



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



In the matter of:)
)
) ISCR Case No. 16-01158
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson Jr., Esq., Department Counsel
For Applicant: *Pro se*

11/15/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On October 6, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on November 3, 2016. The case was assigned to me on February 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 26, 2017, and the hearing was convened as scheduled on June 20, 2017. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Department Counsel's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, but did not offer any exhibits at the hearing. The record was held open and Applicant submitted exhibit (AE) A. DOHA received the hearing transcript (Tr.) on June 27, 2017.

Findings of Fact

Applicant denied the single SOR allegation in his answer. After a careful review of the pleadings and evidence, I make the following findings of fact.

Applicant is 49 years old. He has worked for a defense contractor since August 2015 as an IT specialist. From June to August 2015, he was unemployed. From August 2013 to June 2015, he was employed as an IT consultant. He married in 1995 and has one adult stepchild from the marriage. He has never held a security clearance.²

The SOR alleges Applicant failed to file his federal and state income tax returns for tax years 2011-2014. Applicant explained that he failed to timely file for those years because his wife owned an incorporated business and the business's tax liability was not correctly computed, which impacted his ability to file his personal returns. His wife used a different tax preparer who incorrectly computed the tax liability. Applicant initially stated this problem surfaced starting with his 2013 tax return. When he was asked about why he failed to timely file his 2011 and 2012 tax returns as well, Applicant indicated he may have been mistaken as to when this issue first arose. He raised the issue initially when he affirmatively responded to a question on his September 2015 security clearance application (SCA), asking whether he failed to file any federal or state tax return within the last seven years. He stated this occurred in 2013. During his background interview, Applicant admitted failing to file both federal and state tax returns for years 2012 to 2014. When Applicant received a request to supply tax account transcript information in response to interrogatories (July 2016), he complied and provided the federal tax transcripts for tax years 2011 to 2014 and similar documentation from his state for the same years. He also documented that he properly filed extensions for both his 2015 federal and state tax returns. Applicant admitted that he should have acted in a timelier manner in resolving his tax-filing issues.³

Applicant's documentation shows that he filed federal tax returns as follows: 2011 return (due in April 2012) in January 2013; 2012 return (due in April 2013) in October 2015; 2013 return (due in April 2014) in November 2015; 2014 return (due in April 2015) in February 2016. Although not alleged, Applicant documented that he

² Tr. 5, 16; GE 1-2.

³ Tr. 17-18, 23, 27; GE 1-2.

timely filed his 2015 federal tax return within his extension of time in October 2016. Applicant's 2011-2014 federal tax returns were all filed before the issuance of the SOR.⁴

Applicant's documentation shows that he filed state tax returns as follows: 2011 return (due in April 2012) in December 2012; 2012 return (due in April 2013) in September 2015; 2013 return (due in April 2014) in October 2015; 2014 return (due in April 2015) in January 2016. Although not alleged, Applicant documented that he timely filed his 2015 state tax return within his extension of time in October 2016. Applicant's 2011-2014 state tax returns were all filed before the issuance of the SOR.⁵

Applicant testified that he currently owes no tax liability to either the federal or state governments. He pointed out that he never had any tax issues before his wife's business tax issues impacted him. There is no evidence of any other financial difficulties for Applicant. His tax issues are resolved.⁶

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 are 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, 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(a), 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

⁴ Tr. 24-26; GE 2; AE A.

⁵ Tr. 24-26; GE 2; AE A.

⁶ Tr. 18-20.

mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

(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 failed to file his 2011-2014 state and federal income tax returns when they were due. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 addressed his tax-filing issues that resulted from his wife's business and his own procrastination. He filed all the lacking federal and state tax returns before his SOR was issued. I find AG ¶¶ 20(d) and 20(g) apply.

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 the 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 guideline 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 considered his personal circumstances and his efforts to resolve his tax issues.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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

Subparagraph 1.a: 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.

Robert E. Coacher
Administrative Judge