



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00799

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

June 27, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On August 22, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (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 within the Department of Defense after September 1, 2006.

On September 4, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) On October 31, 2015, Department Counsel issued the Department's written case. On November 23, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered three documentary exhibits. (Items 1-3.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 23, 2015. Applicant submitted no additional evidence. The case was assigned to this

Administrative Judge on February 19, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. He is married, and he has one daughter and one stepdaughter. He received a Bachelor's degree in 2011. Applicant served in the United States Air Force from 1983 to 1987, when he received an Honorable Discharge. He is employed as a Radar Maintenance Technician by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 2.)

Guideline F, Financial Considerations

The SOR lists two allegations (1.a. and 1.b.) regarding financial difficulties, specifically failing to file Federal and state tax returns, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. The SOR alleges that Applicant failed to file Federal income tax returns for tax years 2011, 2012, and 2013. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) This information was revealed by Applicant on his Electronic Questionnaires for Investigations Processing (e-QIP), signed by him on June 30, 2014. (Item 2.)

1.b. The SOR alleges that Applicant failed to file State A income tax returns for tax years 2011, 2012, and 2013. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) This information was also revealed by Applicant on his e-QIP. (Item 2.)

Regarding his Federal and State A tax returns for tax years 2011 through 2013, Applicant wrote in his RSOR that his Federal and State A tax returns for tax years 2011 through 2013 "have [now] been filed and all taxes, interest and penalties paid, or refunds received, for the years in question." (Item 1.) No independent evidence was submitted that would establish that Applicant had resolved any of his Federal or state tax returns for tax years 2011, 2012, or 2013.

Applicant explained his late filing of the tax returns by writing the following, "When it came time to organize my documents for the 2011 State and Federal returns a folder with a majority of important documents could not be located. Additionally, other interest statements had to be re-obtained that were missing. The account in question had changed institutions, which slowed the process and required additional effort." (Item 1.)

Applicant also explained that his family “was a bit harried at the time,” as Applicant was working the night shift while attempting to earn a college degree, and his wife, who works full-time, struggled with a serious medical condition of one of his daughters. While he had two daughters attending school, because of the illness of his one daughter, she could not continue to attend school. (Item 1.)

Finally, Applicant wrote in his RSOR,

I let too much time get by and put off my responsibility to organize and get my returns filed. Situation snowballed. This caused me unnecessary stress until resolved; and relief once my 2011, 2012, and 2013, returns had been filed. I fully understand the importance of filing my annual State and Federal Income tax returns in a timely manner. All can be assured that this situation will NOT re-occur. (Emphasis in original.)

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 are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s over-arching 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 relating to the guideline 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 and could potentially apply in this case. Under AG ¶ 19(g), “failure to file annual Federal, state or local income tax returns as required . . .” and ¶ 19(a) “an inability or unwillingness to satisfy debts,” are potentially disqualifying and applicable to Applicant in this case. The evidence has established that Applicant failed to timely file his Federal and state tax returns for tax years 2011 through 2013 as required by law.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Applicant self-reported his failure to file his tax returns, and they occurred during a particularly difficult period in Applicant’s life. However, no independent evidence was introduced to establish that his Federal and state tax returns have all been filed. Therefore, I cannot find that AG ¶ 20(a) “the behavior . . . 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,” applies to this case. Also, under AG ¶ 20(b), it may be mitigating where, “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.” As reviewed above, Applicant’s

failure to timely file his tax returns occurred, at least in part, because of the illness of his daughter. However, again no independent evidence was introduced to establish that his Federal and state tax returns have all been filed. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

As Applicant has not established through independent evidence that he has filed his Federal and state tax returns for tax years 2011 through 2013, I find Guideline F against Applicant. If Applicant wishes to obtain a security clearance in the future, he must fully establish that he has filed and continues to file all of his required Federal and state tax returns in a timely manner.

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 the 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. Based on all of the reasons cited above as to why the disqualifying conditions are applicable and controlling, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a. - 1.c.:

Against Applicant

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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge