



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



In the matter of:)
)
) ISCR Case No. 12-11776
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

05/09/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 6, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 2, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the

FORM on June 17, 2016. Applicant did not respond to the FORM. The case was assigned to me on April 7, 2017. The Government's documents identified as Items 1 through 5 are admitted in evidence without objection.

Findings of Fact

Applicant is 59 years old. He obtained his high-school diploma in 1976, a bachelor's degree in 1993, and a master's degree in 2012. He is married and has three adult children. He has lived in his current state since at least 2000.¹

Applicant served in the Air National Guard from May 1977 to October 1978, and in the U.S. military from October 1978 until September 2005, when he retired with an honorable discharge. He began his current job with a federal contractor in July 2005. He has had numerous DOD background investigations throughout his career, and his most recent DOD security clearance was granted in 2008.²

The SOR alleges Applicant's failure to file his state income tax returns for tax years 2006 through 2011, as required. Applicant disclosed his failure to file his state income tax returns in his July 2012 Questionnaire for National Security Positions (SF 86), and during his August 2012 interview with an authorized DOD investigator.³

Applicant attributes his failure to timely file his relevant state income tax returns to changing his home of record from one state to another state when he retired from the U.S. military. He did not think to file his state tax returns, even though state taxes were being deducted from his salary. He did not prioritize filing his state tax returns because he believed he was due refunds. When he realized he had not filed his state tax returns, he contacted the state tax commission who informed him that he needed to do so for tax years 2006 through 2011. As of his July 2012 SF 86, Applicant was working with the state tax commission to determine if he owed any taxes or recoup any refunds he was due. During his August 2012 interview with an authorized DOD investigator, Applicant stated that he had begun filing his relevant state tax returns, and expected to have them filed by December 2012. Applicant has not provided corroborating evidence of actions he may have taken to file his relevant state tax returns.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

¹ Item 4.

² Items 4, 5.

³ Items 4, 5.

⁴ Items 1-5.

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, 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."

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 security 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 of 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 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

The security concern for 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. 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. The following 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 file his state income tax returns for tax years 2006 through 2011, as required. There is sufficient evidence to support the application of the above disqualifying condition.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

(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.

Applicant has not provided corroborating evidence of actions he may have taken to file his relevant state tax returns. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely file his relevant tax returns casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Circumstances beyond his control did not contribute to Applicant's failure to file his relevant state tax returns. Applicant attributes his failure to do so to changing his home of record from one state to another state when he retired from the U.S. military. However, he has resided in the state for which he is required to file his relevant income tax returns since at least 2000. AG ¶ 20(b) does not apply.

Applicant indicated in his July 2012 SF 86 that he was working with the state tax commission to determine if he owed any taxes or recoup any refunds he was due. Applicant also stated in his August 2012 interview with an authorized DOD investigator

that he had begun filing his relevant state tax returns, and expected to have them filed by December 2012. Applicant has not provided corroborating evidence of actions he may have taken to file his relevant state tax returns. Applicant's financial situation is not under control. AG ¶ 20(c) 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.

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

I considered Applicant's honorable service in the U.S. military from 1978 to 2005, his numerous DOD background investigations throughout his career, his work with a federal contractor since 2005, and his most recent DOD security clearance granted in 2008. Circumstances beyond his control did not contribute to his failure to file his state income tax returns from 2006 through 2011, as required. Applicant did not provide corroborating evidence of actions he may have taken to file his relevant state tax returns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concern 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:	Against Applicant
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Subparagraph 1.a:	Against Applicant
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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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge