



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-09056
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Andrew E. Behrns, Esq.

12/08/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On February 3, 2012, Applicant submitted his latest Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On March 15, 2012, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). After considering the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. The DOD issued to Applicant a Statement of Reasons (SOR), dated May 22, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 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 in the DOD on September 1, 2006.

Applicant answered the SOR on June 22, 2015. He denied the six financial allegations of failure to file federal and state tax returns for tax years 2009, 2010, and 2011. He included with his response copies of Internal Revenue Service (IRS) federal tax transcripts and state tax transcripts for the years in question. Department Counsel was prepared to proceed on August 17, 2015, and the case was assigned to me on August 31, 2015. The DOD issued a notice of hearing on October 23, 2015, scheduling a hearing for November 4, 2015. I convened the hearing as scheduled. The Government offered two exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 and 2. Applicant and one witness testified, and Applicant submitted 17 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through Q. I received the transcript of the hearing (Tr.) on November 13, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 58 years old. He graduated from college in 1979 with a bachelor's degree in mechanical engineering. He stated working for a government contractor in a shipyard in 1979 and has been employed at the shipyard as a nuclear engineer for over 36 years. He has held a security clearance continuously since 1979 with no security violation. He married in 1978 and has two grown children. (Tr. 17-20; GX 1, e-QIP, dated February 3, 2012)

Applicant presented three letters of recommendation commending his work performance at the shipyard. A fellow nuclear engineer wrote that he has known and worked with Applicant for over ten years. Applicant is valued for his knowledge, strong ethics, good judgment, dependability, and honesty. He is considered the "go to guy" for a wide variety of issues because of his long standing record of dependability. (AX A, Letter, undated) Another nuclear engineer states that he has known Applicant for over 20 years, and he is Applicant's supervisor. Applicant is dependable, reliable, hard-working, conscientious, and honest. He has exhibited integrity, good judgment, and excellent character over the 20 years he has known him. (AX B, Letter, dated October 22, 2015) A third nuclear engineer, who has worked with and known Applicant for over three years, wrote that Applicant has good character and moral amplitude. When the writer became an engineer, Applicant made the effort to counsel and guide him through his work. Applicant always shows good judgment, responsibility, and good character. (AX C, letter, dated October 22, 2015)

The SOR alleges that Applicant failed to timely file federal and state income tax returns for tax years 2009, 2010, and 2011. Applicant testified that he had timely filed his federal and state tax returns from 1979 until 2009. He received refunds on his state taxes each of those years. He received a refund on his federal tax most of those years except for two. In 2009, he also anticipated receiving a refund on his federal and state taxes. He either read something or was told by someone that if he was receiving a

refund, he did not have to file his federal and state tax returns for three years. He did not timely file his 2009, 2010, and 2011 federal and state tax returns. When he was interviewed by the OPM security investigator in March 2012, he learned that he was wrong about the timing to file tax returns. He was advised he was required to file his tax returns each year in April for federal returns and May for his state return. The three year rule was that he had to file within three years of the tax year to receive a refund. (Tr. 23-30) Applicant's wife also testified that when she asked Applicant about their tax returns, he advised her that they did not have to file for three years because they were receiving a refund. (Tr. 55-58)

After the personal subject interview with the OPM agent, Applicant immediately filed his federal and state tax returns for 2009, 2010, and 2011. In his response to the SOR, Applicant provided tax transcripts from his state Commissioner of Revenue and the IRS to show that he filed his 2009, 2010, and 2011 federal and state tax returns and that he received a refund for each of those years. (Response to SOR, Tax Transcripts) Applicant also provide federal and state tax transcripts to show that he timely filed his 2012, 2013, and 2014 federal and state tax returns, and received federal and state tax refunds for each years. (Tr. 30-31; AX D, 2012 Federal and State Tax Returns; AX E, 2013 Federal and State Tax Returns; AX F, 2014 Federal and State Tax Returns)

Applicant started a calendar system so he could timely prepare and file tax returns. Applicant collects tax information in a file during the tax year. He plans to use a computerized tax preparation system to prepare his tax returns in February each year. He provided copies of his tax file and reminders on his home and office calendars. (Tr. 35-37; AX G, Copy of Tax File; AX H, Home Calendar; AX I, Office Calendar)

Applicant testified that his finances are sound. (Tr. 38-47) Applicant and his wife have a combined monthly income of \$6,559, with monthly expenses of \$4,103, leaving a positive monthly balance of \$2,456. (AX M, Budget and Pay Stubs) His latest credit report shows that he is current paying all of his bills. (AX L, Credit Report, dated November 1, 2015) His mortgage is current. (AX J, Mortgage Statement, dated November 1, 2015) Payments on a loan are current. (AX K, Loan Statement, dated November 1, 2015) The family savings account shows a balance in excess of \$10,000. (AX N, Statement, dated October 9, 2015) Another saving account shows a balance in excess of \$1,000. (AX O, Statement, dated November 3, 2015) His retirement account with his employer shows funds of almost \$420,000. (Tr. P, Statement, dated October 30, 2015) An individual retirement account (IRS) shows a balance of almost \$50,000. (AX Q, Statement, dated June 30, 2015)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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.

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 in seeking 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 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.

Analysis

Financial Considerations

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 a person's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information.

Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant did not timely file his federal or state tax returns for tax years 2009, 2010, and 2011. He had the mistaken belief that he did not have to file the tax returns for three years since he was expecting a refund of both federal and state taxes. Applicant's failure to timely file tax returns is sufficient to raise a security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

(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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply. Applicant failed to file his federal and state income tax returns for tax years 2009 through 2011. He had a mistaken belief that he did not have to file his returns for three years since he was anticipating a refund. When he was advised that he must timely file the returns, he immediately filed his federal and state tax returns for these years. He received a refund for each year from his federal and state taxes. Applicant timely filed his subsequent tax returns and has a system to ensure he files timely in the future. His finances are sound and he has no delinquent debt. Applicant has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances. His federal and state tax problems are resolved. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's over 36 year career in a Navy shipyard. I considered the views of Applicant's supervisor and fellow workers of his excellent job performance, character, trustworthiness, and reliability. Applicant is current with the filing of his federal and state tax returns. His finances are sound and he has no delinquent debt. Applicant presented sufficient information to establish that he is acting reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.f 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge