



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02301

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

10/12/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On October 17, 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 December 29, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 13, 2016, scheduling the hearing for July 22, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He did not submit any additional documents. DOHA received the hearing transcript (Tr.) on July 29, 2016.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1989 until he retired with an honorable discharge in 2010. He has worked for his current employer since 2010. He seeks to retain a security clearance, which he has held since his time in the military. He attended college for a period, but he has not earned a degree. He is married but separated with two children, ages 23 and 17.¹

Applicant and his wife separated in about 2010. He moved to another state after retiring from the military, and he left his children with his wife. At about the same time, his parents' health took a downturn. His parents lived several hours away, but he drove multiple times a week to help care for them. He also handled their financial affairs until they both passed away in 2011. He served as the executor of their estates, which also involved considerable time. While he was helping his parents and taking care of their estates, he neglected his personal financial responsibilities. He also admitted that he was "scattered" and "overwhelmed." He did not file federal income tax returns for tax years 2010 through 2014 when they were due.²

Applicant reported on his August 2012 Questionnaire for National Security Positions (SF 86) that he did not file his tax returns for tax years 2010 and 2011. He wrote that he had secured an agency to assist him in filing his returns as soon as he recovered his documentation. When he was interviewed for his background investigation in October 2012, he stated that he intended to hire a certified public accountant (CPA) during the upcoming tax season to file the returns and settle any arrearages owed.³

Applicant filed his federal income tax returns for 2011 and 2012 in about October 2015. His returns indicated that he owed \$9,246 for \$2011 and \$8,998 for \$2012. Those figures do not account for penalties and interest. He indicated that he intends to file amended returns, which might reduce or increase his tax liability. He has not filed returns for tax years 2010, 2013, and 2014. The IRS is levying his wages \$402 every two weeks. As of July 22, 2016, the IRS had collected \$9,112 from his pay during 2016. Applicant stated that he thought he owed about \$20,000 before his wages were levied.

¹ Tr. at 26-28; GE 1.

² Tr. at 19-24, 29-34, 41, 43; Applicant's response to SOR; GE 1, 2. The SOR only alleged that Applicant did not file income tax returns for tax years 2010 through 2012. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in the application of mitigating conditions, and in the whole-person analysis.

³ GE 1, 2.

He increased the amount withheld from his pay in about 2015, which would lower the amount of taxes owed, if any, for that year. He stated that he intends to file all his returns and pay his back taxes.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 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).

⁴ Tr. at 17, 20-25, 36-39; AE A-C.

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 did not file his 2010 through 2012 federal income tax returns when they were due. AG ¶ 19(g) is applicable.

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; 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 helped his parents when they were ill. He was the executor of their estates after they passed away in 2011. His commitment to his parents before and after their deaths is commendable. However, he knew when he submitted the SF 86 in 2012 that his unfiled tax returns were a problem. During his background interview in October 2012, he stated that he intended to hire a CPA to file the returns. Despite his stated intentions to file all his returns and pay his back taxes, he still has not filed all his returns, and he owes the IRS an unknown amount.

The Appeal Board has stated that "[f]ailure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). The

Appeal Board has further held that an applicant's "repeated failure to file his Federal income tax returns in a timely manner does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

Applicant's financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. There are no applicable mitigating conditions.

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 my whole-person analysis.

I considered Applicant's honorable military service and his steady employment with a defense contractor. I also considered his commitment to his parents. However, he failed in his fundamental obligations to file his tax returns and pay his taxes.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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
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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge