



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05824

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On July 29, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.¹

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM)

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

dated October 27, 2016.² Applicant received the FORM on November 21, 2016. He did not submit any material in response to the FORM. The case was assigned to me on August 8, 2017. Based on a review of the case file, submissions, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the sole allegation in the SOR under Guideline F, with explanations. (Item 1)

Applicant is 42 years old. He graduated from high school in 1993 and obtained an undergraduate degree in 2012. He is single and has no children. He has worked for his current employer since 2014. He completed his security clearance application (SCA) in 2015. (Item 3)

The SOR alleges that Applicant failed to file Federal and state income tax returns for at least tax years 2008, 2009, 2010, 2011, and 2013, as required. He volunteered in his answer to the SOR that he did not file his state taxes for years 2009, 2010, 2011 2012, and 2013. He noted that he was not required to file a tax return in 2010, because he earned less than the standard exemption. In 2016, he told the clearance interviewer that he did not file his Federal income tax return in 2013, because he tried to buy a stamp from the post office but the postal worker would not sell him just one stamp. (Item 3) The IRS transcripts provided by the Government reveal that the 2008, 2009, 2010, 2011 tax returns have been filed as of June 2016. (Item 4) There is no information concerning the 2013 Federal tax return. Applicant claimed that he paid delinquent tax for 2009 and 2010. He did not explain why he could not file his income tax returns for those years. He also did not disclose this information on his SCA. (Item 3)

Applicant was unemployed for various periods of time, but he did not present any nexus between the unemployment and not filing his Federal or state tax returns. There is no information in that regard concerning any filing of state income tax returns.

Applicant did not provide any evidence that would mitigate the security concern under the financial considerations guideline. He did not comply with the requirement to file tax returns for a number of years and he gave no credible reasons why. He has not met his burden of proof in this case to mitigate the security concerns under the financial considerations guideline.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

²The Government submitted four items for the record.

disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(a), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 Executive Order 10865 provides that 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."⁶ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individuals' reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus be a possible indicator of, other issues of personnel security concerns such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government provided credible evidence that Applicant failed to file Federal and state income tax returns timely for the tax years 2008 through 2013. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19 (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) applies. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply. Applicant did not provide any explanations for the lack of filings. It appears from the IRS account transcripts (Item 4) that in 2016, some returns were filed. In addition, (FC MC) AG ¶ 20(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) partially applies. However, there is no information concerning the state income tax returns.

⁸ *Id.*

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 42 years old. He has worked for his current employer since 2014. He failed to file Federal and state income tax returns for many years and provided no credible reason. He repeatedly failed to comply with his legal obligation. He presented no information that he has been responsible concerning his Federal and state income taxes during the intervening years. He has not met his burden of proof in this case.

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
Subparagraph 1.a:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge