



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-01376
)
)
 Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

08/05/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to file his income tax returns as required between 2006 and 2012. He did so to avoid diversion of his tax refunds to satisfy his child support debts. His request for continued access to classified information is denied.

Statement of the Case

On April 9, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew his eligibility for access to classified information. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On June 7, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns about financial considerations (Guideline F).² Applicant timely responded to the SOR and requested a decision without a hearing. On January 21, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on February 4, 2016, but did not submit any response to the FORM within the time allotted. The record closed on March 5, 2016, and the case was assigned to me on June 6, 2016.

Findings of Fact

Under Guideline F, the Government alleged Applicant failed to file his federal income tax returns for tax years 2006 through 2012 (SOR 1.a); and that he failed to file his state income tax returns for the same years (SOR 1.b). Applicant denied both allegations, and provided information showing that he had filed his past-due returns in 2013. He also established that he was in repayment of both his federal and state tax debts, which totaled \$2,475. (FORM, Items 1 and 3)

Applicant is 58 years old. He served in the United States Army from July 1978 until July 1982, when he received a general discharge under honorable conditions. From 1996 until 2004, Applicant worked for the federal government as a police officer. After he left federal service, he worked as a security guard for several different federal contractors. He was hired for his current position as a security officer in September 2013. (FORM, Item 4)

Applicant was married from July 1982 until divorcing in August 2001. He remarried in September 2001, but again divorced in March 2006. He has two adult children and one 16-year-old child for whom he is obligated to pay monthly support to the child's mother. As of October 2014, Applicant owed more than \$17,000 in past-due child support. (FORM, Items 4 - 6)

Applicant deliberately did not file his federal or state income tax returns for the 2006, 2007, 2008, 2009, 2010, 2011, and 2012 tax years. He knew he would be owed refunds for those years, but he did not want those funds diverted for application to his child support debt. However, he decided to file his past-due returns in 2013. The total refunds due from those filings was \$3,408 and was, in fact, diverted to his child support debt. He also owed \$2,475 for those tax years, and he has been repaying that debt to the IRS and state authorities since 2013. (FORM, Items 3 and 6)

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

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

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. 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 factors 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. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Financial Considerations

Available information supports the SOR allegations. The resulting security concern about the facts established by the Government is expressed at 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, Applicant's conduct requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

These disqualifying conditions apply because Applicant tried to avoid paying past-due child support by deliberately failing to file any income tax returns for seven tax years in a row. He is still repaying past-due taxes and, presumably, his child support arrearage.

Of the pertinent mitigating conditions, only AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable to these facts. Applicant acted to resolve his tax debt and past-due filings in 2013. Nonetheless, the benefit he receives from AG ¶ 20(d) is far outweighed by his calculated attempt to avoid his financial obligations. Applicant failed to mitigate the security concerns raised by the Government's information.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

whole-person factors listed in AG ¶ 2(a). Applicant did not carry his burden of presenting sufficient information to refute or mitigate the security concerns raised by his failure to satisfy his income tax obligations. Without such information, doubts about his suitability for access to classified information remain. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

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.b: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's security clearance is revoked.

MATTHEW E. MALONE
Administrative Judge