



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-08537
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial considerations security concerns.

Statement of the Case

On March 19, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated May 27, 2016, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 21, 2016. He admitted SOR allegation 1.a concerning failure to timely file federal tax returns for tax years 2009 and 2013. He

denied SOR allegation 1.b concerning a state tax lien. Department Counsel was prepared to proceed on August 18, 2016, and the case was assigned to me on December 2, 2016. DOD issued a notice of hearing on April 8, 2017, for a hearing on April 20, 2017. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4), and Applicant's two exhibits (AX A and B) were admitted into the record without objection. Applicant testified. I kept the record open for Applicant to submit additional documents. Applicant timely submitted seven additional documents that I admitted into the record without objection. (GX 5, e-mail, dated June 1, 2017; AX C, e-mail with six attachments, dated May 31, 2017) I received the transcript of the hearing (Tr.) on April 28, 2017. The record closed on June 2, 2017, after I received Applicant's post hearing submissions.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 37 years old. He is a high school graduate, never married, and has no children. He has not served in the military. He has contemporaneously worked as a project manager for a private company since 2013 and for a DOD contractor since 2015. He requires eligibility for access to classified information for his work with the DOD contractor. This is his first request for a security clearance. (Tr. 17-20; GX 1, e-QIP, dated March 9, 2015)

The SOR alleges that Applicant did not timely file federal income tax returns for 2009 and 2013 (SOR 1.a). The SOR further alleges that a state placed a tax lien against Applicant for \$3,884.36 for taxes owed for tax year 2009 (SOR 1.b).

Applicant admitted that he did not timely file his 2009 federal income tax return. When the 2009 tax return was required to be filed in 2010, Applicant was unemployed and not financially able to pay his taxes. When he was financially able, he did not remember that he had not filed his 2009 federal income tax return. He was never contacted by the Internal Revenue Service (IRS) about the 2009 income tax return. When he received the SOR on May 27, 2016, he realized he had failed to file the income tax return. He had a job and was financially able to pay the taxes. He contacted the IRS and immediately filed the income tax return. He established a payment plan with the IRS. (Tr. 26-28)

¹ I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

Applicant admitted he did not timely file his 2013 federal income tax return. In 2013, he was working both as an employee of a company and privately as a business owner. The owner of the company passed away and Applicant did not receive his pay for his last four months of work. This created a financial problem and led to his inability to pay his personal income tax. He was able to pay the tax for his business, but not his personal income taxes. He did not contact the IRS to explain his financial issue. (Tr. 28-32)

After receiving the SOR in May 2016, Applicant agreed to a payment plan with the IRS for both the 2009 and 2013 taxes. He was to pay \$250 a month until the debt was resolved. In May 2017, after paying \$250 to the IRS for ten months, Applicant made a lump sum payment that resolved the federal taxes he owed. (Tr. 32-35) IRS tax documents reveal that Applicant is current with his federal income taxes through 2015. (AX C, e-Mail dated May 31, 2017; AX D, IRS Record of Account, tax year 2009 to 2013; AX E, Tax Return Transcripts for tax years 2009 to 2013; AX H, Account Transcript, 2009 to 2013; AX I, Wage and Income Transcripts 2009 to 2013).

Applicant did not pay his 2009 state income taxes for the same reasons he did not file the federal income tax return. The state placed a tax lien against Applicant. Applicant learned of the state tax lien when he received the SOR in May 2016. He paid the state tax lien as soon as possible after learning of the lien. He provided a receipt for payment of the lien (AX A, Receipt), and the court document releasing the lien. (AX B, Release of Lien, dated August 8, 2016)

Applicant timely filed for an extension to file federal tax return for tax year 2016. (AX F, IRS Form 4686) Applicant filed an extension to file his state tax return for tax year 2016. (AX G, State Tax Form 502E) Applicant is current with filing federal and state tax returns.

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 must be considered 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(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.” 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, 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 in seeking 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 the 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.

Analysis

Financial Considerations

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 a person’s reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Applicant admits to delinquent federal tax debts because he did not timely file his 2009 and 2013 federal income tax returns. This information raises the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

I considered the following Financial Considerations Mitigating Conditions under 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;
- (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 individual has received or is receiving financial counseling for the problem from a legitimate and credible sources, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (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 and is in compliance with those arrangements.

Mitigating condition AG ¶ 20(a) does not apply. Applicant accumulated debts for not timely filing federal income tax returns for 2009 and 2013 because he did not have the funds to pay any taxes he owed. His failure to file the tax returns was recent not caused by unusual circumstances not likely to recur. However, AG ¶ 20(b) applies because he did not have the funds to pay the taxes owed because of unemployment in 2009 and his employer did not pay his last four months of salary in 2013. Applicant did not report any financial counseling so AG ¶ 20 (c) does not apply.

AG ¶¶ 20 (d) and (g) apply. Applicant contacted the IRS and established a payment plan for the taxes. He paid on the plan for about ten months and then made a lump sum payment to resolve any taxes owed. He provided information from the IRS that his federal income taxes are current. He provided court documents that the lien for federal taxes has been paid and the lien released.

Applicant established a track record of paying his debts and acting in a financially responsible manner. There is ample evidence of responsible behavior, good judgment, and reliable conduct and actions by Applicant towards his finances. Applicant met his burden to establish his good-faith efforts to resolve his remaining debts. He established that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. It is obvious that Applicant's financial problems are under control, and that Applicant is managing his personal financial obligations reasonably and responsibly. Applicant's reasonable and responsible actions towards his finances is an indication that he may protect and safeguard classified information. Applicant presented sufficient information to mitigate security concerns for financial considerations

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. Applicant incurred delinquent debt when he did not timely file his 2009 and 2013 federal income tax returns. He since has filed the returns and paid all taxes owed. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances under the circumstances. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated

security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.

THOMAS M. CREAN
Administrative Judge