



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



In the matter of:)	
)	
XXXXXX, XXXXXX XXXX)	ISCR Case No. 14-03749
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

08/14/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 15 August 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 1 July 2015, when Department Counsel stated no objection to Applicant's response to the FORM. DOHA assigned the case to me 18 July 2015.

¹Consisting of the File of Relevant Material (FORM), Items 1-3, and the Applicant's Response to the FORM.

²DoD acted under Executive Order 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) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR financial allegations. He is a 58-year-old principal design engineer employed by a U.S. defense contractor since September 1986. This is a periodic reinvestigation of a clearance he has held since September 1986, with renewals in September 1991, February 2003, and June 2008.

The SOR alleges, Government exhibits (Items 1-3) substantiate, and Applicant admits failing to file his state income tax returns, as required by law, for tax years 2011 and 2012. He has since filed the income tax returns. Under state law, there is no penalty for late filing unless tax is owed, although any refund due is forfeited if the filing is more than three years late. Furthermore, the state in question requires annual filing of income tax returns if certain income levels are met.

Applicant's January 2014 clearance application (Item 3) reported his failure to file his state income tax returns in 2011 and 2012. He noted at the time that he put the tax returns in a drawer and forgot about them. In his September 2014 Answer to the SOR, he stated that he got a false sense of security when he discovered that there was no penalty for late filing if no tax was owed. However, he had filed the missing returns, and resolved to timely file in the future.

His more expansive explanation in his Response to the FORM noted that he files his Federal income tax returns electronically for free. The state charges a fee for utilizing this service. Moreover, the state gives an automatic six-month extension of the 1 May due date, to 1 November of each year. Applicant always files his state taxes by mail, to avoid the electronic filing fee.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant failed to timely file his state income tax returns for 2011 and 2012.⁴ While I have no doubt that failure to file income tax returns can stand alone as a basis for denial of clearance, such cases usually involve failure to file over many years, or a significant amount of delinquent debt accompanying the failures to file. This does not appear to be a case that warrants denying a renewal of clearance for failing to file state income tax returns twice, even if recent and for back-to-back years.

The mitigating conditions for financial considerations are largely inapplicable to this case because of the nature of the allegation. However, while his failure to file was both recent and multiple, the circumstances are unlikely to recur, and, more important under the circumstances of this case, Applicant’s failure to file does not cast doubt on his current reliability, trustworthiness, or good judgment.⁵ Applicant has held a clearance for nearly 30 years, without apparent incident. Department Counsel argues that Applicant’s forgetfulness “does not inspire confidence that he will timely remember to comply with requirements for safeguarding classified information.” I prefer Applicant’s analogy: this is the same as claiming that because Applicant forgot his driver’s license, he would forget how to safely operate a motor vehicle and abide by traffic laws and rules of the road. I think it highly unlikely that Applicant’s failure to timely file his state income tax returns on two occasions would cause him to forget the commitment to security awareness forged over nearly 30 years. Accordingly, I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:

FOR APPLICANT

Subparagraph a:

For Applicant

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶19 (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

⁵¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge