



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



In the matter of:)
)
) ISCR Case No. 14-02776
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 10, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 11, 2014, and requested a hearing. The case was originally assigned to a different judge on February 23, 2015. A hearing was scheduled for March 26, 2015, but due to a work conflict, Applicant requested a continuance. The continuance was granted and the case was reassigned to me on October 7, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice

of hearing on November 19, 2015, setting the hearing for December 10, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. The Government's discovery letter, which contained an exhibit list, was marked as a hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through D, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE E and F. Those exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 23, 2015.

Findings of Fact

Applicant is 60 years old and has worked for government contractors since 1978. He is has a doctorate degree in engineering. He is married with two adult children. He has held a security clearance for at least 19 years without incident.¹

In his answer, Applicant denied all the allegations. The SOR alleged Applicant failed to file his 2005, and 2007 through 2012 federal income tax returns (SOR ¶ 1.a). The SOR also alleged he failed to file his 2005 through 2012 state income tax returns (SOR ¶ 1.b). Finally, the SOR alleged he was indebted to the IRS for delinquent federal income taxes in the amounts of \$16,094 for tax year 2010 and \$10,366 for tax year 2006 (SOR ¶ 1.c).²

Applicant admitted that he had not filed the disputed tax returns when they were due, but over time, he filed all the returns. He explained that his failure to file his tax returns was not done to hide income or evade taxes, but rather was due to his divorce and inability to gather information at that time. He and his wife divorced in 2002 (they subsequently remarried in 2004 and are still married). Because of the divorce, which he described as contentious, Applicant either was unable to gather the necessary information to file his tax returns, or was so overwhelmed by what was happening to his life he became paralyzed to act. Once he failed to file the returns for one year, each succeeding year's return became more difficult to prepare and file. He further explained that even though he was not filing his tax returns, he was having more than enough money withheld from his paycheck for taxes, which generally creates a surplus. He also revealed that he did not file his 2013 and 2014 tax returns when due.³

Applicant provided documentary evidence supporting that he filed his federal and state tax returns as follows: for years 2005-2006, filed January 2014; for years 2007-2011, filed February 2015, July 2015, August 2015, and December 2015; for years 2012-2014, filed January 2016. Tax years' 2005-2006 returns were filed before the issuance of the SOR. At hearing, Applicant committed to filing all remaining returns

¹ Tr. at 5-6, 22-23; GE 1.

² Answer.

³ Tr. at 23-26, 32-33 (In his testimony he indicated he had not filed his 2013 or 2014 federal or state tax returns. Since these years were not alleged in the SOR, I will use this information only to the extent it may have application to his credibility, mitigation, and whole-person factors).

within the next month, which he accomplished. His federal and state income tax return-filing issue is resolved.⁴

Applicant presented documentary evidence showing that he overpaid his federal taxes even for the years he failed to timely file his tax returns. IRS tax transcripts show that the amounts alleged in SOR ¶ 1.c have been paid and that he currently has a credit balance (surplus) after filing his 2014 return. Applicant's tax debt for years 2006 and 2012 is resolved.⁵

Applicant's supervisor offered a character endorsement of Applicant that stated he is an exemplary employee, ranking well above his peers. The supervisor recommended that Applicant retain his security clearance. I also find that Applicant made a detailed disclosure of his tax issues when he completed his security clearance application in February 2012.⁶

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 that 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, administrative judges apply the guidelines 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,

⁴ Tr. at 34; Answer; AE B, F.

⁵ Tr. at 23-25; 29-31, 37; Answer; AE A-C, F.

⁶ GE 1; AE D.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant owed federal taxes for two years. AG ¶¶ 19(a) and (c) apply. He also failed to timely file his 2005 and 2007-2012 federal income tax returns, and his 2005-2012 state tax returns. AG ¶ 19(g) applies.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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.

In 2014 and 2015, Applicant filed his federal tax returns for years 2005 through 2014. Although he could have addressed this issue in a more timely manner, he was somewhat paralyzed by his divorce and the snowball effect of not filing his tax return. He has documented his payments of the outstanding tax debt. Although it took some time, he has acted responsibly and in good faith by filing his missing federal and state tax returns and, paying any delinquent tax liability. His current trustworthiness, reliability, and judgment are no longer at issue. He has resolved his tax return issues and his tax debt. AG ¶¶ 20(a), 20(c), and 20(d) 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.

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 relevant facts and circumstances surrounding this case. I have incorporated my

comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's lengthy federal contractor service where he has held a security clearance without issue. I considered the recommendation from his supervisor. I also considered the impact the divorce had on his tax issues. I found Applicant to be honest and candid about the circumstances that led to his tax issues. He took action to resolve his taxes and pay his tax debt. I find it unlikely that Applicant will find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant refuted and mitigated the financial considerations security concerns.

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.c:	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.

Robert E. Coacher
Administrative Judge