



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



In the matter of:

ISCR Case No. 17-01382

Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Department Counsel

For Applicant: *Pro se*

February 23, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 9, 2015, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP). (Item 3.) On May 30, 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 26, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 28, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing 3 Items, were received by Applicant on August 3, 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 September 1, 2017 and it was admitted into evidence as Applicant's Exhibit A. DOHA assigned the case to me on December 18, 2017. Applicant had no objection to Government's items. Therefore, items 1 through 3 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 3.

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 46 years old and is married with two teenagers. He has an associate's degree. He is employed by a defense contractor as an Engineer. He is seeking to obtain a security clearance in connection with his employment. He has been working for his current employer since August 2005.

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.

The SOR identified four allegations under this guideline concerning Applicant's failure to file his Federal and state income tax returns for tax years 2009, 2010, 2011, and 2012, 2014, and 2015. In his answer to the SOR, Applicant admits each the allegations, except 1.c., which he denies, and claims he is working to resolve. Applicant attributes his failure to file his income tax returns on his shortsightedness. He erroneously believed that he had a three-year window in which to file his income tax returns for a refund. After researching the filing rules, Applicant now understands that he was mistaken, and he has taken action to correct his mistakes.

Applicant attributes his extended delay in filing his returns to a series of circumstances beyond his control that caused him to be extremely stressed. In 2009,

Applicant house was burned down, repairs exceeding \$170,000 and his family was out of their home for ten months. In May 2016, his daughter was in a vehicle accident and sustained serious back injuries. His father was very ill since 2015 and his declining health led to his recent death in April 2017. (Applicant provide copies of both his daughter's accident report and his father's death certificate.) (See, Applicant's Exhibit A.) Applicant was also been occupied handling his father's estate and related issues.

Despite these unexpected, difficult life events, Applicant now understands that he must always file both his state and Federal income tax returns in a timely fashion, no matter what occurs. He is still held responsible for filing his income tax returns. Applicant expresses that he is extremely embarrassed and ashamed for making this mistake.

Even if Applicant truly believed that he could file his income tax returns late, without incurring a penalty, as long as he was receiving refunds, he has shown no evidence of the required extension, nor is there evidence of the fact that he had calculated his taxes and knew he would receive refunds. The three year statute of limitations in claiming a refund does not mean that an individual is exempt from filing their annual income tax returns in a timely fashion.

Applicant has now filed the income tax returns in question, and has provided copies of both his Federal and state income tax returns for tax years 2009, 2010, 2011, 2012, 2014, and 2015. (Applicant's Exhibit A, enclosure 2.) Applicant also states that he has now filed his 2013 state income tax return and no longer owes \$184.48, but instead, according to his return, he is now entitled to a refund of \$13. Applicant states that he now has a good grasp on the filing timelines and will ensure future filings are conducted on time. In addition, he has decided to have his future income tax returns handled by a professional, as his returns are becoming more complex with his daughter starting college. Applicant further states that this mistake of his is an aberration and not a normal pattern of his conduct. He states that he is usually responsible and trustworthy and will continue to demonstrate good judgment and reliability in the future.

Three character letters from coworkers and friends of the Applicant, all of whom have worked with the Applicant over the years, and at times, on a daily basis, attest to his sound judgment, conscientious and hardworking nature, as well as his honesty and trustworthiness. Applicant's work product is described as "always technically sound" and he is considered extremely reliable and responsible. They all enjoy working with the Applicant. (Applicant's Exhibit A, enclosure 3)

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 2009, 2010, 2011, 2012, 2014 and 2015. He was also indebted to a state tax authority for delinquent back taxes for tax year 2013 in the amount of \$184.48. 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. Applicant also states that he has now filed his 2013 state income tax return and no longer owes \$184.48. According to his income tax return he is now entitled to a refund of \$13. The evidence is sufficient to raise the above disqualifying condition.

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.

In addition to his shortsightedness, Applicant had a serious misunderstanding of the legal requirements to file annual income tax returns in a timely fashion. He mistakenly thought he had three years to file his return for a refund. Applicant also experienced a series of devastating events that contributed to his delay in filing his tax returns, namely a house fire, his daughter's very serious car accident wherein she sustained back injuries, and his father's illness and recent death in 2017. Applicant has made a good faith effort to resolve his problem, and has filed the income tax returns in question, and has corrected his tax problems. He understands that he must always comply with Federal and state law, and he now understands what the law means. He has researched the issue and now understands that going forward he must file his annual income tax returns in a timely fashion, and that his chronic history of not filing in the past, must never happen again. In the event that it does, Applicant's security clearance will be in immediate jeopardy. In order to continue to be eligible for access to classified information, Applicant must consistently demonstrate good judgment and reliability in every area of his life, including his financial affairs, as well as the timely filing of his annual 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
Subparagraph 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge