



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-07154

Appearances

For Government: Andre Gregorian, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

05/09/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On June 6, 2016, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ On August 8, 2016, Applicant responded to the SOR, addressed the three allegations, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on March 28, 2017. The matter was scheduled on May 24, 2017, for a July 27, 2017, hearing. The hearing was convened as scheduled.

The Government offered three documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-3. Applicant gave testimony and offered 20 documents, accepted without objection as Exs. A-T. The record was left open through August 22, 2017, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on August 4, 2017. On August 21, 2017, Applicant submitted 10 additional documents.

¹ The action was taken under Executive Order 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 within the DOD on or after September 1, 2006. Since that time, the AG have been amended. The present AG, applied here, are in effect for any adjudication on or after June 8, 2017.

After review by the Government, they were admitted without objection as Exs. U-DD. The record was closed on August 22, 2017. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 54-year-old senior systems architect engineer and business owner. He has been an employee of his business since 2006. First granted a security clearance in about 1986, he has maintained his present security clearance since 2004. Applicant has a bachelor's degree from a major university. Applicant's wife is a homemaker. The couple has one pre-teen child. Applicant has maintained the services of an accountant since 2005, and he has received financial counseling. (Ex. C) Recommendations from friends and professional peers are all highly favorable. (Ex. H)

In 2006, Applicant met his future wife. Their romantic relationship progressed quickly. As the woman was a foreign national, Applicant prepared multiple forms and reviewed much paperwork trying to get her a fiancée visa, while arranging for a wedding abroad. (Tr. 24) This involved multiple trips between their two countries. Ultimately, the couple married in the United States in February 2017. A child was born the following month. Unfortunately, this all occurred during a short period of time during which Applicant had chosen to do his own federal and state taxes. Because of all the "huge life changes that were going on at the time," Applicant failed to timely file his income tax returns for TY 2006-2007 or to seek aid from his accountant. (Tr. 24, 43-44) Although he did timely request extensions for filing his various tax returns, he failed to submit them within six months of the regular due date. (Tr. 25; Ex. DD)

During a 2015 interview related to this process, Applicant self-reported his failure to file state and federal income tax returns for tax years (TY) 2006 and 2007. In June 2017, Applicant, through his accountant, filed his TY 2006 federal and state tax returns, both business and personal.² (Tr. 22-23; Exs. K, M, N, and O) At the same time, he similarly filed his federal and state business and personal income tax returns for TY 2007.³ (Tr. 22; Exs. L, N, and P-Q) With those filings, Applicant paid modest sums to his state, while considerable refunds he would have otherwise have received for overpayment were barred because his filings were too late. (Tr. 17, 23, 38-39)

At the time, Applicant was unaware that his failure to timely file tax returns could jeopardize his security clearance eligibility. (Tr. 25-26) Applicant's accountants have since checked to assure that all his taxes have been paid and they have reviewed his past returns.⁴ (See, e.g., Exs. V, X, and Y) Applicant now fully understands the

² Applicant overpaid toward his TY 2006 federal personal income tax by approximately \$23,000. (Tr. 23)

³ Applicant's accountant was working on the TY 2006-2007 returns when the SOR was issued. (Tr. 32)

⁴ Contrary to the SOR, there is no evidence Applicant had an outstanding debt amounting to \$60,000 owed to the federal taxing authority.

importance of timely filing one's income tax returns. (Tr. 46) Making sure tax returns are timely filed is now a priority for him. (Tr. 46-47) He intends to let professionals exclusively file his tax returns in the future. (Tr. 51) Applicant has offered a statement of intent indicating that he will automatically forfeit any security clearance granted should he ever again file his tax returns late. (Tr. 18; Ex. B)

Before these issues arose, Applicant had only been involved in one incident that potentially raised security concerns. Several years earlier, Applicant had been working in a classified lab. He later found an unmarked CD-ROM in his briefcase. He did not put it in the briefcase and he did not know its origin. Applicant immediately reported the incident to his superior and tendered the CD-ROM for appropriately handling. The individual to whom he reported this incident highly recommends Applicant for a security clearance, noting Applicant's honesty, trustworthiness, reliability, and candor. (Ex. R)

While on travel in 2010, Applicant got a telephone call from a cable television company saying that boxes had been left on his porch for him to return its equipment. Applicant was confused, as he had never used this company or its services. (Tr. 19-20) This was his first indication that he was a victim of identity theft.⁵ Once he discovered this, he filed a police report. (Ex. D) That report fully documented the reporting of the incident and the initial efforts by the police. Applicant informed the cable provider that he had reported the matter to the police. The company "basically said, okay, [and] they wrote it off as mistaken identity or identity fraud." (Tr. 21) Applicant believed the company would be having the incorrect entry removed from his credit report. (Tr. 21)

Today, Applicant is in good financial shape. He has around \$5,000 available in the bank and a retirement account with a balance of approximately \$15,000. He and his spouse have about a \$50,000 share in a property located in her former country of residence. (Tr. 49) Applicant owns his residential home, in which he has about \$150,000 in equity, and a smaller property he purchased from his father, which has a value of \$10,000. He typically has a net monthly remainder after all expenses. His only large purchase in the past five years was a used automobile. He is able to meet his monthly obligations without difficulty.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). The AG 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. They 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. Under the

⁵ In addition, according to Applicant's December 2014 credit report, the account was suspiciously opened after the date of last activity on the account. (Ex. 2 at 5)

AG, the entire process is a conscientious scrutiny of variables known as the “whole-person concept,” under which all available, reliable information must be considered.

