



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



In the matter of:)
)
) ISCR Case No. 12-08274
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

09/28/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 6, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD 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 September 1, 2006.

Applicant answered the SOR on January 20, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 11, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2016, and the hearing was convened as scheduled on March 30, 2016. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without

objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibit (AE) A, which was admitted without objection. The record was kept open and Applicant submitted AE B and C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 8, 2016.

Findings of Fact

Applicant admitted both SOR allegations.¹ His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 42-year-old employee of a defense contractor. He has worked for this employer as a software developer since 2008. He is several hours short of obtaining a bachelor's degree. He is married and has two children. He has no military service. He has held a security clearance since 2009 and has had no apparent security incidents.²

The SOR alleged Applicant failed to file his federal and state income tax returns for tax years 2006-2014. He disclosed his non-filings in his March 2012 security clearance application (SCA) and discussed them in his security clearance interview in April 2012.³

Applicant admitted to procrastinating in filing his tax returns. His explanation for the procrastination was that in 2006 his tax return was relatively simple because he did not have much income, but because he got married and was waiting for his wife's income information he failed to file on time. In 2007 and 2008, he was self-employed and his tax returns became more complex. He eventually filed his returns for years 2006 through 2008 sometime in 2008. In 2009, he received a letter from the IRS stating that it never received his tax returns for those years. He claimed that he refiled his 2006 tax return in 2010, but because his computer hard drive malfunctioned he could not recreate the necessary information to re-file his 2007 and 2008 tax returns. He believed he had to file his tax returns in chronological order and therefore he did not file his later tax returns when they were due. In September 2014, the IRS began levying his pay for unpaid taxes.⁴ From September 2014 through March 2016, the IRS levied over \$130,000 in unpaid federal taxes from his pay. In March 2016, Applicant filed his 2007 through 2012 federal and state tax returns. In April 2016, after the hearing, he filed his 2013 and 2014 federal and state tax returns. There appears to be a wide discrepancy between what those actual tax returns show Applicant owed and the amount that was

¹ Without objection, I amended the SOR to conform to the evidence. The dates reflected in SOR ¶¶ 1.a and 1.b were changed to "2006-2014." Tr. at 33, 48.

² Tr. at 6, 20, 24-26; GE 1.

³ GE 1-2.

⁴ The SOR did not allege Applicant's failure to pay taxes. I will only consider this information as it might apply to the application of mitigating factors and as part of the whole-person evaluation.

levied by the IRS. Applicant admitted that he did not seek the assistance of a tax professional and that he did not contact the IRS for assistance. There is no evidence of any financial counseling.⁵

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 that 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, administrative judges apply the guidelines 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, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

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 the 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 EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁵ Tr. at 29-32, 36, 43-47.

applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 under AG ¶ 19. One is potentially applicable in this case:

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

Applicant failed to timely file his 2006 through 2014 federal and state income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's failure to file his tax returns is recent and casts doubt on his reliability, trustworthiness, and good judgment. He recently filed all of his past federal and state tax returns, but it took almost ten years for him to accomplish this task. AG ¶ 20(a) is not applicable.

Applicant failed to establish conditions beyond his control as a reason for his grossly-delayed tax return filings. Even if his computer problem led to a delay in filing his 2007 and 2008 returns, it had no impact on his remaining tax returns. He finally took action on his tax issues years after the fact. His delayed response to his tax problems was not responsible. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling. Given Applicant's delayed reaction to dealing with his tax problems, there are not clear indications that Applicant's financial problems are under control. The evidence does not show that Applicant put forth good-faith efforts to file his federal and state income tax returns. The IRS had to start involuntarily withholding Applicant's pay to collect on his federal taxes. AG ¶¶ 20(c) and 20(d) do 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.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant's tax situation came to be an issue. However, I also considered that he failed to timely resolve his tax obligations. He has not established a meaningful track record of financial responsibility when addressing his federal and state income tax issues.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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: AGAINST APPLICANT

Subparagraphs: 1.a – 1.b: Against Applicant

Conclusion

In light of all of the circumstances, 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.

Robert E. Coacher
Administrative Judge