



ISCR Case: 14-06739

Applicant for Security Clearance

Appearances

For Government: Andrea M. Correales, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

DAM, Shari, Administrative Judge:

Applicant failed to timely file federal income tax returns for the years 2008 through 2011. He was indebted to a state for a tax lien filed in 2012 for 2008 taxes. He intentionally did not disclose his failure to file those taxes on his security clearance application. He did not provide sufficient evidence to mitigate the financial or personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of Case

On June 15, 2012, Applicant submitted a security clearance application (SF-86) for investigation. On June 20, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). The action was taken 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DoD after September 1, 2006.

Applicant answered the SOR on July 17, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 26, 2015, Department Counsel mailed Applicant a copy of its written case. Applicant received the File of Relevant Material (FORM), containing five Items, on September 1, 2015. The FORM stated that Applicant had 30 days from its receipt to file objections and submit material in refutation, extenuation, or mitigation.

Applicant signed the document acknowledging receipt of his copy of the FORM and timely returned it to the Defense Office of Hearings and Appeals (DOHA), along with additional information, which consisted of a letter in response to the Department's FORM, and four attachments. I marked the letter as Applicant Exhibit (AE) A, and the attachments as AE A (1) through (4). All Items and exhibits are admitted into the record without an objection from either party. DOHA assigned the case to me on October 19, 2015.

Findings of Fact

In his answer to the June 2015 SOR, Applicant denied the allegations contained in SOR ¶¶ 1.a and 1.b. He admitted the allegation in SOR ¶ 2.a. (Item 2.) His admissions are accepted as factual findings.

Applicant is 55 years old and married for 29 years. He earned a bachelor's degree in 1998. He has worked for federal contractors since the mid 1990's and his current employer since 2008. (Item 3.) He has held a security clearance since 1994. (Item 5.)

When he completed his June 2012 SF-86 for re-investigation, Applicant failed to disclose to the Government that he had not filed his 2008, 2009, 2010, and 2011 federal and state income tax returns.¹ (Item 3.) During a personal interview with a government investigator in October 2012 regarding information in the SF-86, he "volunteered" information about his failure to file federal and state returns for said years. (Item 5.) He explained he did not disclose the omissions because he was embarrassed about his actions and attributed the omissions to his laziness. When confronted about an outstanding 2008 state tax lien that was filed in May 2012, he indicated that he was unaware of it. He stated that he told his accountant about the unfiled tax returns in early 2012 and that he was in the process of filing them. (Item 5.)

In his Answer to the SOR, Applicant again admitted that he failed to disclose that he had not filed federal and state income tax returns for years 2008 through 2011. He stated that he regretted his actions. (Item 2.) In his response letter to the FORM, he

¹ The SOR did not allege security concerns related to Applicant's failure to timely file federal returns for 2012 and 2013, or any of his state returns from 2008 to 2013. Hence, these facts will not be considered in an analysis of disqualifying conditions, but may be considered in an analysis of mitigating conditions and the whole-person concept.

quoted his statement to the investigator regarding his embarrassment and laziness as the reason for not filing his returns. (AE A.)

Applicant filed his 2008 state tax return in October 2012.² He subsequently was notified by the state that after calculating an abatement, he did not owe \$19,401 for the tax year, but had overpaid the taxes in the amount of \$9,901. (AE A (1.)) The lien is resolved.

Applicant submitted copies of his federal and state tax returns for 2008 through 2011. (AE A (1) through (4).) He stated in his answer to the SOR and response to the FORM that he filed all of said tax returns. The 2008 return includes his signature and a date of October 20, 2012. However, none of the other federal or state returns are signed or dated by him or his accountant. There is no evidence in the record verifying the date he filed those returns.

Applicant also submitted copies of his 2007, 2012, and 2013 federal and state income tax returns, which are unsigned, undated, and do not provide proof of filing. He provided copies of his 2014 federal and state tax returns, which were signed by his accountant and dated September 12, 2015. He had received a filing extension for the 2014 returns. (AE A (1) through (4).)

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security." In reaching this

² In his response letter to the FORM, Applicant stated that he filed his 2008 state income tax return on October 20, 2015, which resulted in the receipt of a tax abatement on January 11, 2013. Clearly, he filed the return in October 2012, and not in 2015, which was a clerical error. (AE A.)

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. Directive ¶ E3.1.15 states that “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations; and

(g) failure to file annual federal, state or local income tax returns as required.

Applicant's financial problems, specifically failing to timely file federal tax returns, began in 2008 and extended through the tax year for 2011. Until recently he has been unwilling to fully and timely resolve his tax obligations. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (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.

Applicant asserted that he has filed all of his delinquent federal and state tax returns. Because he failed to timely file returns for at least four consecutive tax years, 2008 to 2011, and seemingly only recently filed some of them, he did not demonstrate that such problems are unlikely to recur. His reliability and trustworthiness in managing his income tax obligations remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant did not provide any evidence that circumstances beyond his control contributed to his delinquent filings. In fact, he admitted that his omissions were due to laziness and embarrassment. AG ¶ 20(b) does not provide mitigation. There is no evidence that he participated in financial counseling, although he sought professional assistance with preparing some of the tax returns. Based on his four-year history of failing to timely file required tax returns, there are minimal indications that his tax problems are fully under control; thus, AG ¶ 20(c) has little application. There is some

evidence that he timely filed his 2014 federal and state returns, demonstrating that he made a good-faith effort to comply with the law for that year. Given his history of delinquent filings, AG ¶ 20(d) has no application to the allegations regarding his failure to timely file tax returns for tax years 2008 through 2011. However, there is sufficient evidence to determine that Applicant has resolved the 2008 tax lien. AG ¶ 20(d) applies to that allegation. There is no evidence to support the application of AG ¶ 20(e).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he intentionally failed to disclose his unfiled income tax returns for years 2008, 2009, 2010, and 2011 in his June 2012 SF-86. The evidence raises the above disqualifying condition.

AG ¶ 17 includes four conditions that could mitigate security concerns arising under this guideline:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

In October 2012 Applicant voluntarily disclosed to a government investigator that he had not filed his federal and state tax returns for 2008, 2009, 2010, and 2011. However, waiting until an investigative interview to disclose requested information is not considered a prompt or good-faith effort to correct an omission. AG ¶ 17(a) does not provide mitigation for the allegation in SOR ¶ 2.a. There is no evidence to establish mitigation under AG ¶ 17(b) because Applicant's concealment of the information was not based on improper advice from a professional. His failure to timely file returns for more than four years is not a minor infraction; hence, AG ¶ 17(c) does not provide mitigation. Although Applicant acknowledged his intentional misconduct, which was based on embarrassment and laziness, he did not submit sufficient evidence that he has established steps to avoid similar conduct in the future. AG ¶ 17(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 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is 55 years old. He has been employed by a defense contractor since the mid-1990s. Despite having gone

through the security clearance process in the past and having been granted a security clearance, he chose not to timely file federal and state income tax returns for the years 2008 through 2013. Although he supplied copies of his state and federal tax returns for the years 2007 through 2014, which he asserted are now filed, he failed to verify the date on which the returns were filed. Even with proof of filing, it is clear that most of those returns were filed late with the possible exception of 2007 and 2014. While Applicant is apologetic for his conduct, he intentionally chose not to disclose his delinquent tax returns. Having eventually revealed his tax problems to the Government during a background interview in 2012, he repeated his conduct by not timely filing returns for tax years 2012 and 2013. He asserted in his response to the FORM that he filed the tax returns, but it took him months and years to correct the situation. The likelihood that similar problems will continue is significant.

Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against 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.

SHARI DAM
Administrative Judge