



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



In the matter of:

ISCR Case No. 14-06115

Applicant for Security Clearance

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel

For Applicant: *Pro se*

09/02/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On January 22, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on February 14, 2013. (Item 3) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On April 23, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 9, 2015. He denied the two financial allegations of failing to file his federal (SOR 1.a), and state tax returns (SOR 1.b) for tax years 2010 and 2011. He claims that the tax returns have been filed. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on September 30, 2015. Applicant received a complete file of relevant material (FORM) on January 3, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a respond to the FORM. (Item 4) I was assigned the case on August 8, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. In his response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 53 years old. He received an associate's degree in May 1985 and a bachelor's degree in May 1994. He married in May 1991 and has one child. He has been employed by the same DOD contractor as a program manager since 1985. This appears to be his first application seeking eligibility for access to classified information. (Item 2, e-QIP, dated January 22, 2013; Item 3, PSI, dated February 14, 2013)

The SOR alleges that Applicant did not file his federal tax returns for tax years 2010 and 2011 (SOR 1.a), and state tax returns for the same tax years. (SOR 1.b) In response to question 26 on the e-QIP concerning filing of tax returns, Applicant reported that he did not file his federal and state tax returns for 2010 and 2011. He stated that he had no excuse for not filing the tax returns in question. He further reported that he hired a tax accountant to prepare and file his tax returns for the tax years in question. (Item 2, e-QIP)

Applicant also told the security investigator the he had no excuse for not filing his tax returns as required. He did cite to some medical bills, health issues, and surgery as contributing factors in not timely filing tax returns. Applicant informed the security investigator that he had been contacted by the Internal Revenue Service (IRS) in January 2013. The IRS informed him that they had one of his bank accounts frozen until he filed his 2010 and 2011 tax returns. Applicant claimed he hired a tax accountant, and the tax returns would be filed before the deadline imposed by the IRS of March 2013.

In his June 9, 2015 response to the SOR, Applicant wrote that he had filed the state and federal tax returns prepared by his tax accountant for 2010 and 2011 on February 18, 2013. Applicant requested copies of his state tax returns from the state tax authority. He provided copies of his state tax returns for 2010 and 2011 in his response to the FORM. He owed a small amount of tax for one tax year and received a sizable refund for the other tax year. Applicant requested tax transcripts of his federal taxes for 2010 and 2011 from the IRS. He received the tax transcript from the IRS for tax year 2010, but did not receive the transcript for tax year 2011. He made additional requests for the 2011 tax transcripts but they have not been received. Applicant included copies of the federal tax returns for both tax years. The returns are stamped as received by the IRS service center on February 28, 2013. Applicant received federal tax refunds for both years. (Item 4, Response to the FORM)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining 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.

Analysis

Financial Considerations

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, thereby raising questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Applicant self-reported that he failed to file federal and state tax returns for tax years 2010 and 2011. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(g) (failure to file annual Federal, state, or local tax returns as required or the fraudulent filing of the same). The information raises issues about Applicant’s unwillingness to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

(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 problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions at ¶¶ AG 20 (a), (b), and (c) do not apply. Applicant himself reported that he had no excuse for not filing his tax returns on time. There were no unusual issues or conditions beyond his control preventing the filing of the returns on time. He did not report that he had any financial counseling except for the possibility that he received some counseling from the tax accountant working on his tax returns.

Mitigating condition AG ¶ 20(d) does apply. Applicant established a good-faith effort to pay his financial obligations. For a good-faith effort, there must be an ability to pay financial obligations, the desire to pay them, and evidence of a good-faith effort to pay or resolve the obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling financial obligations is needed. Applicant must establish a meaningful track record of payment of financial obligations. A meaningful track record of payment can be established by evidence of actual payments or reduction of obligation through payments of debts. A promise to pay financial obligations is not a substitute for a track record of meeting obligations in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant established that he has now filed his federal and state tax returns for 2010 and 2011. He presented documents from his state tax authority to show that the state tax returns were filed. He paid the small amount owed for 2010 and received a refund for 2011. He presented an IRS tax transcript to establish that his 2010 taxes were filed and he received a refund. He also presented his 2011 federal tax return stamped received by the IRS. He is due a tax refund for 2011.

Applicant did not file his tax returns on time. He has no excuse for not timely filing his federal and state tax returns. However, by now filing his returns and paying the small amount owed or receiving a refund, he has shown that he is now acting reasonably and

responsibly to resolve his financial obligations. The evidence supports a finding that he is now responsibly managing his finances. His financial problems are now under control. His reasonable and responsible action towards his finances is a strong indication that he will protect and safeguard classified information. Applicant presented sufficient information to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant provided sufficient credible documentary information to show that he filed his federal and state tax returns for 2010 and 2011. His taxes have either been paid or he received a refund. He established that he has taken reasonable and responsible action to resolve his financial obligations. Applicant demonstrated appropriate management of his finances and a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

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 - 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge