



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



In the matter of:)
)
) ISCR Case No. 17-01763
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

07/03/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his continued eligibility for a security clearance. Applicant failed to mitigate the security concerns raised by his failure to file federal and state income tax returns for a number of years between 2001 and 2015, and his \$28,052 in unresolved delinquent debt. Applicant's continued access to classified information is denied.

Statement of the Case

On June 24, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on September 30, 2017. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on October 24, 2017. He did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7, without objection.

Findings of Fact

Applicant, 59, has worked for his current employer, a federal contractor since 2007. He was on medical leave from January 2013 to January 2014. Applicant returned to his duties in January 2014. He was initially granted a security clearance in 1979, during his service in the U.S. Army from 1977 to 1992, and held a security clearance continuously until approximately 2003. Applicant completed his most recent security clearance application in October 2014 and disclosed derogatory financial information, including federal tax issues, a car repossession, and a unpaid medical account.³

The SOR alleges that: Applicant failed to file his 2001 through 2003, 2007 through 2009, and 2013 through 2015 federal income tax returns, as required (SOR ¶ 1.a); that he owes \$3,200 in outstanding federal taxes for the 2001, 2013 and 2014 tax years (SOR ¶ 1.b); Applicant failed to file his 2001 and 2002 state income tax returns, as required (SOR ¶ 1.c); and, that Applicant is indebted to nine creditors for \$28,052 (SOR ¶¶ 1.d – 1.i). Applicant admits all of the allegations. In response to DOHA interrogatories, Applicant provided documentation indicating that he had his federal income taxes for 2014 through 2016 prepared in June 2017. He was entitled to a refund for 2015 and 2016 and broke even for the 2014 tax year. Applicant did not provide documentation showing the prepared returns were actually filed. Applicant did not provide documentation showing the outstanding state income tax returns were filed. All of the debts alleged in the SOR, including the outstanding federal tax balance remains unresolved.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

² GE 1.

³ GE 3, 7.

⁴ GE 2, 4-6, 7.

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.

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.

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

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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.⁵

The record establishes the Government’s *prima facie* case that Applicant has a history of not meeting financial obligations⁶ and that he failed to file his federal and state income taxes and pay federal income taxes, as required.⁷ Applicant did not submit sufficient information to mitigate the alleged concerns. All of the concerns alleged in the SOR remain unresolved. Accordingly, none of the financial considerations mitigating conditions apply.

Based on the record, doubts remain about Applicant’s ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns.⁸ An applicant is reasonably expected to provide corroborating documentation regarding his financial interests. Applicant failed to do so. As a result, he did not meet his burdens of production and persuasion to refute or mitigate the financial considerations allegations.

⁵ AG ¶ 18.

⁶ AG ¶ 19(c).

⁷ AG ¶ 19(f).

⁸ See Directive ¶ E3.1.15.

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, Financial Considerations: AGANST APPLICANT

Subparagraphs 1.a – 1.l: Against Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge