



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



In the matter of:)	
)	
)	ISCR Case: 14-02718
)	
Applicant for Security Clearance)	

Appearances

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

06/30/2015

Decision

DAM, Shari, Administrative Judge:

Applicant failed to file Federal income tax returns for tax years 2007 through 2014. He failed to file state income tax returns for tax years 1984 through 2014, except one year. He did not provide evidence that he resolved or is resolving the allegations raised by the Government. Financial security concerns were not mitigated. Eligibility for access to classified information is denied.

Statement of Case

On November 22, 2013, Applicant submitted a security clearance application (SF-86). On September 8, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. 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 for Determining Eligibility for Access to Classified Information* (AG), effective in the DoD after September 1, 2006.

Applicant answered the SOR on October 13, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On March 21, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing three Items was provided to Applicant on April 22, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on May 6, 2015, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided an additional letter in response to the FORM within the 30-day period. I marked that document as Applicant Exhibit (AE) A and admitted it into the record without an objection from Department Counsel. DOHA assigned the case to me on June 18, 2015.

Ruling on Evidence

Item 3 is a Report of Investigation (ROI) from the background investigation of Applicant. The four-page document is a summary of an interview of Applicant conducted on February 27, 2014. An ROI may be received and considered as evidence when it is authenticated by a witness.¹ Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte*. While it is clear that Department Counsel is acting in good faith, having highlighted the issue in the FORM,² Item 3 is not authenticated. Applicant's failure to raise this issue in his reply to the FORM is not a knowing waiver of the rule.³ Accordingly, Item 3 is not admissible and is not considered in this Decision.

Findings of Fact

Applicant's SOR response admitted both SOR allegations. (Item 1.) His admissions are accepted as factual findings and incorporated herein.

Applicant is 61 years old and unmarried. He earned a bachelor's degree in 1976. He has worked as an engineer for a defense contractor since November 1976. He has held a security clearance while employed. (Item 2.)

¹Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing case law that a properly authenticated report of investigation is admissible).

² Department Counsel Brief at 2, n 1.

³Wavier means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

In his November 2013 security clearance application (SCA), Applicant disclosed that he had not filed Federal or state income tax returns for tax years 2007 through 2013. (Item 3.) In his October 2014 answer to the SOR, Applicant admitted that he failed to file Federal income tax returns for, at least, tax years 2007 through 2012. He admitted that he failed to file state income tax returns, for, at least, tax years 2004 through 2012. Applicant stated that he was not “financially overextended.” (Item 1, Item 2.) He said that he opted over the years to meet work obligations rather than personal obligations, such as cleaning his house so he could organize financial records. (Item 1.) He said he does not believe he owes taxes because his withholding deductions have always covered the taxes in those instances when he filed tax returns. (AE A.)

In his June 2015 response to the FORM, Applicant expanded on his disclosure of failure to file income tax returns and further admitted as follows:

1. Prior to 1984, I filed all my [state] tax forms. Since 1984, I only filed the state forms for 2001 (the same year I got my federal form done on time).
2. I had filed Federal income forms for the years 2001-2007 prior to the interview in 2008. I did not file for the 2008 tax year. This was the year I moved from [one program to another] and my workload became exorbitant.⁴ (AE A.)

He reiterated that his failure to file tax returns to “being overextended at work; and letting my house, and particularly my mail, get way out of control leading to the inability to find tax records.” (AE A.)

Applicant did not present evidence that he obtained credit or financial counseling to assist in the resolution of his delinquent tax returns. He offered no plan or timeline for filing the tax returns. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling classified information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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 (AG) list

⁴ The SOR did not allege these additional unfiled tax returns as a security concern. Hence, they will not be considered in the analysis of disqualifying conditions, but may be considered in the analysis of mitigating conditions or the whole-person concept. In his answer to the SOR, he admitted that he did not file a Federal return for 2007. Based on his disclosure in SCA and answer to the SOR, this Decision will reference 2007 as the year he stopped filing Federal income tax returns.

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, these guidelines are applied 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. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Directive ¶ E3.1.15 states that "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations; and

(g) failure to file annual federal, state or local income tax returns as required.

Applicant has a history of failing to meet his financial obligations, specifically his duty to file Federal income tax returns from 2007 through 2012, and state income tax returns for the years 2004 through 2012. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

(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;

(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; and

(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; and

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

Applicant failed to file Federal income tax returns for tax years 2007 to 2014, and state income tax returns from 1984 to 2014, with the exception of 2001. Because he

failed to provide proof that he has filed or is filing the returns, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing his tax obligations remain a serious concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided insufficient evidence that his failure to file income tax returns for numerous years were circumstances beyond his control. AG ¶ 20(b) does not apply. He has not participated in financial counseling or sought the assistance of a tax consultant to help resolve his tax issues. He presented no evidence from which to conclude that there are clear indications that his tax problems are under control. AG ¶ 20(c) has no application. He did not provide any documentation to demonstrate that he made a good-faith effort to file the delinquent returns; thus AG ¶ 20(d) does not 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 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is 61 years old. He is an adult, who is accountable and responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His failure to file Federal income tax returns from 2007 to 2014, and state income tax returns from 1984 to 2014, with the exception of 2001, demonstrates an egregious disregard for his legal obligations. Proffering excuses of work burdens and a disorganized house for all those years lacks credibility, and generates no confidence in his ability to comply with security procedures. Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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.

SHARI DAM
Administrative Judge