



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



In the matter of:)
)
) ISCR Case No. 15-02757
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Applicant's failure to timely file his federal income tax returns between 2012 and 2014 was based on his misunderstanding of the filing deadlines applicable to U.S. citizens living overseas. He has since filed all outstanding federal income tax returns, with no additional taxes due. Clearance is granted.

Statement of the Case

On February 10, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on April 21, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on May 6, 2016, and provided responses in May 2016 and July 2016, respectively.³ The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 8 and Applicant's Exhibits (AE) A through F, are admitted without objection.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant has worked for federal contractor companies since 2004, living and working outside the United States. He has worked for his current employer since 2013. DOD initially granted Applicant a security clearance in 2004. He completed his most recent security clearance application in October 2014, disclosing that he failed to file federal income tax returns for 2012 and 2013. Applicant's disclosure is the basis for the SOR allegation. In his answer to the SOR, Applicant admitted that he failed to timely file his 2014 federal income tax returns as well. Applicant believed that because he did not owe any additional taxes, the deadline for filing federal income tax returns did not apply to him. Applicant filed his outstanding federal income tax returns for 2012, 2013, and 2014 in May 2016, May 2015, and January 2016, respectively. He did not owe any additional federal taxes for those years. He timely filed his 2015 return.

Applicant does not have any other financial issues. He has assets in excess of \$200,000 and a favorable credit history. He has also received favorable character references from his supervisor and client.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair,

² GE 1.

³ In his responses, Applicant submitted documents served upon him by Department Counsel. Those documents are excluded as duplicative of items already in the record.

impartial, and commonsense decision. 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Financial Considerations

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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.⁴

The SOR alleges, in pertinent part, that Applicant “failed to file federal income tax returns for tax years 2012 through at least 2013, as required” Applicant asserts that the SOR allegation failed to articulate the requirement he failed to meet. Although the allegation does not specify the particular requirement, it provided Applicant sufficient notice of the Government’s concerns and enough information to allow Applicant to prepare a response. Applicant admits that he did not file his 2012 through 2014 federal tax returns timely, but argues that there is no absolute deadline for doing so. He posits that any deadline established by the IRS is only there to impose penalties and interest on tax balances that remain unpaid after that date.

Applicant’s understanding of the filing deadlines is incorrect. The deadline for filing federal income tax returns is established by federal law, specifically, 26 U.S.C. § 6072(a). Generally, U.S. citizens required to file federal income tax returns must do so “on or before the 15th day of April following the close of the calendar year.” IRS regulation, 26 C.F.R. § 1.6081-5(a)(5) grants an automatic extension to U.S. citizens

⁴ AG ¶ 18.

living abroad until the “fifteenth day of the sixth month following the close of the taxable year.” The statutes and rules do not make exceptions for taxpayers who believe they will not have an additional tax obligation or those expecting to receive a refund. The IRS may grant an additional extension if the taxpayer makes a written request.

Applicant filed his 2012 and 2013 income tax returns in 2014 and 2016. He did not request an extension for either tax year. Applicant’s failure to comply with federal tax law between 2012 and 2013 establishes the Government’s *prima facie* case under Financial Considerations Disqualifying Condition AG ¶ 19(f), that he failed to file annual federal income tax returns as required. However, there is sufficient evidence in the record to mitigate the security concern. Applicant’s failure to file was based on a misunderstanding of the requirements, not an attempt to avoid his responsibilities. He has since filed his outstanding federal income tax returns and showed compliance with the requirements in 2015. Financial Considerations Mitigating Condition AG ¶ 20(g), the individual has made arrangement with the appropriate tax authority to file and is in compliance with those arrangements, applies.

Accordingly, no doubts remain about Applicant’s suitability for access to classified information. In reaching this decision, I have considered the whole-person factors at AG ¶ 2(d). Applicant has taken the appropriate steps to remediate his federal tax issue. His failure to timely file his federal income tax returns was not a function of poor judgment, or an inability to abide by rules and regulations, but a misunderstanding of federal law. He is financially healthy and it is unlikely that his finances can be effectively used as a source of vulnerability or exploitation. Furthermore, he had held a security clearance for at least 13 years without incident.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a: For Applicant

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge