



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



In the matter of:)
)
) ISCR Case No. 17-01213
)
)
Applicant for Security Clearance)

Appearances

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

February 23, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 27, 2016, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP). (Item 3.) On May 16, 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. 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on June 6, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 21, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing 4 Items, were received by Applicant on July 25, 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 responded to the FORM on August 10, 2017 and on September 5, 2017. Department Counsel had no objection to the evidence provided by Applicant on August 10, 2017. Department Counsel objected to the evidence submitted by Applicant on September 5, 2017, but states no basis for the objection. Both responses are admitted into evidence, and marked as Applicant's Exhibits A and B. DOHA assigned the case to me on November 9, 2017. Applicant had no objection to Government's items. Therefore, items 1 through 4 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 4.

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 AG, 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 58 years old. He has never been married and has no children. He is employed by a defense contractor as an Electronics Technician. 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 in the United States Marine Corps from May 1976 until December 1978 when he received an honorable discharge with severance pay for a physical disability. He has been working for his current employer since November 1994. He has held his current security clearance since May 2006.

The SOR identified three allegations under this guideline concerning Applicant's failure to file his Federal and state income tax returns for tax years 2015; and his failure to timely file his Federal and state income tax returns for tax years 2011, 2012 and 2013. In his answer to the SOR, Applicant admits the allegations. Applicant attributes his failure to file his income tax returns on laziness; and his belief the he was due a

refund; and his knowledge that he could delay filing his income tax returns for three years without forfeiting his refund.

Applicant acknowledges his misunderstanding of the tax laws and his mistake in not filing his income tax returns in a timely fashion. He states that he is serious about fixing his past problem and is remorseful. He has now filed the income tax returns in question, and has provided copies of his Federal income tax account transcript showing that he has filed his Federal income tax returns for tax years 2011, 2012, 2013, 2015, and 2016. He provided a copy of his 2014 Federal tax return tracking result that shows that he has filed this return. He has also provided copies of his state income tax returns for tax years 2011, 2012, 2013, 2014, 2015, and 2016. (Applicant's Exhibit A.) He realizes that going forward, he must continue to file his income tax returns on time, if he is to continue to be security clearance worthy. Not getting around to filing ones income tax returns shows poor judgment and unreliability and disqualifies one from access to classified information. Applicant has made a good faith effort to resolve his filing problems and has now filed his income taxes, and corrected his tax problems. He states that he will never allow this situation to ever occur again.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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. 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 annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file his Federal and state income tax returns for tax years 2011, 2012, 2013, and 2015. Applicant's conscious decision to avoid his legal

duty to file his income tax returns indicates that he has a problem complying with well-established governmental rules and systems. His actions demonstrate both a history of and a unwillingness to abide by the law. By not fulfilling his legal obligation to file his income tax returns, Applicant has not demonstrated the high degree of judgment and reliability required to hold a security clearance. In Applicant's response to the FORM, he provides copies of both of his Federal and state income tax returns that he has filed for the years in question. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are 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;

(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 regrets not filing his income taxes in a timely fashion. He has now filed the income tax returns in question, and has corrected his tax problems. He now correctly understands the application of both Federal and state law concerning his annual tax filing obligation. He also understands that going forward he must file his income tax returns in a timely fashion, and that his chronic history of not filing in the past, must never occur again. In the event that it does, his security clearance will be in immediate jeopardy. In order to continue to be eligible for access to classified information, Applicant must demonstrate good judgment and reliability in every area of his life, including his financial affairs and the timely filing of his income tax returns.

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 mitigated the Financial Considerations 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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge