



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



In the matter of:)
)
) ISCR Case No: 15-07915
)
)
 Applicant for Security Clearance)

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

08/09/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to file federal and state income tax returns for 2013 and 2014, and resolve two delinquent debts. Resulting financial security concerns were not mitigated. National security eligibility for access to classified information is denied.

Statement of the Case

On June 16, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 previous *Adjudicative Guidelines for Determining*

Eligibility for Access to Classified Information effective within the DOD on September 1, 2006 (AG). This decision applies the new AG that became effective on June 8, 2017.¹

Applicant answered the SOR in writing (Answer) on July 5, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) A complete copy of the File of Relevant Material (FORM), containing three Items, was mailed to Applicant on August 18, 2016, and received by him on September 14, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not object to the Government's evidence and submitted a letter in response to the FORM, which I marked as Applicant Exhibit (AE) A. Items 1 through 3 and AE A are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on May 22, 2017.

Findings of Fact

Applicant admitted the four allegations in the SOR. Those admissions are incorporated into these findings of fact.

Applicant is 39 years old and divorced. From 1998 to 2012, he served in the U.S. Air Force, the Air Force Active Reserve, and Air National Guard until he was honorably discharged. He has a bachelor's degree. After leaving military service, Applicant started his own business in 2013. Prior to that he worked in private industry and owned a business at different times. (GE 2.)

On December 18, 2014, Applicant submitted a security clearance application (SF-86). In response to questions related to his financial record, he disclosed that he failed to file federal and state income tax returns for "2014."² He wrote, "Will file returns for 2013 and 2014 at the same time upon receipt of all W-4s." (GE 2.) He estimated that his tax liability was \$100,000. (GE 2.)

The June 2016 SOR alleged that Applicant failed to file federal and state income tax returns for 2013 and 2014. Applicant admitted that allegation. Based on a credit bureau report (CBR) from January 2015, the SOR also alleged two delinquent debts, which became delinquent in 2014 and totalled \$4,795. (GE 3.) In his Answer, Applicant stated that his 2013 and 2014 taxes were paid in early 2016. He said that the two debts were paid in mid-2015. (Item 1.) He did not submit documentation to corroborate those assertions.

Applicant stated that his financial issues arose after he began a business in 2013. He did not have the necessary business knowledge to successfully operate the business

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. Although this decision is issued pursuant to the new AG, my decision would be the same under either set of guidelines.

²At this time Applicant's 2014 tax returns were not due. He seemingly made an error and meant 2013, as indicated in his note following that disclosure.

or enough money to pay debts until he subsequently began working for a defense contractor.

Department Counsel notified Applicant in its August 2016 FORM that he had not provided evidence that he filed his 2013 or 2014 tax returns. In response to that FORM, Applicant stated that he was a patriot, who proudly served his country. He emphasized the financial hardships he encountered when he began his business. He said his credit report documented that he no longer owed the two alleged delinquent debts. He did not submit evidence verifying that he paid those two debts or that he filed the outstanding tax returns.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying 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(a), 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 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 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. Likewise, I have avoided drawing inferences grounded 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 an "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 applying for national security eligibility 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. Finally, as emphasized in Section 7 of Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 or sensitive information. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.³

AG ¶ 19 lists three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; 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 timely file federal and state tax returns for 2013 and 2014. He also has been unwilling or unable to resolve delinquent debts from 2014. The evidence is sufficient to raise the above disqualifying conditions.

³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate financial considerations security concerns under this guideline:

(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;

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant has not presented documentary evidence that he filed his 2013 and 2014 federal and state income tax returns, or paid two delinquent debts. AG ¶ 20(a) does not apply because these financial issues remain ongoing. Applicant established limited mitigation under AG ¶ 20(b), as there is some evidence that his financial difficulties began when he experienced business problems associated with owning a business, some of which may not have been within his control. However, there is no evidence from which to conclude that he acted responsibly under the circumstances while those problems arose.

The record evidence is insufficient to establish mitigation under AG ¶ 20(c) or AG ¶ 20(d). There is no documentation indicating that he participated in financial counseling or that the alleged security concerns are under control. He did not provide evidence that he initiated or is adhering to a good-faith effort repay or resolve the delinquent debts. AG ¶ 20(g) does not apply because there is no evidence that he made arrangement with either the federal or state taxing authority to file his outstanding returns or pay any amounts due.

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). They include the following:

(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) 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must include 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 facts and circumstances surrounding this case. Applicant is an educated 39-year-old man, who honorably served this country for 14 years. Those are positive factors in this case. However, he failed to document that he timely filed federal and state income tax returns for 2013 and 2014, and paid two delinquent debts from 2014. In its August 2016 FORM, Department Counsel notified him that he had not submitted verification that he had resolved both of those financial issues, as he asserted in his Answer. Despite being placed on notice, he did not submit additional evidence with his response to the FORM. The absence of proof of the resolution of those four SOR allegations outweighs the positive factors. Overall, the record evidence leaves me with questions as to Applicant's suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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 through 1.d:

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. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge