



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



In the matter of:)
)
) ISCR Case No. 15-04048
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/13/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 29, 2016, 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 April 14, 2016, and requested a hearing before an administrative judge. The case was assigned to me on June 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 13, 2016, scheduling the hearing for July 21, 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 D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE E and F and admitted without objection. DOHA received the hearing transcript (Tr.) on July 28, 2016.

Findings of Fact

Applicant is a 60-year-old engineer for a defense contractor. He has worked for his current employer since 2003. He worked at the same company as a contractor from 1994 to 2003. He seeks to retain a security clearance, which he has held since about 1983. He has a bachelor's degree that was awarded in 1980. He is married with two adult children.¹

Applicant did not file federal income tax returns for tax years 2011 and 2012 when they were due. He used a tax professional to prepare his returns, but the individual did not contact Applicant during the 2012 filing season. Applicant did not contact the professional, seek another professional, or file the 2011 and 2012 returns in a timely manner himself. Applicant admitted he procrastinated in taking care of his taxes.²

Applicant filed his 2011 federal income tax return in March 2015. There was \$10,240 withheld from his pay during 2011 for his federal income taxes, and he paid \$1,500 on April 15, 2012. He paid \$3,954 in March 2015 to resolve his remaining tax liability for 2011.³

Applicant filed his 2012 federal income tax return in February 2015. There was \$9,028 withheld from his pay during 2012 for his federal income taxes. He paid \$3,201 in February 2015 and an additional \$1,317 in April 2015 to resolve his tax liability for 2012.⁴

Applicant accepted responsibility for his actions. He credibly testified that he has learned a valuable lesson and that he will never again fail to file his tax returns on time. His returns for 2013 through 2015 were filed on time. He does not owe any taxes, and his finances are sound. He has not received formal financial counseling. He submitted documents and letters attesting to his excellent job performance.⁵

¹ Tr. at 19, 38; GE 1, 2.

² Tr. at 19-21, 30-34; Applicant's response to SOR; GE 1, 2.

³ Tr. at 20-23, 34; AE E.

⁴ Tr. at 20-23, 34; AE F.

⁵ Tr. at 21-25, 28-29, 35-38, 43; AE A-D.

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).

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 are potentially applicable in this case:

- (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.

Applicant did not file his 2011 and 2012 federal income tax returns and he did not pay the taxes from those years when they were due. The above disqualifying conditions are applicable.

Conditions that could mitigate 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;
- (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 filed his 2011 and 2012 federal income tax returns in February and March 2015, and he paid the remaining taxes due in February, March, and April 2015, about a year before the SOR was issued. Applicant accepted responsibility for his actions. He credibly testified that he has learned a valuable lesson and that he will

always file his tax returns on time. Applicant overcame the heavy burden upon an applicant who shirks his tax responsibilities. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016). The above mitigating conditions are applicable.

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 steady employment with a defense contractor. He failed in his fundamental obligations to file his tax returns and pay his taxes. However, he resolved those matters about a year before the SOR was issued. I am convinced the conduct will not be repeated.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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:	For Applicant
Subparagraph 1.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge