



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



In the matter of:)
)
) ISCR Case No. 15-04140
)
)
Applicant for Security Clearance)

Appearances

For Government: Douglas Velvel, Esquire, Department Counsel
For Applicant: *Pro se*

February 3, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On November 23, 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 January 5, 2016, 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 February 22, 2016, Department Counsel issued the Department's written case. On February 23, 2016, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered four documentary exhibits. (Items 1-4.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on April 7, 2016. Applicant submitted an additional document, which has been identified and entered into evidence without objection as Item A. The case was assigned to this Administrative

Judge on September 13, 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 47 years old. He is unmarried, and he has no children. He received a high school degree. He is employed 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 a delinquent debt, and failing to file Federal 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. This overdue debt to the Federal Government for a tax lien entered against Applicant in 2008, is cited in the SOR in the amount of \$15,524. The credit report, dated October 1, 2014, and submitted with the FORM, establishes this debt is owed by Applicant, and it does not show that this debt has been reduced or resolved. (Item 3.)

Applicant admitted this SOR allegation in his RSOR, and he wrote,

as of the date of this Statement of Reasons, the lien remains unpaid because I was advised to complete filing the rest of my unfiled taxes to make arrangements for all of them combined. Now that all of my tax returns have been filed, I am working with a tax reconciliation firm, on completing the IRS Form 433-F form. Upon completion of this form, we will be working with the IRS ACS United States citizen to finalize a Fresh Start Installment agreement. (Item 1.)

As stated above, Applicant submitted an additional document, a letter from him, dated April 5, 2016, that he wrote after the issuance of the FORM. (Item A.) Applicant gave no indication that he has made any payments toward the tax lien.

1.b. The SOR alleges that Applicant failed to file Federal income tax returns for tax years 2008, 2009, 2010, 2011, 2012, and 2013. Applicant admitted this SOR allegation in his RSOR, and he wrote,

This issue has been resolved as all past due tax returns were filed in September of 2014. Additionally, I filed an extension for my 2013 Federal Income Tax Returns and it was electronically filed and accepted on 09/17/2014, before the 10/15/2014 deadline. I am currently making

voluntary payments until Fresh Start Arrangements can be completed.
(Item 1.)

In his Electronic Questionnaires for Investigations Processing (e-QIP), Applicant wrote that he failed to file his tax returns from 2008 to 2013 because he thought he would be entitled to a refund. (Item 2.) Applicant did not submit any documentation establishing that the returns had been filed.

In Applicant's Post-FORM letter, he explained that he had periods of time when he was unemployed or periods when he was earning less than he had previously earned. He also wrote, ". . . in my past, there have been times when I was careless and didn't have a good grasp of credit, debt and taxes because I am far from perfect, but since getting back to working I've been trying to do everything I could to clean everything up." (Item A.)

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(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. ¶ 19(g), “failure to file annual Federal, state or local income tax returns as required . . .” is also applicable to Applicant in this case. The evidence has established that Applicant failed to timely file his Federal tax returns for tax years 2008 through 2013 as required by law, and has not resolved his overdue tax debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. While Applicant has written that he has now filed all of his overdue tax returns, no independent evidence was introduced to establish that his Federal tax returns have all been filed. Also, as has been reviewed by the Appeal Board, the simple act of filing returns many years after they were due is not automatically dispositive. Applicant’s failure to file his tax returns in a timely manner for several years shows a pattern of behavior that involves failure to follow legal requirements. I also considered that Applicant’s tax debt continues to be unresolved. 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.

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 unemployment or underemployment. However, again, no independent evidence was introduced to establish that his Federal tax returns have all been filed, or that the tax debt has been resolved or reduced. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

As Applicant failed to timely file his Federal tax returns for tax years 2008 through 2013, has not established through independent evidence that he has filed these tax returns, and has not established that his tax debt has been resolved or reduced, 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 tax returns in a timely manner, and is making a significant effort to resolve his delinquent tax debt.

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.b.:

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