shows that he has had steady employment with no interruptions since then. (Government Exhibit 2.)

Applicant stated that he is currently working on getting his income tax returns filed and he is trying to save up money to pay off his tax liability. However, events keep happening that cause him to spend the money on other things. (Government Exhibit 1.)

In 2022, Applicant started to address his delinquent taxes. He filed his Federal and state income tax returns for 2017, 2018, and 2022. There is no evidence in the record to show that he has filed his Federal and state returns for 2015 and 2016. Applicant stated that he intended to start a payment plan in October 2017, to pay the delinquent taxes he owes, but he never started the payment plan. He stated that when he filed his most recent income tax returns, he started to pre-pay his debts. He stated that he is still waiting on documents from the IRS to show that his debts have been satisfied. Applicant's Federal tax account transcripts for tax years 2017, 2018, 2019, 2020, 2021, and 2022, do not show a tax liability owed. However, the record is unclear as to what the Applicant still owes in back taxes to the state, or what he has already paid in back taxes to either the Federal Government or the state. (Government Exhibit 3.)

In accordance with Federal and state laws, Applicant stated that he understands his responsibility to file annual Federal and state income tax returns in a timely fashion. He has failed to submit any documentation in mitigation regarding his back taxes owed or any payments he may have made towards these debts.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant completed a security clearance application dated July 4, 2022. (Government Exhibit 2.) In response to Section 26, Financial Record, he was asked, "In the past (7) seven years have you failed to file or pay federal or state, or other taxes when required by law or ordinance?" Applicant answered, "No," and failed to disclose that information as noted in Guideline F above.

Applicant admits the allegation. However, he states that he did not mean to fill out the application incorrectly. He states that he must not have checked the right box correctly or did not fully read the questions when he filled it out. (Applicant's Response to the Amendment to the SOR.)

The security clearance application is an important document that must be taken seriously. It is the Applicant's responsibility to be careful, honest, and truthful, when answering the questions on the application. It is not clear if Applicant took the requisite time to read the application thoroughly or to complete the document carefully to ensure its accuracy. Regardless, he is held responsible for the accuracy of the responses to the questions.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 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. 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." The applicant has the ultimate burden of persuasion to obtain 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the 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 adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. One is potentially applicable in this case:

(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 file Federal and state income tax returns for a number of years, and only recently filed some of them when confronted with losing his security clearance eligibility. The evidence is sufficient to raise the above disqualifying condition.

The following mitigating condition under Financial Considerations is potentially applicable under AG ¶ 20.

(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 failed to abide by Federal and state tax laws. He failed to file his Federal and state income tax returns in a timely manner for at least five years. The failure of Applicant to act in a timely manner shows a defect in character. Circumstances beyond his control may have distracted him from filing his annual income tax returns. If so, these circumstances could also impact his ability to properly protect classified information. Applicant did not file an extension to accommodate his circumstances, nor did he contact anyone to help him file his returns on time. Instead, he ignored the situation until it became a problem. Applicant has not acted responsibly

under the circumstances. There is no justification for his failure to file his income tax returns. He has failed to mitigate this violation of the tax laws. This misconduct demonstrates a lack of judgment and reliability.

As long as Applicant is gainfully employed and earning sufficient monies, he is required to file annual income tax returns on time. Voluntary compliance with rules and regulations is essential for protecting classified information. If he cannot follow the tax rules, he very well may not be able to follow the rules required to protect classified information. It was only when his tax delinquencies were an impediment to his security clearance that he took action to get some of his income tax returns filed. Under the circumstances, it cannot be said that Applicant made a good-faith effort to resolve these delinquencies. None of the mitigating conditions apply. Guideline F, Financial Considerations is found against Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant deliberately failed to answer the question correctly in response to whether he had any delinquent income tax filings or unpaid taxes. The questions on the application are not difficult or complex, but one must be thorough, careful, accurate, and truthful when providing information to the Government. If he did not answer the question accurately in an attempt to conceal his failure to file his returns and his tax liability from the Government, he is ineligible for access to classified information for his untrustworthiness. Deliberately concealing material information from the government on a security clearance application raises serious questions about one's credibility and trustworthiness. On the other hand, if he was careless and did not read the question carefully, he is still ineligible for access to classified information, because it is assumed that because he is applying for a security clearance, he knew or should have known the importance associated with the document, and that the Government relies on the information he provides. In either case, Applicant has not shown that he is sufficiently responsible, or that he meets the eligibility requirements for access to classified information. Under the particular circumstances of this case, none of the mitigating conditions are applicable. Guideline E, Personal Conduct is found against 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.

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 relevant facts and circumstances surrounding this case. Applicant repeatedly failed to timely file his Federal and state income tax returns, and he failed to pay his back taxes for several years. His actions do not demonstrate the high degree of judgement and reliability required of persons eligible for access to classified information. And then, to provide false information about the filings on his security clearance application is equally as troubling. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	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.

Darlene Lokey Anderson
Administrative Judge