



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



In the matter of:)
)
) ISCR Case No. 14-00749
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/22/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On April 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 responded to the SOR on June 9, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014, scheduling the hearing for August 12, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 21, 2014.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since 2001. He is applying for a security clearance. He served in the U.S. military from 1988 until he was honorably discharged in 1992. He is a high school graduate. He is married for the second time. He has two children.¹

The SOR alleges that Applicant owes \$12,157 in state taxes for tax year 1997 (SOR ¶ 1.a) and \$6,402 for tax year 1998 (SOR ¶ 1.b). It also alleges that Applicant filed Chapter 13 bankruptcy in 2004, and the case was dismissed in 2009 (SOR ¶ 1.c). Applicant admitted that he filed the Chapter 13 bankruptcy, but he denied owing the state taxes.

Applicant did not file federal income tax returns for tax years 1995, 1997, 1999, and 2001. He stated that a co-worker was supposed to prepare and file his income tax returns, but unbeknownst to Applicant, she failed to do so. The IRS filed a \$15,767 tax lien against him in 2002. Applicant consulted with an attorney, who advised him to file a Chapter 13 bankruptcy.²

The trustee for Applicant's Chapter 13 bankruptcy filed an annual report in September 2009 and a final report in October 2009. The reports listed claims for attorney's fees (\$2,000), collection companies (\$1,300 and \$169) and the IRS (\$8,069; \$19,620; and \$8,402). The reports noted that all the claims were paid, with the exception of \$5,317 owed to the IRS. Applicant's statement that he paid all his back taxes owed to the IRS is corroborated by IRS documents that show he received refunds for tax years 2011 and 2012.³

Applicant never lived in the state that filed tax liens against him in 2000 and 2001. He stated that the company he worked for in the 1990s was headquartered out of the state. He spent a few days working in the state, but not enough to require him to file state tax returns and pay state taxes. He believes his company mistakenly reported his annual income to the state. In July 2014, the state confirmed that Applicant does not owe any state taxes for tax years 1997 and 1998.⁴

¹ Tr. at 25-27; GE 1, 2.

² Tr. at 19-21; Applicant's response to SOR; GE 2, 6; AE C.

³ Tr. at 19, 21; Applicant's response to SOR; GE 2, 7; AE B, C.

⁴ Tr. at 17-19; Applicant's response to SOR; GE 2, 6; AE A, D, E.

Applicant has not received financial counseling. He stated that he learned his lesson and is now diligent about filing his income tax returns and paying his taxes on time. His current financial situation is sound.⁵

Applicant's performance appraisals show that he is a valued employee. His company awarded him a cash grant that is given to "select employees who show great potential and deliver superb results."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, 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, 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."

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 the applicant or proven by Department Counsel." The applicant 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. 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

⁵ Tr. at 22-26; Applicant's response to SOR; GE 2-5.

⁶ GE 2; AE F.

extrapolation of 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* EO 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:

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant filed Chapter 13 bankruptcy in an effort to resolve his unpaid federal income taxes. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.a and 1.b allege that Applicant owed \$12,157 and \$6,402 in state taxes for tax years 1997 and 1998. Applicant established that the information was incorrect and he never owed taxes to the state. Accordingly, SOR ¶¶ 1.a and 1.b are concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

Applicant resolved his federal income taxes several years ago. He learned from the experience and is now diligent in filing his tax returns and paying his taxes. His current financial situation is sound.

I find that Applicant made a good-faith effort to pay his debts. His financial problems have been resolved. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are applicable.

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 the 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 honorable military service, his favorable work history, the factors that led to his financial problems, and the steps he took to remedy those problems.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.

Edward W. Loughran
Administrative Judge