



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



In the matter of:)
)
) ISCR Case No. 16-01482
)
Applicant for Security Clearance)

Appearances

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

03/30/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On February 13, 2015, Applicant submitted a security clearance application (SCA). On April 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations. The action was taken 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case was considered under the previous AGs.

Applicant answered the SOR on June 6, 2017. He admitted the single SOR allegation under Guideline F. He also listed that he had filed his 2009-2016 income tax returns to the state and the Internal Revenue Service (IRS), in response to an Interrogatory from the Defense Office of Hearings and Appeals (DOHA). He did not provide any other documentation with his Answer. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing. (Item 2) On July 11, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on September 14, 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 his receipt of the FORM. Applicant did not respond to the FORM and there was no objection to Items 1 through 5, which are admitted into evidence. The DOHA Office assigned the case to me on December 18, 2017.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 64 years old and employed by a Federal government contractor as a utility worker since February 2015. He has been married since 1996. He is the father of a 30-year-old son. He is requesting national security eligibility.²

The SOR alleges that Applicant failed to file his state and Federal income tax returns for the tax years 2009-2015. On his 2015 SCA, he disclosed that he had not filed his Federal income tax returns for 2012 and 2013. He listed that he had not filed these tax returns due to not having the financial means to satisfy the tax debts. During his April 2015 background interview, Applicant stated that he had not filed or paid his state or Federal tax returns for tax years 2011 through 2014. He also stated that he had no idea how much money he currently owed for these tax years.³

In August 2016, DOHA sent Applicant interrogatories asking him to verify his background subject interview report that was attached, and also requested he submit documentation of his filed Federal and state income tax returns covering tax years 2009-2015. Applicant verified the subject interview as being accurate in his response. During his interview, he reported to the investigator that one tax year (year unknown) he had his income tax returns prepared by a tax consulting company. He discovered that he owed \$900 for his Federal taxes. He did not have the money, so he did not file either his state or Federal income tax returns for that year. For the following years, he chose not to have his taxes computed and chose not to file his state or Federal income tax returns thereafter. He stated that the primary reason he and his spouse have procrastinated in contacting the tax authorities in recent years is due to his spouse's

² Items 3, 5.

³ Items 1, 3, 4.

health problems and the added stress it would cause. He stated that his finances were stable, but they primarily live paycheck to paycheck.⁴

Applicant hired a law firm to assist him with the filing of his income tax returns. In response to the interrogatories, he submitted documentation of his filed Federal tax returns for 2009 through 2015, all received by the IRS on January 24, 2017. He failed to provide any documentation showing the status of his state income tax returns. The Federal tax transcripts showed that he owed \$53.00 for tax year 2010; \$510.00 for 2011; \$1,527.00 for 2012, \$4,877.00 for 2013; \$4,973.00 for 2014; and \$4,429.00 for 2015, for a combined total of \$16,369.00.⁵ Applicant failed to provide documentation as to the amount of state tax, if any, owed.

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(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 access to classified information will be resolved in favor of 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

⁴ Items 4, 5.

⁵ Item 4.

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 Executive Order 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

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 or, 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability to satisfy debts;
- (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 timely file state and Federal tax returns for seven consecutive years. He owes over \$16,000 for his Federal tax debt. He did not provide

documentation that he has filed his state tax returns for 2009-2015. There is insufficient information to determine the amount of state tax debt he owes, if any. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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;
- (c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;
- (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 compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant provided documentation of filing his Federal tax returns after his background investigation was initiated. He did not provide documentation of filing his state income tax returns, nor did he provide any documentation to show whether he has paid, or is resolving his Federal tax debt of \$16,369. There is insufficient information to determine whether Applicant owes any state taxes.

There is no evidence that Applicant's financial problems were beyond his control. The mere comment of his spouse's health problems is insufficient to raise the mitigation condition. Hence, AG ¶ 20(b) does not apply. There is no evidence Applicant received financial counseling. He has not established any documented action of his efforts to resolve his Federal tax debt of approximately \$16,000, or whether he has taken any action to resolve his undetermined state tax debt, if any. There is no evidence that Applicant has filed his state income tax returns. AG ¶ 20(c) does not apply.

Applicant failed to address his delinquent tax filings until his background investigation was underway and after an interrogatory requested that he provide the Government records of his state and Federal tax filings. He provided documentation of Federal tax filings only, and his Federal tax debt was calculated at approximately \$16,000. There is no evidence he initiated a good-faith effort to repay his Federal tax obligations. I find AG ¶ 20(d) does not apply. I find AG ¶ 20(g) does not apply since there is no evidence Applicant has made arrangements to pay his delinquent Federal taxes. There is no evidence that he has filed his state income tax returns, or has made arrangement to repay any delinquent state tax debt, if any.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁶

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. Some of the factors in AG ¶ 2(d) was addressed under that guideline, but some warrant additional comment.

Applicant is a 64-year-old federal contractor employee. He chose not to file his Federal and state income tax returns for seven years and incurred tax debt. He did not

⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

voluntarily make an effort to resolve his tax problems until it became an issue in his security background investigation, and after the Government requested that he provide documentation of his tax filings. I considered Applicant's explanation of living paycheck to paycheck, and his recent procrastinating in contacting the state and Federal tax authorities in order to prevent added stress for his spouse's health problems. Whether or not Applicant could afford to pay his taxes, he knew he was required to timely file his state and Federal tax returns. Absent a compelling excuse or reason, his failure to timely file his tax returns and pay his tax debt for several years reveals a deficiency in his judgment, reliability and trustworthiness required of person handling sensitive information. A person who fails repeatedly to fulfill his legal obligations, such as filing income tax returns when due, suggests that an applicant will likewise have a problem with complying with well-established government rules and procedures. Although he has recently filed his Federal tax returns, which is a step in the right direction, he has failed to provide evidence that his state tax returns have been filed. He failed to provide documentation to show his good-faith efforts to repay his Federal tax debt. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate 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: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge