



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



In the matter of:)
)
) ISCR Case No. 15-05983
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concern involving a delinquent student loan, but did not mitigate his failure to file federal income tax returns for tax years 2011 through 2014, as required. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On February 19, 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 (Exec. Or.) 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).¹

Applicant responded to the SOR on March 28, 2016, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 8, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the Government's FORM on June 21, 2016. Applicant did not respond to the Government's FORM. The case was assigned to me on May 4, 2017.

The Government's documents identified as Items 1 through 5 are admitted into evidence. Other than his Answer to the SOR, admitted into evidence as Item 2, Applicant failed to submit any additional documentation. I appended to the record as Appellate Exhibit (AE) A the relevant pages of documents of which I took *sua sponte* administrative notice, as discussed below.

Findings of Fact

Applicant admitted SOR ¶ 1.a and denied SOR ¶ 1.b in his response to the SOR.² Applicant is 56 years old. He is married and has three adult children, though the youngest was living with and supported by Applicant and his wife as of January 2015, while attending college.³

Applicant obtained his high school diploma in June 1978. He served honorably in the U.S. military from October 1978 until he retired in October 2002. He has lived and worked in Japan since at least December 2002. He worked for a prior defense contractor from December 2002 to May 2009, and worked part-time for another employer from June 2003 to March 2013. He has been unemployed since March 2013, supporting himself through military retirement benefits and his spouse's income as a sales agent for a real estate company. He received an offer of employment to work for a defense contractor in October 2014, contingent upon obtaining a security clearance. He was granted a DOD security clearance in June 1990 and July 2006.⁴

The SOR alleges that Applicant failed to file his federal income tax returns, as required, for tax years 2011 through 2014, and a delinquent student loan totaling \$27,645. Applicant listed and discussed his failure to file federal income tax returns for

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

² Item 2.

³ Items 3, 5.

⁴ Items 3, 5.

tax years 2011 through 2013 on his January 2015 Questionnaire for National Security Positions (SF 86) and during his May 2015 interviews with an Office of Personnel Management (OPM) investigator.⁵

Applicant stated that he did not file federal income tax returns for tax years 2011 through 2014 because he was unemployed, he took advantage of the benefit given to overseas residents to file at a later time, and he did not receive a W-2 form. He stated that he earned \$25,000 during each of the relevant tax years, and is owed refunds for those years. He intended to file the tax returns by May 2015.⁶

Applicant did not provide documentation to show his gross income for tax periods 2011 through 2014. Neither party provided evidence of the threshold number for reportable income for federal income tax returns for tax years 2011 through 2014, or evidence of the special tax rules applicable to U.S. citizens living abroad. Therefore, I have taken administrative notice of Internal Revenue Service (IRS) Publications 501 and 54 for tax years 2011 through 2014, which provide the filing requirements for most taxpayers and discusses special tax rules for U.S. citizens who work abroad or who have income earned in foreign countries.⁷

Applicant denied that he has a delinquent student loan totaling \$27,645. This debt is for two student loans he took out for his eldest child. It is the only delinquent debt listed on the February 2015 credit report. It is reported as in collection status with a collection company, and the collection company references the same original creditor as that discussed by Applicant.⁸

Because Applicant believed his child paid this debt, Applicant contacted the original creditor to inquire about it. That creditor told him that the information reflected on the credit report was incorrect, and verified that the account was current. Applicant planned to contact the credit bureaus to resolve the incorrectly reported information about this debt. With his response to the SOR, Applicant provided documentation from the credit reporting agency TransUnion, indicating that as a result of their investigation,

⁵ Items 1, 3, 5.

⁶ Items 2, 3, 5.

⁷ Items 1, 3, 5; See <https://www.irs.gov/pub/irs-prior/p501--2011.pdf>; <http://www.irs.gov/pub/irs-prior/p501--2012.pdf>; <https://www.irs.gov/pub/irs-prior/p501--2013.pdf>; <http://www.irs.gov/pub/irs-prior/p501--2014.pdf>; <https://www.irs.gov/pub/irs-prior/p54--2011.pdf>; <https://www.irs.gov/pub/irs-prior/p54--2012.pdf>; <https://www.irs.gov/pub/irs-prior/p54--2013.pdf>; <https://www.irs.gov/pub/irs-prior/p54--2014.pdf>. As a general rule, the parties are entitled to know what information an Administrative Judge is relying on in making a decision. There are some narrow exceptions to this general rule: official or administrative notice, and matters known to an agency through its cumulative expertise. ISCR Case No. 99-0454 at 3 (App. Bd. Mar. 21, 2000).

⁸ Items 2, 4, 5.

the debt to the original creditor as reported on his credit report would be deleted as of March 2016.⁹

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 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, these guidelines are applied 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and 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 that an applicant may deliberately or inadvertently fail to 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 Exec. Or. 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

⁹ Items 2, 4, 5.

applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 personnel 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. 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (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 admitted that he failed to file his federal income tax returns for tax years 2011 through 2014, as required. While he has lived abroad since December 2002, has worked in a part-time capacity between June 2003 and March 2013, and has since been unemployed, he receives military retirement income and earned about \$25,000 during tax years 2011 through 2013. AG ¶ 19 (f) is established.

The February 2015 credit report lists Applicant’s delinquent student loan of \$27,645. AG ¶¶ 19 (a) and 19(c) apply.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

The student loan debt at issue is the only delinquent debt reported on the February 2015 credit report. While it is in collection status with a collection company, it references the same original creditor as discussed by Applicant, who told him that the information reflected on the credit report was incorrect and verified that the account was current. Applicant provided documentation to corroborate his claim that the credit bureaus were reporting the debt to the original creditor in error, as the investigation conducted by the TransUnion credit reporting agency concluded that as of March 2016, the original creditor for this debt would be deleted from his credit report. AG ¶ 20(e) applies.

Applicant intended to file his federal income tax returns for 2011 through 2014 by May 2015. He has not provided documentation to show that he has, or that he made arrangements with the IRS to do so. AG ¶ 20(g) does not apply.

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(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 the facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concern involving a delinquent student loan, but did not mitigate his failure to file federal income tax returns for tax years 2011 through 2014, as required.

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
Subparagraph 1.b:	For 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.

Candace Le'i Garcia
Administrative Judge