



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



In the matter of:)
)
) ISCR Case No. 15-04782
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2017

Decision

CURRY, Marc E., Administrative Judge:

In the course of caring for his wife who battled cancer for two years before succumbing in 2014, and dealing with the grief after her death, Applicant did not file his federal or state income tax returns. Since overcoming his grief, Applicant has organized his personal affairs, retained an attorney, and is in the process of resolving his delinquent income taxes. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On February 5, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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) implemented by the DOD on September 1, 2006.

On February 25, 2016, Applicant answered the SOR, admitting all of the allegations and requesting a hearing. The case was assigned to me on August 11, 2016. DOHA issued a notice of hearing on September 14, 2016, scheduling the hearing for October 17, 2016. The hearing was held as scheduled. Department Counsel submitted one exhibit (GE 1), Applicant submitted eight exhibits (AE A - H), and I took administrative notice of the Department Counsel's discovery letter (Hearing Exhibit I). Applicant testified. DOHA received the transcript (Tr.) on October 25, 2016.

Findings of Fact

Applicant is a 55-year-old widower with two adult children and one adult stepchild. He has a bachelor's degree in history, a master's degree in health care, and a Ph.D in national security. (Tr. 9) He is a Navy veteran, serving from 1985 to 2005. He retired honorably. (Tr. 20) While enlisted, he served in Operation Desert Storm, and he deployed in support of U.S.-led efforts in Bosnia. (Tr. 9)

Applicant is a subject-matter expert in public health, medical planning and mass-casualty disaster preparedness. He is extremely respected in his field, and he has worked with executives at the highest levels of federal and state government.¹ (Answer at 5) He currently consults with private health care firms and teaches at a university. (Tr. 23) Applicant has held a top secret clearance since 1990. (Tr. 23)

In November 2011, Applicant's wife was diagnosed with cancer. (Answer at 1) After extensive treatment during the following year, her physicians declared her cancer-free in November 2012. In June 2013, Applicant took a job located in another state (State 2). Rather than relocate the family, he decided to have them remain at home (State 1) until his daughter could finish high school. (Tr. 27; Answer at 2)

In August 2013, Applicant's wife's cancer recurred. Doctors informed her that neither chemotherapy nor radiation would work, and that her only chance of survival was to have multiple reproductive and digestive organs removed. (Answer at 4) Because of the delicate nature and scope of these procedures, Applicant and his wife selected a world-renowned hospital located in another state (State 3) for the procedures to be performed. (Tr. 28) After approximately 20 days in the hospital in State 3, Applicant's wife's health rebounded to the point where her doctors allowed her to return home.

Although Applicant's wife's health had stabilized, she remained extremely ill. For the remainder of 2013, Applicant tried to balance his job in State 2 with his care for his wife and children at home in State 1, often driving home, a nine to twelve hour trip, on short notice. (Tr. 44) In November 2013, Applicant travelled from State 2 to State 3 after being informed that his wife, experiencing post-operation complications, was flown back

¹Because of the unique and extraordinary nature of Applicant's accomplishments, awards, and employment history, I have not elaborated on them in the Decision in an effort to protect his privacy. They are set forth in AE E, AE F, and discussed in Applicant's Answer at 4 and the Tr. at 23.

to the hospital that performed her surgery in August 2013. (Answer at 4) In January 2014, Applicant's wife died.

During the period Applicant was caring for his terminally ill wife, he increasingly struggled to keep up with his routine household affairs. By the time his wife died, the administration of his personal affairs had become "a train wreck." (Tr. 48) It continued to deteriorate after his wife's death, as he "blanked out" (Tr. 30) and "was in a nearly dysfunctional state with grief, and . . . at times . . . couldn't make decisions on simple matters [such as] the administration of [his] household." (Tr. 47)

Applicant attended counseling for most of 2014 and 2015. (Answer at 5; Tr. 30) During this period, he did not file any of his tax returns. With the help of grief counseling, Applicant gradually began recovering. As he recovered, he began to get control of his financial affairs, with the help of his children, organizing and paying bills. (Tr. 49-50) In December 2015, Applicant retained a tax attorney to help him file his delinquent income tax returns. (Tr. 48; AE D) By May 2016, the attorney had filed Applicant's overdue tax returns from 2012 to 2015. (AE G) Subtracting the tax refund from 2015 from the debt owed in tax years 2012 through 2014, Applicant owes approximately \$20,000 in delinquent federal income taxes. (Tr. 52-53) As of January 2016, there was a lien on Applicant's property for his delinquent federal income taxes. His attorney filed an application of withdrawal of the lien, shortly after being retained. (AE D) Currently, Applicant's attorney is attempting to negotiate a hardship reduction. (Tr. 54) Once the IRS settles on an amount, Applicant will satisfy it in monthly increments. (Tr. 55)

Applicant owed approximately \$2,800 of 2012 state income taxes. (Tr. 51) This delinquency prompted the state to file a lien against his savings account. This debt has been satisfied. (Tr. 52) Currently, Applicant with the help of his tax attorney has filed all of the delinquent state income tax returns. He received approximately \$3,800 in refunds for tax years 2013 and 2014. (Tr. 52)

Applicant recently negotiated a lower interest rate on his mortgage. His monthly mortgage payments have decreased by \$700. (Tr. 59) Conversely, Applicant's annual income has decreased this year from approximately \$225,000 in 2014 to approximately \$90,000 in 2015. (Tr. 36) His current income is comprised primarily of his pension. Applicant has approximately \$3,800 in savings. (Tr. 60)

Applicant's stepdaughter is mentally disabled. (Tr. 74) Applicant is her sole caretaker. (AE A)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Applicant failed to file his federal income taxes between 2012 and 2015. Having since filed them, he owes \$20,000. AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(g), “failure to file Federal, state, or local income tax returns as required, or the fraudulent filing of the same,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 debt.

Applicant’s financial problems were not caused by irresponsible or profligate spending. Instead, they occurred during Applicant’s wife’s lengthy battle with cancer, and after her subsequent death. During this time, Applicant lost track of his personal finances while splitting time between three states, trying to balance his job with the care of his wife and children. After Applicant’s wife’s death, his attention to his finances further deteriorated, as he was overcome with grief, and was unable to recover until he began receiving counseling. Since recovering, Applicant has consulted a tax attorney, filed his overdue federal and state income tax returns, and has begun negotiating a settlement. Also, in an effort to generate more disposable income, Applicant

successfully negotiated a lower interest rate on his mortgage. Under these circumstances, I conclude that all of the mitigating conditions, as set forth above, apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

The nature and seriousness of Applicant's failure to file his income taxes is significant, as "failure to file tax returns suggest that an applicant has problems with complying with well-established government rules and systems." (ISCR Case No. 01-05340 at 3 (App. Bd. December 20, 2002)) Conversely, the circumstances surrounding Applicant's failure to file his tax returns were extraordinary, as he lost control of his finances while trying to balance his job, the care of his terminally ill wife, and the care of his three children, one of whom is mentally disabled, while frequently traveling between three states on short notice due to his wife's recurring medical emergencies. Since completing grief counseling, Applicant has consulted a tax attorney, filed his income tax returns, and negotiated the reduction of his mortgage payments. Although he has a federal income tax debt that remains unresolved, he is working diligently through his attorney to negotiate a settlement. Considering these factors, together with his stellar career accomplishments, I conclude that Applicant has mitigated the security concern.

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

Subparagraphs 1.a - 1.b:

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

MARC E. CURRY
Administrative Judge