



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



In the matter of:)	
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)	ISCR Case No. 12-08844
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

February 29, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On February 13, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On March 23, 2015, Applicant replied to the SOR (RSOR) in writing with attachments, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) On June 26, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered three documentary exhibits. (Items 1-3.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response or any additional evidence. The case was assigned to this Administrative Judge on September

22, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. He has never been married, and he has no children. He seeks a DoD security clearance in connection with his employment in the defense sector. (Items 2, 3.)

Guideline F, Financial Considerations

The SOR lists three allegations (1.a. through 1.c.) regarding financial difficulties, specifically failure to file Federal and state income tax returns, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. It is alleged in the SOR that Applicant failed to file, as required by law, Federal income tax returns for tax years 2004 through 2013. In his RSOR, Applicant denied this SOR allegation, and he wrote, "These were filed late, but were filed. Whatever I could obtain for Account transcripts were supplied." (Item 1.) Applicant submitted documentation to show that tax returns were filed for tax years 2010 through 2013. (See below.) However, no evidence was introduced to establish that the Federal income tax returns for tax years 2004 through 2009 have been filed.

1.b. It is alleged in the SOR that Applicant failed to file, as required by law, State A income tax returns for tax years 2004 through 2013. In his RSOR, Applicant denied this SOR allegation, and he wrote, "These were filed late, but were filed. Account Transcripts are enclosed." (Item 1.) Applicant attached to his RSOR State A Income tax return receipts that do appear to be for tax years 2003 through 2012. However, none of these forms are complete, and it is not clear when they were actually filed or if they have been resolved.

1.c. It is alleged in the SOR that Applicant failed to file, as required by law, State B income tax returns for tax years 2004 through 2013. In his RSOR, Applicant denied this SOR allegation, and he wrote, "These were filed late, but were filed. I have been unable to obtain Account Transcripts. It is unclear how to obtain these." (Item 1.) Applicant submitted no evidence to establish that any of the State B income tax returns have been filed.

On April 7, 2012, Applicant underwent a Personal Subject Interview. (PSI.) A copy of the report was submitted by Department Counsel, and it was confirmed by Applicant, in his signed responses to interrogatories, to accurately reflect the information that he provided to the investigator. (Item 3.) On the PSI report it states that Applicant had not

filed Federal income tax returns or state tax returns for State A or State B for tax years 2004 through 2010, nor had he filed an extension for tax year 2011. Applicant was required to file state tax returns for State A because his employment is in that state, and State B tax returns because that is the state in which he resides.

Applicant explained that he did not file the required Federal and state taxes for those years because he became depressed in 2004 or 2005, due to work stress and he felt overwhelmed. As a result, he lost control of the situation regarding filing taxes. Applicant had not been diagnosed with depression, and he had not received counseling or therapy. At the time of the interview, he had hired a Certified Public Accountant to help him resolve his tax situation and file his Federal and state tax returns. (Item 3.) Applicant was asked in the interrogatories to provide tax account transcripts for tax years 2003 through 2013 for his Federal taxes and for States A and B. Applicant responded that he only received the 2010 through 2013 Federal tax account transcripts and no State A or State B tax account transcripts were received. Applicant did submit the Federal tax account transcripts for tax years 2010 through 2013, establishing that Applicant did file tax returns for tax years 2010 through 2013.

A Personal Financial Statement was introduced. The document is undated, but it shows that Applicant earns a net monthly income of \$7,432, with total monthly expenses of \$3,820, and a net monthly remainder of \$3,612. (Item 3.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 useful 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 over-arching 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 access to classified information will be resolved in favor of 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 applicant or proven by Department Counsel. . . .” The Applicant 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 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 information.

Section 7 of Executive Order 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The evidence has established that Applicant failed to timely file his Federal and state income tax returns as required for many years. The guideline notes several conditions that could raise security concerns. I find that AG ¶ 19(g), “failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of same,” is applicable to Applicant.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Because Applicant failed to file his Federal and state tax returns in a timely manner over many years, insufficient evidence has been introduced that all of his Federal and state tax returns for those years have now been filed, and since Applicant’s failure was within his control, I do not find that any mitigating condition is a factor for

consideration in this case. Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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. Based on all of the reasons cited above as to why the disqualifying conditions apply and why there are no applicable mitigating conditions, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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. - 1c.:

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge