



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



In the matter of:)
)
) ISCR Case No. 14-00759
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

11/26/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 25, 2014, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD CAF 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).

Applicant submitted an undated answer to the SOR, and requested a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was reassigned to me on August 21, 2014. The Defense Office

of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014, and the hearing was convened as scheduled on October 9, 2014. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's exhibit list was marked as HE I. Applicant testified and offered exhibits (AE) A through F, which were admitted into the record without objection. The record was held open for Applicant to submit additional information, and he submitted AE G through K, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 20, 2014.

Procedural Issue

Department Counsel moved to amend the SOR to conform to the proof after resting his case and right before closing argument. He moved to amend by adding an allegation that Applicant failed to pay federal taxes owed for various years between 2005 and 2010 (no specific years were stated). At hearing, I denied the motion indicating that the Government was well aware of the non-payments at the time the SOR was drafted and had ample information at the time to allege the non-payments in the SOR.¹ I have reconsidered my ruling and will allow the amendment. The additional or new SOR allegation will be numbered ¶ 1.b.

Findings of Fact

In Applicant's answer to the SOR (Answer), he admitted the allegation listed in the SOR. During his hearing testimony, he also admitted owing the IRS for federal taxes he failed to pay for various years. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 51 years old. He is married and has three adult children and one adult stepchild. He has worked for his current employer, a defense contractor, since August 2007. He attended high school, but did not graduate. He served in the Air National Guard for two different states for a combined 18 years before being medically discharged in 2007. He has held a security clearance since 1991.²

The SOR alleged that Applicant failed to file his federal tax returns for the period 2005 through 2010. Additionally, he owed federal taxes in an undetermined amount for some of those tax years (estimated amount was approximately \$42,000). These allegations are supported by Applicant's admissions in his security clearance application and his Answer.³

¹ Tr. at 43-44.

² Tr. at 5; GE 1.

³ GE 1; Answer.

Applicant explained in his April 2013 security clearance application that he had no excuse for not filing his federal tax returns. He just failed to do so for the period alleged. He was contacted by the IRS in 2012 and proceeded to file federal tax returns for all the years he previously failed to file returns. As of the hearing date, he has filed all his tax returns for all years required, including 2013, and provided documentation of the same. There is no issue concerning his state tax returns.⁴

Applicant entered into a payment agreement with the IRS whereby he would pay \$800 monthly toward his total tax debt. He supplied written documentation showing that from May 2012 through January 2014 he made his monthly payments, which totaled approximately \$16,800. The IRS also captured several years' worth of Applicant's tax refunds and applied them toward his debt. Because there was some confusion with his on-line payment entries and whether they were being credited to the correct year's taxes, he entered a second agreement with the IRS in March 2014 to pay \$600 monthly. This amount is being deducted right out of his bank account every month. He is current on his payment plan to the IRS. He believes he still owes approximately \$30,000 to the IRS. He intends to pay his tax obligations in full.⁵

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.

⁴ Tr. at 30, 32-33; GE 1.

⁵ Tr. at 18, 20, 22, 26, 36; GE 2; AE A-K.

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. 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 that an 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 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).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following apply:

- (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 did not file his federal tax returns as required and he has delinquent federal tax debts that remain unpaid. I find all the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(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's tax debts are recent and remain unresolved. He has made strides to address his tax obligations, in particular, filing his federal tax returns and making regular monthly payments to the IRS. Despite his recent efforts, his past actions reflect his bad judgment, unreliability, and untrustworthiness during the five year period when he failed to file his tax returns. I find mitigating condition AG ¶ 20(a) partially applies. Applicant had no good reason not to file his federal tax returns or pay the taxes owed. AG ¶ 20(b) does not apply. Although Applicant presented no evidence of financial counseling, there is evidence that Applicant has filed all his missing tax returns and is making steady payments on his tax debt. Yet, he did not address his tax issue until he was notified by the IRS. I find AG ¶ 20(c) applies to SOR ¶ 1.b, but not to SOR ¶ 1.a. 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 the 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 guideline 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 considered Applicant's military service. I also considered his efforts to file all his federal taxes and make monthly payments toward his federal tax debt. On the other hand, I considered that Applicant disregarded his responsibilities to file and pay federal taxes for an extended period of time and it was only after the IRS contacted him that he took action.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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

Robert E. Coacher
Administrative Judge