



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



In the matter of:)
)
) ISCR Case No. 17-00189
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. He filed his overdue federal and state tax returns for tax years 2014 and 2015 and he received refunds.

Statement of the Case

On March 15, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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).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 AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on March 22, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2017, scheduling the hearing for January 4, 2018. I convened the hearing as scheduled.

The Government's discovery letter and exhibit list were appended to the record as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1, 2, and 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through F, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until January 18, 2018, for Applicant to submit additional documentation. He timely provided additional evidence, which I marked collectively as AE G and admitted in evidence without objection. I marked as HE III the Government's email indicating no objection to AE G. DOHA received the hearing transcript (Tr.) on January 9, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 40 years old. He was married in May 2005, separated in April 2015, and divorced in March 2017. As of the hearing, he was in a relationship since late 2015 and he did not have any children. He graduated from high school in 1997 and he earned both an associate's and a bachelor's degree in 2002.²

Applicant has worked for his current defense contractor since April 2017. He was an assistant administrator and information technology manager as of the hearing. He also worked as a part-time flight instructor since 2002. He worked for prior defense contractors from 2005 through 2017. He was granted eligibility for a public trust position in 2006. He has never held a security clearance.³

The SOR alleges Applicant's failure to timely file federal and state income tax returns for tax years 2014 and 2015, as required. The allegations are established by Applicant's admissions. Applicant also listed and discussed his failure to timely file his 2014 and 2015 federal and state tax returns in his March 2016 security clearance application, during his July 2016 background interview, and in his December 2016 response to interrogatories.⁴

Applicant attributed his failure to timely file his 2014 and 2015 federal and state tax returns to his April 2015 separation and March 2017 divorce from his ex-wife. During the course of their marriage, Applicant was the primary breadwinner. He handled their

² Tr. at 6-8, 15, 25-29, 32, 46-48; GE 1, 2; AE D.

³ Tr. at 6-8, 15, 25-29, 46-48; GE 1, 2; AE D.

⁴ Response to the SOR; GE 1, 3.

finances. However, his ex-wife assembled the documentation necessary for filing their tax returns. From October 2014 to March 2015, Applicant was on temporary duty (TDY) for 28 days at a time. He then moved out of the marital home and lived with his mother from April 2015 to January 2017.⁵

While he was on TDY and during their separation, Applicant's ex-wife was uncooperative. Thus, Applicant was unable to obtain the necessary financial records so that their tax preparer could timely file their 2014 tax returns. He mistakenly thought he asked their tax preparer to request an extension. As he anticipated from prior tax returns that they would receive a refund, he waited to file until his ex-wife was cooperative with assembling the necessary tax documentation and signing the tax paperwork. He explored the option with his tax preparer of filing separately, but chose not to because of the substantial negative impact doing so would have on him. He acknowledged that it was inconvenient for him to attempt to obtain the necessary tax documentation on his own, rather than wait for his ex-wife to do so. Since he did not have a security clearance and he had not yet started the process of obtaining one, he did not realize the implications of failing to timely file his tax returns. He acknowledged that completing the application on March 8, 2016, was the impetus for him to reopen negotiations with his ex-wife and file their 2014 tax returns. An IRS tax account transcript for tax period 2014 and a certified copy of his 2014 state income tax return reflect that he filed their 2014 federal and state income tax returns on March 20, 2016. He was due a federal refund of \$9,454 and a state refund of \$3,177.⁶

While Applicant was given an extension until October 15, 2016 to file his 2015 tax returns, the relationship between him and his ex-wife was more adversarial. He had hired a divorce attorney by July 2016. They had just negotiated the terms of their settlement agreement in October 2016, which included a provision that she receive half of their 2015 tax refund. In addition, he continued to assume that there would not be any negative security clearance implications by failing to timely file since he was due a refund. He neither sought advice from his facility security officer nor did he think to ask his tax preparer to seek a second extension. In retrospect, he testified that it would have been better for him to file separately. IRS tax account transcripts for tax period 2015 and certified copies of his 2015 state income tax returns reflect that he filed their 2015 federal and state tax returns on February 23, 2017. He was due a federal refund of \$8,431 and a state refund of \$2,550.⁷

Applicant timely filed his federal and state income tax returns for tax period 2016 and was due refunds of \$6,592 and \$3,077, respectively. He now understands the severity of failing to timely file his tax returns. He expressed his apologies for not timely filing his tax returns for 2014 and 2015. He intends to continue to file all future tax returns in a timely manner. He has otherwise been financially responsible. He was current on the mortgage for the home he lived in as of the hearing, which was

⁵ Tr. at 30-42, 51-57; GE 1, 2, 3; AE A, B, C, D, F.

⁶ Tr. at 31-42, 51-57; GE 1, 2, 3; AE A, B, C, F.

⁷ Tr. at 36-46, 51-57; GE 2; AE A, B, C, D, F.

purchased in April 2011. He was also current on the mortgage for two rental properties. He does not have other delinquent accounts and he maintains a credit score in the 800s.⁸

Applicant's direct supervisor of 10 years stated that Applicant has always conducted himself in a professional and ethical manner. A project manager who has worked closely with Applicant since 2014 described him as trustworthy, honest, and reliable.⁹

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 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(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."

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

⁸ Tr. at 48-52, 56-58; GE 1, 2; AE E.

⁹ AE G.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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 his federal and state income tax returns for tax years 2014 and 2015, as required. AG ¶ 19(f) is established.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

(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; 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's April 2015 separation and March 2017 divorce were conditions beyond his control that contributed to his failure to timely file his 2014 and 2015 federal and state tax returns. However, Applicant did not act responsibly under his circumstances. He did not request through his tax preparer an extension of time to file his 2014 tax returns. He did not seek an additional extension of time to file his 2015 tax returns. He did not attempt to obtain the tax documentation necessary to file his tax returns on his own, rather than wait for his ex-wife to do so, because it was inconvenient. He continued to assume that there would not be any negative security implications for failing to timely file his 2015 tax returns despite his acknowledgment that the completion of his security clearance application on March 8, 2016, was the impetus for him to file his 2014 tax returns on March 20, 2016, and he did not seek advice from his facility security officer. AG ¶ 20(b) is not established.

However, Applicant provided documentation to corroborate his claim that he filed his federal and state income tax returns for 2014 and 2015. He received refunds for both tax years. He timely filed his tax returns for 2016. His financial situation is under control and occurred under circumstances that are unlikely to recur. AG ¶¶ 20(a) 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 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. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns involving his failure to file federal and state income tax returns for tax years 2014 and 2015, as required.

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.d:	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.

Candace Le'i Garcia
Administrative Judge