



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



In the matter of:)	
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)	ISCR Case No. 14-02171
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 14, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 6, 2014. (Government Exhibit 1.) On August 15, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 11, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 21, 2014. This case was assigned to me on December 2, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2014. I convened the hearing as scheduled on January 13, 2015. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A and B, also without objection. Applicant submitted Applicant Exhibit C on January 28, 2015,

and it was admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 21, 2015. The record closed on January 28, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 37 and single. He has a bachelor of science degree, and has never held a security clearance. He is employed by a defense contractor, and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted subparagraph 1.a in the SOR under this paragraph. That admission is a finding of fact. He also submitted additional information to support his request for a security clearance.

The sole allegation in the SOR is that Applicant owes the Internal Revenue Service (IRS) approximately \$10,000 in unpaid taxes for the year 2009. Applicant stated, and provided evidence supporting his statement, that this is incorrect and he actually owes the IRS nothing for that tax year.

Applicant worked for his current employer from approximately 2002 through 2007. He then left to work for another contractor. He was laid off from that job in July 2008, and was unemployed from August 2008 through October 2010. (Government Exhibit 1 at Section 13A.)

Applicant resided with his parents, and lived on his savings and their generosity during this two-year period of unemployment. During the year 2009, when he was unemployed for the entire year, Applicant tried his hand as a day trader. He was not successful at it and wound up losing money, about \$915. Since Applicant had no income that year he thought he did not need to file a tax return.¹ However, the trades were reported to the IRS and they thought he had made money and owed them \$10,000. Once Applicant figured this out he filed a 2009 tax return in 2014, showing that he had a loss for the year. (Applicant Exhibit B.) The IRS has received his return and confirmed in a letter dated December 30, 2014, that he owes them no money for tax year 2009. (Applicant Exhibit A; Tr. 18-19, 22-26, 28-31.)

¹Applicant was technically correct. In 2009 a single person had to make at least \$9,350 in order to be required to file a tax return. Even if Applicant is viewed as being self-employed that year he had to have net earnings of at least \$400. (Department of the Treasury, Internal Revenue Service, *Publication 501: Exemptions, Standard Deduction, and Filing Information 2009* Tables 1 and 3, <http://www.irs.gov/pub/irs-prior/p501--2009.pdf> (accessed April 9, 2015).

Mitigation

Applicant submitted documentation showing that he is a highly respected employee. Applicant Exhibit C is his most recent Performance Review for the 2014 calendar year. His overall summary is “Consistently Exceeds Expectations.” (Tr. 34-36.)

The credit reports in the record also show that Applicant is financially stable. He had one charge off in his past, which he paid. (Government Exhibits 2, 3, and 4; Tr. 27.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The Government failed to show that any disqualifying condition applies to the facts of this case. In reality, as Applicant has compellingly shown, he never owed the IRS any money for 2009 back taxes. He is and has been willing and able to pay his taxes. AG ¶ 19(g) “failure to file annual Federal . . . income tax returns as required,” does not apply because Applicant was not under any obligation to file such returns since he did not make enough money.

However, let’s assume for the sake of argument that the incorrect assertion by the IRS that Applicant did owe them \$10,000 does raise security concerns regarding Applicant. The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.” Based on the particular facts of this case, I also find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). Finally, AG ¶ 20(e) applies as

Applicant “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.”

This case occurred because Applicant did not realize all the financial requirements involved in trying to be a day trader in the commodities market during 2009, when he was unemployed. Since he had no income in 2009, and actually lost money, he thought he did not have to file a tax return. Once he was notified by the IRS that they believed he owed them money, and why they thought that, he filed his tax return for that year and resolved the issue.

Applicant has not received financial counseling. However, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, quickly and successfully resolving this tax issue. All of these mitigating conditions apply to the facts of this case.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has resolved his tax issue, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

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:	FOR APPLICANT
Subparagraph 1.a:	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.

WILFORD H. ROSS
Administrative Judge