

Applicant responded to the SOR on August 21, 2014, and requested a hearing. The case was assigned to me on October 2, 2014, and was scheduled for hearing on November 12, 2014. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and seven exhibits (AEs A-G). The transcript (Tr.) was received on November 24, 2014.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with a documented inquiry of the status of his state tax filings for tax years 2010-2013. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded six days to respond. Within the time permitted, Applicant provided a letter from his state's treasury department confirming his filing of all state income tax returns for the tax periods of 2010-2013. Applicant's submission was admitted as AE H.

Summary of Pleadings

Under Guideline F, Applicant allegedly failed to file federal tax returns for tax years 2010-2012, as required by law. In his response to the SOR, Applicant denied failing to file his federal tax returns for the years in question. He claimed he filed his federal tax returns for the years 2010-2013. He claimed an understanding that he had additional time to file his tax returns because he would be receiving a refund. He claimed he did not then, or now, believe he violated any law and further claimed he has since filed his tax returns for the 2010-2012 tax years as well as for the 2013 tax period.

Findings of Fact

Applicant is a 44-year-old principal project specialist of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant was employed by his current employer in 1991 and has been with the same employer for almost 23 years. (GE 1; Tr. 44) He married in August 2010 and has no children from this marriage. (GE 1 and AE C) Applicant earned a bachelor's degree in May 1991 and earned additional post-graduate credits from a local technical institute in 2007. (GE 1) Applicant claims no military service.

Applicant's finances

Applicant failed to file timely federal and state income tax returns in 2010, 2011, and 2012, as required by law. (GE 4 and AE A; Tr. 54-56) Claiming refunds for all three years and an understanding that he had three years to file his tax returns when he was entitled to tax refunds, he never sought any filing extensions from the IRS or state taxing

authority for the years in question. (AE C; Tr. 63-64) When completing his security clearance applications (e-QIPs) in March 2013 he furnished a much different explanation for his failure to file tax returns for 2010-2012: difficulty with his software. (GEs 1-2). He cited the same software problems when he was interviewed by an agent from the Office of Personnel Management (OPM) in April 2013. (GE 4 and AE C)

Not until Applicant received the SOR in July 2014 did he realize the seriousness of his failure to file timely federal tax returns. (Tr. 65) Even at this time, he still believed he had legal protections to complete his tax returns within the three-year window he relied on for filing taxpayers like himself who were entitled to refunds. (AE C; Tr. 65)

After citing complexities associated with his wife's 401(k), his pending home sale, and his reliance on information in an IRS website that seemingly afforded taxpayers entitled to refunds up to three years to file their federal tax returns, he acknowledged his erroneous understanding of IRS filing requirements. (Tr. 63-65) Mistakenly, he failed to properly interpret the letter he received from the IRS in 2011 (corrected to be 2012) that applied two timelines: one for seeking owed refunds from the IRS and the other for setting income tax filing requirements for all taxpayers. (AEs A and C; Tr. 66-70) Applicant recognized he made a judgment mistake in not filing his returns in a timely way or obtaining filing extensions from the IRS. (Tr. 50)

Applicant filed his federal and state tax returns for the tax years of 2010-2012 in January 2014. (AE A; Tr. 55-56) Without a prior filing extension from the IRS, he waited until August 2014 to file his 2013 return, (AE B). For each of these tax years, he received tax refunds from the IRS. (AEs A and B; Tr. 53-56) His most recent credit report reflects an excellent credit history with no listed adverse accounts that could potentially explain his late filing of his federal tax returns. (AE D) Inferences warrant that Applicant's tax filing delays were attributable to mistaken understandings of his filing duties for taxpayers expecting refunds.

In a post-hearing submission, Applicant furnished a letter from his state's taxation division confirming his filing of state tax returns for tax years 2010-2013 and his having no outstanding tax balances associated with the 2010-2013 tax periods, or any other tax year. (AE H)

Endorsements and awards

Colleagues who have worked with Applicant for many years laud his engineering skills and performance and characterize him as reliable and trustworthy. (AE E; Tr. 58-59) Applicant produced performance evaluations for the inclusive years of 2010-2013 when he worked as a team leader who executed his team's goals while leading other engineers on the team's assigned missions. (AE F) His evaluator assigned leader ratings that ranged from 5.0 (significantly exceeds) to 3.0 (proficient) in rating categories and assigned an overall performance rating of 3.6/5.0 (exceeded commitments). (AE F)

In recognition of his outstanding contributions to his engineering team over the course of his 20 years with the company, Applicant received a prestigious award from his employer in October 2013. (AE G) Previously, he was a recipient of numerous special recognition awards between 2005 and 2013.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG, ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's failure to timely file federal tax returns for tax years 2010 through 2012. Difficulties with his software and mistaken understandings about IRS deadlines for tax filings for taxpayers who expect refunds are

his assigned reasons for not timely filing his federal tax returns for the years in question, or obtaining filing extensions.

Applicant's filing delays raise potential security concerns about his judgment, reliability, and trustworthiness in managing his personal finances. Applicant's actions warrant the application of one of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(g), "failure to file annual [f]ederal, state, or local income tax returns as required or the fraudulent filing of the same."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant's failure to file timely federal tax returns cannot be considered to be the result of extenuating circumstances. He was manifestly aware of the importance of filing timely federal and state tax returns and paying his debts as they come due. His recent correspondence from his state's taxing authority confirmed Applicant's timely filing of his state tax returns is an important indicia of his security clearance worthiness. See ISCR Case No. 12-05053 at 4-5 (App. Bd. October 30, 2014). Applicant has since filed his federal returns covering his back tax years before the issuance of the SOR in 2014, and documented his receipt of refunds for these years.

Cited confusion over IRS criteria for tax filing for taxpayers anticipating refunds is the major reason for Applicant's extended delays in filing his tax returns. Still, he waited several months to file his back returns even after he told the OPM agent who interviewed him in April 2013 that he "intends to file these tax returns in the near future." (GE 4) None of his cited reasons for failing to address his federal tax returns are sufficient to warrant any application of MC ¶ 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." Failure to make more concerted efforts to address his 2010-2012 tax returns precludes him from taking full advantage of MC ¶ 20(b).

By filing his 2010-2012 federal tax returns (albeit out of time), Applicant has shown progress in stabilizing his finances. Certainly, mitigation could be stronger were Applicant to have filed his 2013 federal tax return with an extension or before he received the SOR. Still, his documented tax filings and refunds reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No.

99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's efforts to date are enough to meet the tax filing criteria established by the Appeal Board for assessing an applicant's efforts to rectify his failures to satisfy his legal tax filing obligations. See ISCR Case No. 12-05053, *supra*, at 4-5.

From a whole-person standpoint, the evidence reflects some Applicant judgment lapses in his failing to timely file his federal tax returns for tax years 2010-2012 or seek tax-filing extensions for the years in question. Still, misunderstandings of his tax filing duties, and not wilful failure to file, best explain his late federal tax filings for the years in issue. Applicant's most recent filing initiatives and refunds resulting from his late tax filings reflect good-faith measures to address his tax returns.

Applicant's many contributions to his defense contractor employer also weigh considerably in his favor in making an overall clearance eligibility assessment. He has received solid performance evaluations and is highly regarded by the colleagues who work with him and place their trust in him. His awards recognizing his outstanding contributions to his engineering team over the course of his 20 years with the company are numerous and include a prestigious employer award. Overall, Applicant's demonstrated trust and reliability with his employer of over 20 years duration and demonstrated corrective tax filing actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subpara. 1.a: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