The protection of the national security is the paramount consideration. Any 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate admitted facts or facts proven by the Government, and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, the Government introduced credible evidence indicating that Applicant failed to timely file both federal and state income taxes for TY 2006 and TY 2007, owed a balance to the federal government for those tax years, and had a \$582 delinquent debt owed to a telecommunications provider. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

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.

Under these facts, five conditions could potentially mitigate the finance-related security concerns posed here:

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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

Applicant was sidetracked from timely filing his federal and state income tax returns for TY 2006 and 2007 due to an international, whirlwind romance that began sometime in early or mid-2006. In short order, Applicant dated, fell in love, proposed, and began flying back and forth to his fiancée's country as part of their courtship. At the same time, he was keeping up with his office work, applying to the appropriate U.S. authorities for a visa and related paperwork for his intended, planning a foreign wedding, preparing for a domestic wedding, and ultimately getting married in the United States. A month later, Applicant's child was born, topping a highly busy year.

In spite of all these activities, Applicant still remembered to submit the appropriate paperwork asking for an extension to file his tax returns. Although he tarried in ultimately filing those returns, his tax return issues are limited to just that one, isolated period (2006-2007). Moreover, while this scenario may not be highly unusual in terms of his romance, the geography and haste involved was rather out of the ordinary. As the more seasoned Applicant of today is unlikely to repeat such events or circumstances, sufficient facts exist to give rise to AG ¶ 20(a). On the other hand, the situation was not out of Applicant's control, obviating application of AG ¶ 20(b).

As for the belated tax returns, Applicant, to his credit, requested an extension to submit them. Such a request, however, does not give one an unlimited time to then

submit the required filings. Here, Applicant either forgot or procrastinated in having the returns completed for about a decade. This poses an extreme example of oversight, if not negligence, that raises significant security concerns.

However, Applicant finally saw fit – before the issuance of the SOR – to start the process with his accountant to take corrective action. While barred from collecting refund monies owed to him due to the lateness of his submissions, Applicant has shown that the federal and state tax returns at issue have been filed, all appropriate tax funds paid, and the situation resolved with the relevant taxing authorities. In light of these facts, AG ¶ 20(g) applies. Overall, Applicant is otherwise financially responsible, living within his means, and has received financial counseling. He is committed to leaving his taxes in the more responsible hands of his accountant. When all this is taken in conjunction with the swift action he took reporting the suspicious entry on his credit report, AG ¶ 20(c)-(d) are also raised.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 54-year-old senior systems architect engineer and business owner who has been associated with his present company for about a dozen years. He was first granted a security clearance in about 1986, and he has maintained his present security clearance since 2004. According to his former superior, Applicant's only involvement with a dubious security incident, the case involving a suspicious CD-ROM, resulted in a display of proper and professional handling by Applicant. A married college graduate and father of one child, Applicant has received financial counseling.

Applicant has retained an accountant for over a dozen years to assist him with his financial matters. In 2006-2007, when he quickly went from bachelor to married man and father, however, he was in the middle of an aberrant period during which he had decided to handle his own federal and state income tax returns. While he remembered to file for an extension with regard to the filing of his tax returns, he failed to follow through and complete them in a timely matter.

A decade later, just prior to the issuance of the SOR, Applicant sought review of his tax issues by a professional. He then instructed his accountant to file the forgotten tax returns. They have since been filed, outstanding taxes were paid, and, to his detriment, he found his filings to be too late for him to receive what would otherwise have been a considerable refund. Since then, he has tasked his accountant with reviewing his entire tax return situation and attending to any issues. Applicant now fully

appreciates the importance of filing his returns in a timely manner, and he has wisely chosen to have such matters in the future handled exclusively by an accounting professional.

As for the \$582 delinquent debt noted on his credit report, that entry, on its face, is irregular. It notes a date of last activity that precedes the date the account was supposedly opened. When Applicant first heard that the telecommunications entity considered him to be a customer, he called it directly, corrected the matter, and then reported the situation to the police as a case of identity theft. A formal police report was promptly completed, and Applicant expects his credit report to soon be amended. If not, he has received financial counseling and knows to immediately seek the entry's deletion by disputing the error with one of the three major credit reporting bureaus.

Timely filing of one's federal and state income taxes is a fundamental requirement for an individual entrusted with a security clearance. Here, Applicant's issues were isolated to a two-year period many years ago. Such issues have not recurred in nearly a dozen years. Applicant now fully appreciates the importance of this annual requirement and will not again fail to file all necessary paperwork in a timely fashion. This is his only security failure after many years of maintaining a security clearance. Today, his focus is directed toward his responsibilities, and not the whirlwind excitement of romance. Given what he has learned and experienced, I find it unlikely he will again neglect his tax responsibilities. Therefore, I find Applicant has mitigated financial considerations security concerns.

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.c:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge