



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05064

Appearances

For Government:

Aubrey De Angelis, Esquire, Department Counsel¹
Andrew Henderson, Esquire, Department Counsel

For Applicant:

Leon J. Schachter, Esquire
Bigley Ranish LLP

July 31, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant paid the one alleged past-due debt in 2011, and filed both of his delinquent tax returns. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on September 22, 2014. (Government Exhibit 1.) On December 29, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued

¹ Ms. De Angelis only appeared at the June 21, 2016 hearing.

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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.²

Applicant answered the SOR in writing (Answer) on February 3, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 16, 2016. The case was assigned to me on March 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued an initial Notice of Hearing by video tele-conference on May 9, 2016. I convened the hearing as scheduled on May 9, 2016. Due to technical issues the hearing was continued. A second Notice of Hearing was issued on September 14, 2016, and the hearing was held in person on November 7, 2016.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits A through W, which were admitted without objection, and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on December 9, 2016.

Findings of Fact

Applicant is 27 years old and, at the time the hearing began, was employed by a defense contractor. He served on active duty with the Marine Corps from 2005 through 2009. Applicant is married and has one child. He is seeking to obtain national security eligibility for a security clearance. He has held a security clearance at various times during both his military and civilian careers. (Applicant Exhibits B and C.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a past-due debt, and has not filed two Federal tax returns in a timely fashion. Therefore he is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In his Answer, Applicant admitted in part and denied in part allegations 1.a and 1.b in the SOR with explanations. He admitted allegation 1.c with explanations. He also submitted additional evidence to support his request for a finding of national security eligibility.

² I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

1.a. Applicant admitted that he did not file his 2010 Federal tax return in a timely fashion. At that time Applicant had just left the Marine Corps, but was still working overseas as a civilian contractor. He attempted to file his tax return electronically for that year, but due to technical issues was unable to do so. He has since filed that tax return, which would have given him a substantial refund if filed on time. Applicant admits that this procrastination was his fault. (Applicant Exhibits N and O; Tr. 35-38, 47-49.)

1.b. Applicant admitted that he did not file his 2008 Federal tax return in a timely fashion. At that time he was stationed overseas in the Marine Corps. Due to work requirements, and his own fault, Applicant was unable to get his tax return prepared and filed in a timely fashion. He has since filed that tax return, which would have given him a refund. Applicant admits that procrastination was his fault. (Applicant Exhibits L and M; Tr. 31-35, 43-47.)

With regard to his taxes, Applicant submitted documentation showing that he has filed his taxes in a timely fashion for 2009, and 2011 through 2015. He recognizes his personal responsibility to make sure his taxes are filed in a timely fashion in the future. (Applicant Exhibits A, S, T, U, V, and W; Tr. 35, 50-51.)

1.c. Applicant admitted that he was indebted for a past-due credit card debt in the amount of \$3,020. Applicant provided evidence showing he paid this debt off in 2011. (Applicant Exhibits P and Q; Tr. 25-31.)

Applicant's current financial situation is stable. He makes a substantial income, and the most recent credit reports in the record show no delinquent accounts. (Government Exhibit 4; Applicant Exhibits J and K.)

Mitigation

Applicant provided five letters of recommendation from people who know him in the defense industry. All the writers have knowledge of the allegations in the SOR. He is described as being "honest, trustworthy and a great American citizen" by one writer, who is also Applicant's unit security manager. (Applicant Exhibit E.) Applicant's Exhibit D is from Applicant's current supervisor. The writer states, "[Applicant] has proved to be an honest and reliable employee." The other three letters are of a similar nature. (Applicant Exhibits F, G, and H.)

Policies

When evaluating an applicant's suitability for a national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had one past-due debt, and he did not file two years of Federal tax returns. All three of these conditions apply, thereby shifting the burden to Applicant to mitigate them.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant paid the single past-due debt alleged in the SOR in 2011. He has filed both of the Federal tax returns, albeit considerably late. However, he presented evidence that he has been consistently paying his taxes for several years since 2010. These incidents are aberrations, and he submitted compelling evidence that they will not happen again. His current financial status is stable, and he evinces a credible intent and ability of being able to maintain that stability into the future, including paying his taxes in a timely fashion. He has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

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(d):

(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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and a security clearance.

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:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

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 or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge