



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



In the matter of:)
)
) ISCR Case No. 12-09566
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire
For Applicant: *Pro se*

09/15/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient documentary evidence to mitigate Guideline F and Guideline E security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On December 15, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 DOD on September 1, 2006. Applicant received the SOR on November 13, 2014.

In a response to the SOR, dated January 25, 2015 (SOR Response), Applicant admitted two of the allegations raised under Guideline F and the sole allegation raised under Guideline E. He also requested a determination based on the written record. On June 26, 2015, the Government issued a File of Relevant Material (FORM) that contained six attachments (“items”). Applicant did not respond to the FORM. The case was assigned to me on September 3, 2015. Based on my review of the case file and

submissions, I find Applicant failed to mitigate financial considerations and personal conduct security concerns.

Findings of Fact

Applicant is a 58-year-old engineering analyst. He has worked for the same defense contractor since May 2000. Applicant has earned a bachelor's degree. He is divorced with two grown children.

Between 2000 and 2001, Applicant became involved in on-line gambling. Because of his gambling, he had insufficient funds to pay for all of his obligations. Consequently, he incurred debt. Due to a change in the law in 2001, Applicant was soon thereafter unable to participate in this pastime. (FORM, Item 5 at 5) As a result, he quit gambling.

Applicant had insufficient funds to pay the \$5,000 he owed on his 2005 federal tax return, so he chose not to file federal income taxes that year. "Each year it just became more of a problem, and the subject did not file his taxes through 2011." (FORM, Item 5 at 5)

Applicant's current financial situation is "tight." (FORM, Item 5 at 5) He is, however, meeting his current obligations. He is working on satisfying old debts. He started working with the Internal Revenue Service regarding his taxes in 2012. At issue in the SOR are the following IRS debts:

1.a – 1.b – Delinquent taxes for tax year (TY) 2009 (\$9,584.54) and TY 2008 (\$194.28). Allegations denied. Applicant wrote that these have been satisfied and that evidence of satisfaction was attached to his SOR Response. No such documentary evidence was cited or otherwise identifiable. His attachment was a copy of his "last payment statement to the IRS," which was also cited in the debts below concerning TY 2007 - TY 2005. That statement specifically cites to TY 2007 - TY 2005. No mention, however, is made with specific regard to the status of TY 2009 – TY 2008.

1.c – 1.d – Delinquent taxes for TY 2007 (\$9,814.15) and TY 2006 (\$9,732.68). Allegations admitted. In his SOR Response, Applicant wrote that these delinquent debts were "still being paid off, but penalties will accrue." He provided evidence that they are in repayment. (FORM, Item 3, SOR Response, attachment)

1.e – Delinquent tax for TY 2005 (\$11,091.00). Allegation denied. Applicant commented that this debt "is almost paid off, See Attached document from IRS." (FORM, Item 3, SOR Response, attachment) Evidence was provided showing that the debt was in repayment. (FORM, Item 3, SOR Response, attachment)

On March 1, 2010, Applicant executed an electronic security clearance application (SCA). Applicant answered "no" in response to "Section 26: Financial Record . . . (c) "Have you failed to pay Federal, state, or other taxes, or to file a tax

return when required by law or ordinance?” He did not disclose the fact he did not file tax returns and pay his federal taxes for TY 2005 through TY 2009. Applicant admits this allegation, which is set forth at SOR allegation 2.a. He wrote that he “lied . . . because [he] was fearful of losing [his] job. [He] was living beyond [his] means and spending money [he] did not have on gambling.” He also noted that he has spent 21 years serving this country and is loyal to this country.

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 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 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 not drawn 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, 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 to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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). To allay Applicant's concerns, it is stressed that his loyalty is not an issue in this matter.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant failed to timely file tax returns for multiple years. This is sufficient to suggest or invoke five of the financial considerations as disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

AG ¶ 19(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same; and

AG ¶ 19(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses," . . . concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Five conditions could mitigate these finance-related security concerns:

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;

AG ¶ 20(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant provided evidence that the delinquent taxes cited at SOR allegations 1.c-1.e are in repayment. That same evidence, however, failed to be self-evident with regard to the debts noted at allegations 1.a-1.b. Applicant wrote that these have been under a repayment plan put in place with the IRS in 2012. He provided no documentary evidence substantiating this claim. There was no evidence of that plan. With regard to allegations 1.c-1.e, I find that AG ¶ 20(c) - AG ¶ 20(d) apply.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that 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.

Here, Applicant admits he lied on his SCA. AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

AG ¶ 16(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve

as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's failure to timely file tax returns as outlined above indicates that he has questionable judgment and is unwilling to comply with rules and regulations. The Government established the disqualifying conditions in AG ¶¶ 16(a) and 16(e).

AG ¶ 17 provides conditions that could mitigate security concerns. Applicant admitted that he lied on his 2010 SCA in order to keep his job. It took him until recently to disclose this lie. The documentary evidence offers no indication as to whether this type of behavior might recur. No 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 relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 58-year-old engineering analyst. He has worked for the same defense contractor since May 2000. Applicant has earned a bachelor's degree. He is divorced with two grown children.

Applicant declined to timely file federal tax returns for half a decade. He showed that some of those tax year returns have been filed and tax obligations are in the process of repayment. Not all the years at issue, however, have similar documentation to support Applicant's assertions.

Most worrisome is Applicant's admission that he lied on his SCA in an attempt to save his job. Such lies undermine the trust upon which the granting of a security clearance is predicated. Consequently, personal conduct security concerns remain unmitigated.

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-1.b	Against Applicant
Subparagraphs 1.c-1.e	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.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 Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge