



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 16-02123
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/19/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On October 12, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on December 22, 2015. (Item 3, Personal Subject Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 27, 2016, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on October 19, 2016. He denied the two financial allegations and provided detailed information to mitigate the allegations. Applicant elected to have the case decided on the written record. (Item 1) Department Counsel submitted the Government's written case on November 3, 2016. (Item 4) Applicant received a complete file of relevant material (FORM) on November 18, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. (Item 5) Applicant did not provide additional information in response to the FORM. I was assigned the case on October 1, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the administrative judge could determine that he waived any objection to the admissibility of the PSI summary. Since Applicant did not respond to the FORM, he did not object to consideration of the PSI. Since Applicant did not object to consideration of the PSI, I will consider the information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact. Applicant is 53 years old, and a July 1982 high school graduate. He served on active duty in the Air Force from November 1984 until April 1988. He served in the Air Force Reserves from January 2002 until October 2003. He received an honorable discharge. He worked for various companies as an aircraft structural mechanic until starting work for his present defense contractor as an aircraft structural mechanic in September 2015. He has been eligible for access to classified information since June 2003. Applicant married in March 1986 and divorced in July 1998. He married his present wife in November 2004. He has three children. (Item 2, e-QIP, dated October 8, 2015)

Applicant reported on his e-QIP that he did not file his federal income tax returns for tax years 2011 through 2014. The SOR alleges that Applicant failed to file federal taxes, as required, for tax years 2011 – 2014 (SOR 1.a). The SOR also alleges that

Applicant owes approximately \$1,400 to the Internal Revenue Service (IRS) for tax year 2014 (SOR 1.b).

Applicant reported on his e-QIP that he did not timely file 2011 federal income tax return because he did not have the necessary documents. He was out of the country, not in his home location, and was having marital problems. He was not getting mail when his 2011 tax returns were due to be filed. He had not received the necessary pay documents to file his tax return. He was not worried about timely filing his federal tax return because he had more funds withheld from his pay for tax purposes than he believed he owed. He anticipated he would get a refund. For tax years 2012, 2013, he again had more money withheld for taxes so he believed he would receive refunds for those years also. (Item 2, e-QIP at 42-44; Item 3, PSI, at 7-8)

Applicant received the required pay documents by September 2015. He then worked with a tax preparation firm to file all of his past due income tax returns. Applicant provided copies of his federal tax returns for tax years 2011 to 2014. He filed the returns on October 29, 2015. He received refunds for tax years 2011 to 2013 of \$7,545. For tax year 2014, he paid federal income taxes of \$187. His federal taxes have been paid and resolved.

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 must be considered 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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 a person’s reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Applicant admits to not timely filing his federal tax returns because he did not have the information needed to file the returns. While he was employed, Applicant had more funds withheld from his pay than needed to pay his taxes. This information raises the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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.

I considered the following Financial Considerations Mitigating Conditions under 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;

(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, or 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 financial counseling for the problem from a legitimate and credible sources, such as a non-profit counseling 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 and is in compliance with those arrangements.

The mitigating conditions apply. Applicant did not timely file his federal income tax returns for four years because he was not at home and did not receive necessary pay information. Consequently, he did not have the information he needed to timely file the tax returns. He had more funds withheld from his pay for tax purposes so he would cover his taxes when he filed his returns. In 2015, he received the income statements and filed his returns using a professional tax preparer. He received a sizable refund except for one year when he paid a small tax assessment. His failure to timely file his federal tax returns occurred under circumstances unlikely to recur and because of conditions beyond his control. By having more funds withheld from his pay to be ahead of the tax debt, he showed his good-faith effort intentions to resolve his debts. He filed all tax returns, received refunds, and paid any taxes due. He is in compliance with his federal tax requirements, and there are clear indications the financial problems have been resolved. Applicant's efforts shows a good-faith efforts to fulfill his duty to file tax returns, pay federal taxes, and resolve the tax debt. Applicant did not report any financial counseling, but there are clear indications the problem has been resolved.

Normally, failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified and sensitive information. A person who fails repeatedly to fulfill his or her legal obligation to file tax returns does not demonstrate the high degree of good judgment and reliability required for a grant of access to classified or sensitive information. Where an applicant may have attempted to correct the tax return problem, there must still be careful consideration of the applicant's trustworthiness in view of his longstanding prior behavior evidencing irresponsibility by failing to timely file income tax returns. However, Applicant tried to negate the federal tax problems when he was unable to obtain the required pay documents. He had additional funds withheld from his pay so his taxes could be paid when he received the necessary pay documents. He demonstrated the high degree of good judgment and reliability required of persons granted access to classified or sensitive information.

Applicant provided enough details about what he did to address the tax debts alleged in the SOR. He provided sufficient documentation to show proof of payment and other evidence of progress or resolution. There is sufficient evidence to establish that Applicant resolved his tax debts. Applicant established a track record of paying his tax debt and acting in a financially responsible manner. There is ample evidence of responsible behavior, good judgment, and reliable conduct and actions by Applicant towards his finances. Applicant met his burden to establish his good-faith efforts to resolve his remaining debts. He established that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. There is sufficient assurance that his financial problems are resolved and will not recur in the future. His reasonable and responsible actions towards his finances is a strong indication that he will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated financial security concerns.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's active duty and reserve service in the Air Force. I considered that Applicant has been eligible for access to classified information since 2002 with no indications of any problems or security issues. Applicant did not timely file his federal income tax returns because he did not have the necessary pay information to file his returns. He had more funds withheld for tax purposes so he would have a positive tax balance when he received the information and could file his tax returns. He has since filed the returns and is current with his federal taxes. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.b: 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.

THOMAS M. CREAN
Administrative Judge