



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



In the matter of:)
)
) ISCR Case No. 14-01664¹
)
Applicant for Security Clearance)

Appearances

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

12/08/2015

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 March 18, 2015, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 16, 2016, and requested a hearing. The case was assigned to me on July 1, 2015. The Defense Office of Hearings and Appeals

¹ The SOR incorrectly listed the ISCR case number as 14-1644. This decision correctly states the number as 14-1664.

(DOHA) issued a notice of hearing on July 2, 2015, setting the hearing for July 29, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through G, which were admitted into evidence without objection. Applicant's exhibit index and written closing argument were marked as HE II and III respectively. The record was held open to allow Applicant to submit additional evidence. He submitted AE H and I in a timely manner. Those exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 6, 2015.

Findings of Fact

Applicant is 50 years old and has worked for a government contractor since 2008. He is a high school graduate. He is married and has three children. He served in the Air Force for 21 years and retired as a master sergeant (pay grade E-7). He has held a security clearance for over 30 years without incident.²

The SOR alleges Applicant failed to file his 2011 federal and state income tax returns, that he owes \$868 to the IRS for his 2012 federal income taxes, and \$174 for his 2013 federal income taxes. The SOR also alleges that he owes \$303 for a collection account. The collection account was listed on credit reports from January 2014 and February 2015. Applicant admitted SOR ¶¶ 1.a and 1.b, but denied the remaining allegations. His admissions are incorporated into my findings of fact.³

Applicant admitted that he was negligent when he failed to timely file his 2011 federal and state income tax returns. He explained that he was working a second job (part-time) and had difficulty obtaining his W-2 form from that employer. He was also traveling extensively for his regular job and did not take the time to obtain the necessary documents to file the 2011 tax returns. His wife was unable to assist him because of her medical issues. He provided documentation that he filed both his 2011 federal and state tax returns in July 2015. He also paid all the taxes, interest, and penalties associated with those returns. He is up to date on all of his federal and state income tax filings and provided a written letter of intent stating that he will never fail to file his federal and state tax returns again. His 2011 federal and state income tax return filing issue is resolved.⁴

² Tr. at 6, 26-28; GE 1; AE 1.

³ Answer; GE 4-5.

⁴ Tr. at 36-39, 41, 43-45; AE C-D, H-I.

The status of the debts is as follows:

SOR ¶¶ 1.c and 1.d (\$868; \$174):

Applicant provided documentation that both amounts allegedly owed to the IRS for tax years 2012 and 2013 were paid at the time the tax returns were timely filed. These debts were never delinquent and are resolved.⁵

SOR ¶ 1.e (\$303):

Applicant provided supporting documentation that this delinquent account was not his. His son, who has the same first and last name as Applicant, opened this account in his own name. The creditor misidentified Applicant as the owner when the son stopped paying the account and it became delinquent. Once Applicant became aware of the account he paid it, even though it was not his responsibility, in order to clear the matter up. This debt is resolved.⁶

Applicant provided a personal financial worksheet showing that he currently has discretionary income of about \$1,500 at the end of each month. He has about \$54,000 in a retirement account. He is current on all of his financial obligations. He received financial counseling in either 2010 or 2011.⁷

Applicant presented letters of support from a coworker and a supervisor who both describe his loyalty, strong work ethic, trustworthiness, and ethical values. Both recommend that he retain his security clearance. He also presented his performance appraisals for 2013 through 2015, which show that he is a valued employee whose performance meets expected requirements.⁸

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

⁵ Tr. at 52; AE A, B (p. 1), C.

⁶ Tr. at 47; AE G.

⁷ Tr. at 54, 56-58; AE A.

⁸ AE A.

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, 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 failed to timely file his 2011 federal and state income tax returns. AG ¶ 19(g) applies. He supplied documentation showing that he timely paid his 2012 and 2013 federal tax liability as required and that there was never a delinquent amount for those tax years. He also provided documentation showing that the telecommunications account was not his. He paid the account anyway to resolve the issue. The evidence is insufficient to raise disqualifying conditions stated in AG ¶¶ 19(a) and 19(c) as they might relate to SOR ¶¶ 1.c -1.e.

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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In 2015, Applicant filed the returns and paid the taxes owed for both his 2011 federal and state income taxes. He acknowledged that he was negligent in tracking down the necessary documents to complete the returns. Since then, he has timely filed all federal and state income tax returns. He intends to always file his tax returns as required. He is current on all other obligations and has about \$1,500 in monthly discretionary income. He received financial counseling in 2010 or 2011. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) 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 21 years of military service and his years of federal contractor service. I found Applicant to be honest and candid about the circumstances that led to his tax issues. He took action to resolve his taxes. 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.e: | 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