



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



In the matter of:)	
)	
)	ISCR Case No. 09-01782
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

November 26, 2010

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On January 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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's answer to the SOR was received by DOHA on April 5, 2010, and he elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 28, 2010. The FORM was mailed to Applicant and he received it on August 1, 2010. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In response to the FORM, Applicant provided an undated letter and an email dated August 25, 2010. The case was assigned to me on October 19, 2010.

Findings of Fact

In Applicant's answer to the SOR, he denied all the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He is married and has no children. He is a consultant to a federal contractor. He works in the information technology field (IT). This is the first time he has sought a security clearance. He has deployed to both Iraq and Afghanistan as a federal contractor supporting United States forces in those locations.¹

The SOR alleges that Applicant failed to file his 2005-2007 federal and state tax returns (SOR ¶¶ 1.a-1.b), and that he owes \$11,347 to a government agency on a collection account (SOR ¶ 1.c). In 1999, Applicant suffered a workplace injury for which he sought workman's compensation. Additionally, because of the injury suffered, he applied for and received social security disability benefits. Beginning in either late 2000 or early 2001, he received social security benefits in the amount of \$1,000 per month. In October of 2001, he was able to resume employment and contacted the Social Security Administration (SSA) to stop his disability payments. According to the Applicant, he received his last benefit check in about December 2001. The SSA claims that he continued receiving benefit checks for an extended period. There is no SSA documentation of these payments other than the entries on Applicant's credit reports showing a government debt as a collection account.²

In either 2004 or 2005, Applicant received a letter from the SSA asking him to contact them. He did so and was informed he had received an overpayment of benefits. Applicant claims he did not receive any additional payments after December 2001. After updating his address with the SSA in May 2005, Applicant received several checks from the SSA in excess of \$40,000. Applicant knew he was not entitled to these checks and immediately contacted the SSA about the overpayments. He did not cash the checks. In March 2006, Applicant returned all the checks to the SSA he had received to date, amounting to \$42,396. The SSA maintains that Applicant received a total of \$53,743 in overpayment benefits and he still owes \$11,374. Applicant disputes owing this amount and hypothesizes the SSA sent the disputed checks to an incorrect address because he

¹ Item 5.

² Items 4, 13.

has never received those checks. As of July 2009, Applicant and the SSA were working to schedule a mediation to resolve this dispute. Applicant's overseas work schedule has complicated scheduling the mediation.³

Because of the disputed social security amounts, which the IRS was treating as income, Applicant did not file his 2005-2007 federal or state income tax returns at the time they were due. He hired an accounting firm to sort out his tax issues. He has provided documentation showing he has filed and paid his 2005-2007 federal and state income tax obligations. Applicant filed and paid his federal returns in August, September and November 2009. He filed and paid his state returns in October and November 2009. All these actions preceded the issuance of the SOR in this case.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 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.

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."

³ Items 4, 9, 10, 13.

⁴ Items 4; Response to FORM.

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 especially considered the following:

- (a) inability or unwillingness to satisfy debts; and

- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has an \$11,347 delinquent debt that remains unpaid or unresolved. He also failed to timely file both his federal and state income tax returns for 2005-2007. I find both disqualifying conditions have been 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 especially considered the following:

(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 resolved both his federal and state tax obligations for the years in question by November 2009 when he filed and paid what he owed. His failure to timely file his tax returns happened under unusual circumstances, namely, the inclusion of social security benefits as taxable income by the IRS, and is unlikely to recur. Additionally, his delayed filing of taxes (until an accountant could sort things) out does not cast doubt on his reliability, trustworthiness, or good judgment. I find mitigating condition AG ¶¶ 20(a) and 20(c) apply to SOR ¶¶ 1.a and 1.b.

Applicant has a reasonable basis to dispute the remaining social security debt. He claims he never received the money in question. His turning over \$40,000 worth of checks to the SSA that he received through their bureaucratic error persuades me that he did not receive the additional checks. Based upon his previous track record, I can infer that had he received them, he would have also turned them back over to the SSA. He also is currently seeking mediation for this disputed debt. I find AG ¶ 20(e) applies to SOR ¶ 1.c.

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 guidelines 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 the circumstances by which the SSA mistakenly sent him funds to which he was not entitled. I considered how he promptly returned those funds. I also considered how that error by the SSA impacted his tax obligations for the next several years. Finally, I considered Applicant's deployments to hostile places in support of United States military forces. Applicant provided sufficient evidence to mitigate the security concerns.

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 mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	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