



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations, foreign influence, and personal conduct security concerns. National security eligibility for access to classified information is granted.

History of Case

On June 14, 2013, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP). On November 7, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations), B (foreign influence), and E (personal conduct).

Applicant answered the SOR on January 16, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing. On February 22, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to

Applicant and received by him on April 3, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant timely submitted additional information in response to the FORM that I marked as Applicant Exhibit (AE) A, and included a letter and tax documents. He did not object to the admissibility of any Items. Department Counsel did not object to the admissibility of AE A. Items 1 through 8 and AE A are admitted into evidence. The Defense Office of Hearings and Appeals assigned this case to me on October 1, 2017.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a, in that a state had filed a tax lien against him. (Item 2) He denied the remaining allegations in the SOR and provided explanations.

Applicant is 45 years old. He has been married and divorced three times. His most recent divorce was in October 2016. He served in the Air Force from 1990 to 1999, when he received an honorable discharge. He has worked for a defense contractor since 2000. From 2010 to the time he was interviewed by a government investigator in 2015 about information in his e-QIP, he had been living and working in Cyprus.

Financial

The SOR contained three allegations related to financial delinquencies: an unpaid state tax lien for \$9,161 that was filed in May 2014 by State 1 for the 2007 tax year; an unpaid credit card account for \$4,245; and another unpaid credit card account for \$2,341. The two credit card accounts were owed to the same creditor. The status of each of those debts is as follows:

During an investigative interview in February 2015, Applicant stated he had no knowledge of the tax lien filed by State 1 because he never resided in that state. After trying to resolve the matter for several months, in early January 2017, he hired a tax attorney to investigate the issue. His attorney filed the appropriate documents pertinent to his residency in 2007 and the lien was subsequently released in April 2017. The debt alleged in SOR ¶ 1.a is resolved. (Item 2; AE A)

In April 2016, Applicant paid the \$4,245 delinquent debt alleged in SOR ¶ 1.b. It had been reported as delinquent in May 2012. It is resolved. In February 2015, he paid the \$2,342 delinquent debt alleged in SOR ¶ 1.c. It was reported delinquent in January 2015. It is resolved. (Item 2; AE A)

Personal Conduct

The SOR alleged that Applicant falsified his June 2013 e-QIP because he failed to disclose the state tax lien and two delinquent debts. Applicant denied that he intentionally

falsified answers in his e-QIP related to those financial matters. He said he was unaware of the tax lien because he never lived in State 1, and the lien was not filed until May 2014, after he completed the e-QIP. (AE A; Item 4) He said he used both credit cards while he was traveling abroad and said they became delinquent after he relocated from the United States to Cyprus. (Item 4)

Foreign Influence

The November 2016 SOR raised security concerns related to the residency and nationality of Applicant's wife and sister-in-law, who are dual citizens of Cyprus and Serbia, residing in Cyprus. It also alleged that his mother-in-law and father-in-law are citizen residents of Serbia. In his answer to the SOR, Applicant noted that he divorced his wife in October 2016, and no longer has contact with her or any in-laws. (Item 2)

Policies

This case is adjudicated 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 adjudicative guidelines, which became effective within the DOD on June 8, 2017.

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions 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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 national security eligibility will be resolved in favor of the national security.”

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies 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 eligibility for access to classified information or assignment in sensitive duties. 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.

Section 7 of EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case. Two may be potentially applicable:

(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.

The evidence does not establish the above disqualifying conditions. Upon investigation, State 1 determined that the alleged 2007 state tax lien was not Applicant's debt and subsequently released it. AG ¶ 19(f) does not apply to SOR ¶ 1.a. The credit

card debt alleged in SOR ¶ 1.b was reported delinquent in May 2012 and paid in April 2016. The credit card debt alleged in SOR ¶ 1.c was reported delinquent in January 2015 and paid in February 2015. These two debts that totaled \$6,586 were paid before the SOR was issued and therefore failed to raise a security concern in this case. There is insufficient evidence to establish a history of not meeting financial obligations. This guideline is found in favor of Applicant. The Government failed to establish a security concern.

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may have been disqualifying in this case. Based on Applicant's October 2016 divorce and statements that he no longer has contact with his former wife and in-laws, who are citizens and residents of Cyprus, there is no evidence to establish a disqualifying condition under this guideline. This guideline is found in favor of Applicant. The Government failed to establish a security concern.

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security

investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The Government alleged in SOR ¶¶ 2.a and 2.b that Applicant deliberately falsified answers to financial questions on his June 2013 e-QIP, by failing to disclose an unpaid tax lien and two collection accounts. The Government contended that those falsifications constituted a potential disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he intentionally misled the Government by not disclosing the state tax lien or two credit card debts. His explanation that he was unaware of the debts is credible. He could not have known of the 2014 tax lien when he completed his 2013 e-QIP. There is insufficient evidence to rebut his statement that he did not have knowledge that the two credit cards became delinquent while he was traveling and working abroad. This guideline is found in favor of Applicant. The Government failed to establish a security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. My comments under Guidelines F, B, and E are incorporated into this whole-person analysis.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant met his burden to mitigate the financial considerations, personal conduct, and foreign influence security concerns raised by the facts of this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

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: **FOR APPLICANT**

Subparagraphs 1.a through 1.c: For Applicant

Paragraph 2, Guideline B: **FOR APPLICANT**

Subparagraphs 2.a through 2.c: For Applicant

Paragraph 3, Guideline E: **FOR APPLICANT**

Subparagraphs 3.a and 3.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge