



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-01972
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Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro Se*

March 19, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is denied.

On October 25, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories to Applicant to obtain clarification of and/or additional information about adverse information in his background.¹ Based on the results of the background investigation, including Applicant’s response to the interrogatories, DOHA adjudicators

¹ Authorized by DoD Directive 5220.6, Section E3.1.2.2.

were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On September 30, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the revised adjudicative guidelines (AG)³ under Guideline F (financial considerations).

On November 3, 2009, Applicant responded to the SOR and requested a decision without a hearing. On November 19, 2009, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the government's preliminary decision. Applicant received the FORM on November 30, 2009, and was given 30 days to file a response to the FORM. Applicant did not submit a response before the deadline, and the case was assigned to me on March 5, 2010.

Findings of Fact

The government alleged that Applicant has not filed his federal income tax returns for the tax years from 2003 through 2007 (SOR ¶ 1.a); that he did not file his state income tax returns for the same period (SOR ¶ 1.b); and that he owes a \$4,681 delinquent debt that was unpaid as of the SOR (SOR ¶ 1.c). Applicant admitted without explanation all three allegations. (FORM, Item 3) In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

In response to e-QIP question 28.a, Applicant disclosed that he has not filed his federal or state tax returns since 2003. (FORM Item 4) He indicated in the e-QIP and in his interview with a government investigator on May 5, 2008 (FORM, Item 6), that his failure to file has been due to procrastination, but he believes he does not actually owe any taxes. There is no information in the record, such as credit reports or tax authority records attributing to Applicant any debt for unpaid taxes. In May 2008, Applicant stated he intends to file his past-due returns soon. However, as of May 2009, he had not yet done so. (FORM, Item 5)

In response to DOHA interrogatories, Applicant disclosed that he also owes the debt alleged in SOR ¶ 1.c. Neither party submitted any other information about this debt. As of December 30, 2009, the deadline for Applicant's response to the FORM, Applicant had not submitted information showing this debt was paid.

Applicant is 58 years old and has worked as a senior electrical engineer for a large defense contractor since November 1988. He served on active duty in the U.S.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ Adjudication of this case is controlled by the revised adjudicative guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, these guidelines take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the government's case.

Army between December 1971 and November 1974. Thereafter, he served in the Army Reserve until December 1977. He and his current wife have been married since September 2005. He was previously married from September 1978 until he and his first wife divorced in October 1987. (Form Item 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factor are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concern and adjudicative factors under AG ¶ 18 (Guideline F - financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the *SOR*. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her 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 national interest.⁸

Analysis

Financial Considerations

The security concern about Applicant’s finances, as stated in AG ¶ 18, is that:

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 available information supports the allegations in SOR ¶¶ 1.a - 1.c. Further, Applicant admitted that he did not file federal or state income tax returns between 2003⁹ and 2007. He also owes a debt of \$4,681, which has been delinquent since May 2009. Available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*).

By contrast, the record contains no information that would mitigate or extenuate the adverse security implications of the government’s information. As of December 30, 2009, Applicant had not presented any information showing the debt in SOR ¶ 1.c was paid, or that he had filed his past-due tax returns as he said he would when he was interviewed for his clearance in May 2008. Applicant’s claim that he may not actually owe taxes for the years at issue does not negate the security concerns raised by his unwillingness to comply with his annual filing requirement. Accordingly, none of the mitigating conditions listed at AG ¶ 20 apply, and the security concerns about Applicant’s finances remain unchanged.

Whole Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant, a 58-year-old defense contractor, is presumed to be a mature, responsible adult. He has been steadily employed by the same company since 1988. Without additional information about his

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

⁹ The summary of Applicant’s May 5, 2008, subject interview reflected that he had not filed returns in 2002 either.

judgment, reliability, and trustworthiness, positive inferences to be drawn from his age and his stable employment history are not enough to overcome the security concerns about a recent delinquent debt and his failure to file his tax returns for the past eight years. A fair and commonsense assessment¹⁰ of all available information creates doubts about Applicant's suitability to hold a clearance that his response has not adequately addressed. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹¹

Formal Findings

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant's request for a security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge

¹⁰ See footnote 5, *supra*.

¹¹ See footnote 8, *supra*.