



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



In the matter of:)
)
) ISCR Case: 11-01081
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Department Counsel
For Applicant: *Pro se*

05/08/2012

Decision

DAM, Shari, Administrative Judge:

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

On July 19, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for Financial Considerations. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On January 6, 2011, Applicant answered the SOR in writing and elected to have a hearing. On February 14, 2012, DOHA assigned the case to me. On March 23, 2012,

DOHA issued a Notice of Hearing, setting the case for April 17, 2012. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence without objection. Applicant testified and offered Exhibits (AE) A through E into evidence without objection. The record remained open until May 8, 2012, to give Applicant an opportunity to submit additional information. DOHA received the hearing transcript on April 25, 2012. He timely submitted two documents that were marked as AE F and G and admitted into the record without objection from Department Counsel.

Findings of Fact

In his Answer, Applicant admitted the two factual allegations contained in the SOR. His admissions are incorporated into the findings herein.

Applicant is 26 years old and single. He graduated from high school in July 2004 and enlisted in the Air Force the following month. He was a senior airman on active duty until honorably discharged in August 2008. He is on inactive reserves' service for four years.¹ After leaving active duty he worked part time as a software engineering aide while attending college. (Tr. 24.) In June 2011 he earned a bachelor's degree in computer science. He started his present position as a software developer in August 2011 and works on Air Force projects. (GE 1; AE F.) He earns \$43,000 annually, and recently received a bonus after completing a project. (Tr. 27-28.)

Applicant filed his Federal tax return for tax year 2007 on April 24, 2008. (AE A.) He did not file a 2007 state return because his accountant advised him that one was not required under state law as he was in the military during 2007. (Tr. 20; AE G.) He filed his 2008 Federal tax return and state tax return on February 9, 2012. He did not owe taxes and was entitled to a \$1,384 refund. (Tr. 20-21; AE B, C, D, E.)

On September 30, 2010, a government investigator interviewed Applicant as part of the security clearance investigation. Applicant could not remember which tax year he failed to file his returns, 2007 or 2008. He explained that he could not find all information necessary to file it, but did not seek assistance. He did not intend to file them. (GE 2.) When questioned at the hearing about his previous statement, he said he "did not fully appreciate the severity of the situation of not having filed them." (Tr. 30.) He also knew he did not owe any money. (Tr. 50.)

In his September 30, 2011 answer to Interrogatories inquiring into the status of his 2008 returns, Applicant further explained that he lost the capital gains tax information his mother sent him that was to be included in his returns and he did not know how to begin the process of retrieving it or filing the return. He said, "I think I decided it would be better to file no return than to file one that didn't include my capital gains information. I'm willing to do whatever is necessary to rectify the situation." (GE 2 at 136.)

¹ His Top Secret security clearance and access to Sensitive Compartmental Information (SCI), which he obtained while in the Air Force, is active per information from the Joint Personnel Access System (JPAS). (Tr. 7.)

In response to questioning about the subsequent delay in filing his 2008 returns, Applicant stated after leaving the Air Force he started college and became stressed by school, part time employment, and other issues. He did not take time to file his return. (Tr. 21, 34.) He admitted he was also embarrassed to ask his mother for the information again. (Tr. 46.) Receipt of the SOR motivated him to hire an accountant and file the returns. (Tr. 35.) He has learned the importance of filing the forms and that “there’s always time to take care of them.” (Tr. 35.) Other than the 2008 returns, he has timely filed all returns, including his 2011 tax returns. (Tr. 23.) He expressed remorse over his dilatory conduct.

Applicant submitted a letter of recommendation from his supervisor for the past eight months. His supervisor finds Applicant to be reliable and trustworthy. She noted that Applicant exceeds expectations and is a “valued employee.” (AE F.) She is aware of this hearing and Applicant’s income tax problem. (Tr. 43.)

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 useful 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(a), describing 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 “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Directive ¶ E3.1.14 requires the Government to 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 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 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.”

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 an 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 concern pertaining to 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.

AG ¶ 19 describes a condition that could raise a security concern and may be disqualifying:

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

Appellant failed to file his 2008 Federal and state tax returns until February 2012. The evidence raised the above disqualification.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns under this guideline. AG ¶ 20 includes three conditions that could mitigate the security concern arising under this guideline:

(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;
or

(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.

AG ¶ 20 (a) has minimal application because Appellant only recently filed his 2008 federal and state tax returns. He timely filed his 2007 federal tax return and all returns subsequent to 2008, such that this incident is a one time occurrence. He relied on the advice of his tax accountant that he did not have to file a 2007 state tax return because all his income came from the Air Force and was exempt under state law from taxation. AG ¶ 20 (b) does not apply because the circumstances underlying the security concern were within Appellant's control. AG ¶ 20 (c) has partial application because Appellant filed the 2008 tax returns and resolved the problem, albeit three years late. He filed all subsequent tax returns for 2009 and continuing into the present, indicating that the problem is under control.

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 facts and circumstances surrounding this case. Applicant is a 26-year-old former senior airman, who served four years in the Air Force. Subsequently, he completed his bachelor's degree and earned a strong recommendation from his employer in support of his request for a security clearance. Although Applicant's reasons for not filing the 2008 returns sooner are not particularly mature, he failed to file tax returns only once. He expressed remorse and acknowledged his mistake. He did not act to avoid paying his taxes. Instead he was uncertain what he should do about his missing capital gains information he received from his mother, without which he knew his tax returns would be incomplete. The likelihood of a recurrence is minimal, given his appreciation for the

consequences for failing to file tax returns and his employment of an accountant. His employer's knowledge of this situation further diminishes the potential for coercion.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from 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 and 1.b: For Applicant

Conclusion

In light of all 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.

SHARI DAM
Administrative Judge