



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



In the matter of:

ISCR Case No. 16-03445

Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Department Counsel

For Applicant: *Pro se*

February 20, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 12, 2011 and on December 2, 2015, Applicant submitted Electronic Questionnaires for Investigation Processing (e-QIPS). (Government Exhibits 3 and 4.) On April 11, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. (Item 1.) The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on May 17, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2. On July 10, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, were

received by Applicant on August 1, 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 failed to respond to the FORM. DOHA assigned the case to me on December 18, 2017. Items 1 through 6 are admitted into evidence and are hereinafter referred to as Government Exhibits 1 through 6.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 43 years old. He has a high school diploma or the equivalent. He is employed by a defense contractor in Customer Support. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant served on active duty in the United States Marine Corps from May 1997 until June 2005 when he received an honorable discharge. He has been working for his current employer since his military discharge.

The SOR identified one allegation under this guideline concerning Applicant's failure to file his Federal income tax returns for tax years 2004 through 2015. In his answer to the SOR, Applicant admits the allegation. There is no evidence in the record to show that he cured his tax filing defaults. Furthermore, there is no evidence to show that he had filed his most recent, 2016 Federal income tax return as required by law.

Applicant stated that he asked for an account status from the Internal Revenue Service (IRS) on a number of occasions but has received no response from any of his inquiries. He stated that he also requested copies of his W-2 from his local headquarters so that he could file his returns, but he has received no response from them either. Applicant has failed to provide copies of his Federal income tax filings for

tax years, 2004 through 2015. Understanding that these tax returns are at issue, it can be reasonably assumed that he has yet to file them

Guideline E – Personal Conduct

Applicant completed an e-QIP dated January 12, 2011. (Government Exhibit 4.) In response to Section 26, concerning his financial record, Applicant was required to answer for the last seven years, unless otherwise specified in the question. He was asked to disclose all financial obligations, including those for which he was a cosigner or guarantor. In Section 26, Applicant was asked, in the past seven years, had he failed to pay Federal, state or other taxes or to file a tax return, when required by law or ordinance? The Applicant answered “NO” to the question. This was a false response. Applicant deliberately failed to disclose that he failed to file his Federal income tax returns for tax years 2004 through 2009.

Applicant completed another e-QIP dated December 2, 2015. (Government Exhibit 3.) In response to Section 26 concerning his financial record, once again Applicant was asked, “in the past seven years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” Applicant answered ‘NO” to the question. Again, this was a false response. Applicant deliberately failed to disclose that he had failed to file his Federal income tax returns for tax years 2008 through 2014.

Applicant explained that when he completed his e-QIPs he was not sure if he misread the question or just did not pay close attention to the question. He states that it was not his intention to deceive the Government. The record shows, however, that Applicant completed an e-QIP in 2011 and again in 2015. Each time, he deliberately omitted his failure to file the Federal income tax returns. After completing his e-QIP in 2011, he was granted a security clearance. Thus, in 2015, he answered the question the same way in order to receive his security clearance. Applicant knew or should have known that unfiled income tax returns and unpaid taxes are a serious security concern to DoD.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 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. Likewise, I have avoided drawing 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, 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 clearance 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 as to 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. 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 under AG ¶ 19. One is applicable in this case:

(g) 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 his Federal income tax returns for over a decade, spanning tax years 2004 through at least 2015. Applicant's actions demonstrate both a history of and an unwillingness to abide by the law. There is no evidence that Applicant had filed those tax returns or even timely contacted the IRS at the time he was required to file each return to exercise the option of filing for extensions. There is nothing in the record to show that he brought his filings current. The failure to file annual income tax returns suggests that Applicant has a problem complying with well-established governmental rules and systems. Tax liability was assessed against him. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations is potentially applicable 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), 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 source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolved debts.

Applicant provided no information concerning his Federal income tax filings that demonstrate appropriate mitigation. There is evidence of any sort to show that he has filed the Federal income tax returns in question. Thus, there is no evidence that he has

acted responsibly under the circumstances. His inaction casts doubt on his current reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

From the evidence provided, Applicant deliberately failed to disclose his failure to file his Federal income tax returns on two security clearance applications, first in 2011, when he received his security clearance, and then again in 2015, when he attempted to upgrade his security clearance. The fact that he did not list his failure to file his Federal income tax returns for tax years 2004 through 2015 in response to questions on not one, but two of his most recent security clearance applications clearly indicates behavior that shows deception, questionable judgment, unreliability, and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. Applicant intentionally and deliberately attempted to conceal material information from the Government regarding failure to file his Federal income taxes spanning over a decade. Falsifying material information is a serious offense, and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. He has not provided sufficient evidence to meet his burden of proof with respect to his personal conduct.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct 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:	AGAINST APPLICANT
Subparagraphs 1.a.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.:	Against Applicant
Subparagraphs 2.b.:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge