



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



In the matter of:)
)
) ISCR Case No. 14-06105
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2016

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On December 2, 2015, 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 December 21, 2015, and requested a hearing before an administrative judge. The case was assigned to me on March 16, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 12, 2016, and the hearing was convened as scheduled on June 15, 2016. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Applicant testified and offered exhibits (AE) A through R, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 23, 2016.

Findings of Fact

Applicant admitted the SOR allegation. His admission is incorporated as a finding of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 56-year-old employee of a defense contractor. He has worked for this employer as an engineer for 23 years. He is several hours short of obtaining a bachelor's degree. He is divorced and has two adult children. He served in the U.S. Air Force from 1983 to 1992 when he was honorably discharged.¹

The SOR alleged Applicant failed to file his federal income tax returns for tax years 2006-2013. He disclosed his non-filings in his November 2008 and February 2014 security clearance applications (SCA), and discussed them in his January 2009 and May 2014 security clearance interviews.²

As far back as November 2008, Applicant admitted not filing his tax returns. He told a defense investigator in January 2009 that he had not filed his tax returns for the last eight years. He explained his reason for not filing was because he was "lazy." He was not worried about it because he always paid more than he owed and received refunds. When Applicant was interviewed again in May 2014 by another defense investigator, he admitted he still had not filed his tax returns from 2006 to present. He stated that he would file his returns in the future. In April 2016, he filed his federal tax returns for 2009 through 2015. He had these returns prepared by a tax professional specifically because he faced the allegation in the SOR. He explained that substitute returns were filed by the IRS for years 2006 through 2008. For all those years, he would have received refunds, except for 2010, when he owed \$311. He testified that he would file his tax returns in the future, but he also stated, "I do have a problem filing tax returns, as you well see." There is no evidence of any financial counseling.³

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.

¹ Tr. at 6, 26; GE 1.

² GE 1-4.

³ Tr. at 27-29, 31, 34-35; GE 2, 4; AE A-R.

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 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 2013 federal income tax returns. The evidence is sufficient to raise the above disqualifying condition.

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 tax returns, but it took 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. He explained his reasoning for not filing was because he was lazy and would rather have the IRS create his returns. AG ¶ 20(b) is not applicable.

Applicant hired a tax professional to complete his tax returns, but otherwise he did not seek financial counseling. Applicant filed all his federal tax returns that were due up through 2015, so his current tax return issue is resolved; however, his past actions give me little confidence that he will continue to file his federal tax returns as required. Given Applicant's delayed reaction to dealing with his tax problems, there are no 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 income tax returns. AG ¶ 20(c) partially applies, but AG ¶ 20(d) 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 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 Applicant's military service and 23 years working for a federal contractor. However, I also considered that he failed to timely file his tax returns and expressed his displeasure for having to do so, even though he was made aware in 2009 that his failure to file income tax returns created a security concern. He has not established a meaningful track record of financial responsibility by failing to file this federal tax returns for over ten years.

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

Subparagraph: 1.a: 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