



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



In the matter of:)
)
) ISCR Case No. 16-00452
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: [Applicant's wife], Personal Representative

11/28/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 31, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on July 6, 2016, and requested a hearing before an administrative judge.

The case was assigned to me on August 16, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 23, 2017, scheduling the hearing for September 19, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and called five witnesses, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that I have marked Applicant's Exhibits (AE) A

through D and admitted without objection. DOHA received the hearing transcript (Tr.) on September 27, 2017.

Findings of Fact

Applicant is a 58-year-old engineer for a defense contractor. He has worked for his current employer or a predecessor contractor since at least 1990. He seeks to retain a security clearance. He has a bachelor's degree, which was awarded in 1984. He is married with an adult child.¹

Applicant is focused on his job, often working seven days a week. He takes little or no vacation. He is described by his wife and co-workers as brilliant, but disorganized, with little interest or involvement in anything outside work. He is also described as trustworthy, reliable, and "extraordinarily honest." His wife handles most of his non-work-related responsibilities, including: "finances, investments, and taxes; major purchasing decisions re cars, computers, medical and dental coverage, home appliances, and home improvements; gifts, family social activities; shopping; and any other responsibilities."²

Applicant's wife used to work for the U.S. Government, and she held a security clearance. She suffers from depression, and she has a hoarding disorder. She did not file their joint state and federal income returns for 2014, 2015, and 2016 when they were due, and she did not pay all the taxes owed.³

Applicant and his wife retained a tax professional. They filed their state and federal tax returns for 2014 through 2016 in November 2017. Their returns indicated they owed the IRS \$1,998 and their state \$418 for 2014. They owed the IRS \$426 and their state \$229 for 2015. They paid the IRS \$1,998 and \$426, and the state \$647 for the two years. Their 2016 returns indicated they were due a refund of \$3,501 from the IRS and \$1,503 from their state.⁴

Applicant's wife accepted responsibility for their failure to file the tax returns and pay taxes when due. She is receiving treatment for her issues. Applicant knows it is also his legal obligation to file his tax returns and pay his taxes on time, and that failure to do so in the future could cost him the job that he loves. They indicated that they will file all future returns when they are due.⁵

¹ Tr. at 22; GE 1.

² Tr. at 12, 21-25, 43-60; Applicant's response to SOR; AE A.

³ Tr. at 13, 25; Applicant's response to SOR; GE 2; AE A.

⁴ Tr. at 13, 26; AE A-C.

⁵ Tr. at 25-29, 32, 35-42, 65-66; Applicant's response to SOR; AE A, D.

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 (AG), which became effective on June 8, 2017.

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 are to be used 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, 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, 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 national security eligibility will be resolved in favor of the national security."

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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 personnel 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) 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.

Applicant did not file his tax returns when they were due, and he did not pay his taxes. The evidence raised the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 owed and is in compliance with those arrangements.

Applicant is described by his wife and co-workers as brilliant, but disorganized, with little interest or involvement in anything outside work. That description is consistent with my observation. He is also described as trustworthy, reliable, and "extraordinarily honest." His wife handles virtually all of his non-work decisions and tasks. That approach worked until her depression and hoarding disorder contributed to her failing to file their tax returns and pay their taxes.

Applicant and his wife realized they needed assistance, and they retained a tax professional. They filed their state and federal tax returns for 2014 through 2016 in November 2017. They paid the taxes due for 2014 and 2015, and they are due refunds for 2016, which will cover any additional amounts due for penalties and interest.

Applicant knows it is his legal obligation to file his tax returns and pay his taxes, and that failure to do so in the future could cost him the job that he loves. They credibly stated that they will file all future returns when they are due. I am satisfied that Applicant's finances are now in order and that his tax issues will not be repeated. AG ¶¶ 20(d) and 20(g) are applicable.

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):

(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 eligibility for 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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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
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Subparagraphs 1.a-1.c:	For Applicant
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