



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



In the matter of:

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ISCR Case No. 17-02291

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: Jacob T. Ranish, Esq.

09/19/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant filed his delinquent income tax returns and satisfied the corresponding delinquent income tax debt. He has no current delinquencies and has \$1,200 of monthly discretionary income that he deposits in a savings account. I conclude Applicant has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On July 21, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On August 14, 2017, Applicant answered the SOR, admitting subparagraphs 1.a through 1.c, and denying subparagraph 1.d. He requested a hearing, whereupon the case was assigned to me on March 15, 2018. On

June 5, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for July 23, 2018. The hearing was held as scheduled. I received five Government exhibits¹ (GE 1 – GE 5) and 11 Applicant's exhibits (AE A - AE J). Also, I took administrative notice, at Department Counsel's request, of the discovery letter mailed to Applicant on May 25, 2017 (Hearing Exhibit I). The transcript (Tr.) was received on July 31, 2018.

Ruling

Both parties agreed that Applicant satisfied the debts alleged in subparagraphs 1.a and 1.b, totaling \$792. (Tr. 12) I resolve them in his favor.

Findings of Fact

Applicant is a 57-year-old, married man with three adult children, two of whom are from his current wife, and one who is from his ex-wife. He is a high school graduate who served in the U.S. Navy honorably, enlisting in 1979 and retiring in 2000. (Tr. 16) While in the Navy, he earned five Good Conduct medals, a Navy Achievement Medal, two Navy Commendation Medals, a Joint Service Achievement Medal, and a Joint Commendation Medal. (Answer at 2)

Applicant has been working for his current employer for the past year. He is an interoperability systems engineer. (Tr. 14) According to his employer, he is an extremely conscientious and dedicated employee. (AE A at 4))

While Applicant was in the Navy, he was seldom home. Consequently, his wife "took care of everything," managing the finances and caring for the children. (Tr. 19) He had no reason to doubt that she was not paying any bills or filing income tax returns on time. Applicant's wife continued to manage the finances after he retired. He did not know she had not been filing their income tax returns until he received notice from the IRS in 2012 that they had not filed between 2004 and 2010 and owed approximately \$50,000. (Tr. 20)

Shortly after receiving the IRS notice, Applicant and his wife retained a law firm to help him file his delinquent income tax returns and to prepare an offer in compromise. (Tr. 14) They initially developed a repayment plan that required \$2,000 monthly payments. (Tr. 21) This amount proved to be too much for Applicant to pay. Consequently, the IRS reduced the payments to \$700. This amount was not high enough to keep pace with the penalties and interest that Applicant and his wife continued to incur. (Tr. 21) In 2016, Applicant received a notice of tax lien and garnishment. (Tr. 21; AE F) The balance was \$74,680. Applicant considered negotiating another offer-in-compromise, but decided not to pursue this option after an IRS representative informed him that the process could take up to two years to execute, and that he would continue to incur interest and penalties during that time. (AE G; Tr. 23)

¹ I admitted GE 3, an unsworn interview, subject to Applicant's clarifications. (Tr. 9)

Ultimately in August 2017, Applicant decided to withdraw money from his 401k account and pay the entire income tax delinquency, which then totaled \$85,056. (AE I; AE K at 2) The following month, the government released the tax lien. ((AE K at 2) Applicant attributes part of the delay in resolving the income tax delinquencies, once he discovered them, to a series of personal crises, including his son's struggle with severe mental illness, the death of his sister-in-law, and his wife's knee surgery. (Tr. 20; 27)

Applicant has been filing his income tax returns on time since 2010. (Tr. 34) Now, he and his wife prepare their income tax returns together. (Tr. 34) Although his 401k was significantly depleted when he withdrew money to pay his income tax delinquency, he continues to maintain a balance, and continues to contribute to it. (Tr. 35)

Applicant and his wife have a budget. (AE M) They are saving approximately \$1,200 monthly. (AE M at 1)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).²

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

Applicant’s failure to file or pay his income taxes from 2004 to 2010 triggers the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations” and AG ¶ 19(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 returns as required.”

The following mitigating conditions are potentially applicable:

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

² The factors under AG ¶ 2(a) are as follows:

(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.

cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 had been retired from the Navy for four years when his wife stopped filing their income tax returns. Consequently, his ignorance of her management of the family finances for six to eight years, until receiving notice from the IRS in 2012, reflects poorly on his judgment, regardless of the circumstances beyond his control that he encountered over the years. AG ¶ 20(b) is inapplicable.

Since being informed of the income tax delinquency in 2012, Applicant has been attempting to resolve it. Ultimately, he satisfied the entire delinquency in 2017, using money withdrawn from his 401k. He and his wife now manage their finances together, keep a budget, and are saving \$1,200 monthly. Applicant's better communication with his spouse, their joint financial planning, and their financial stability render their problems with filing their income tax returns or paying their income taxes unlikely to recur. AG ¶¶ 20(a), 20(c), 20(d) and 20(g) apply.

Whole-Person Concept

Failing to pay income taxes is a serious transgression as it indicates that Applicant may "have a problem abiding by well-established rules and regulations." (ISCR Case No. 15-01031 (June 15, 2016) at 4) Nevertheless, he has paid the entire delinquency, and is now actively engaged in the management of the family finances. Moreover, he is maintaining a budget, and is comfortably meeting his financial obligations, with \$1,200 remaining each month that he is depositing into a savings account. In sum, the presence of rehabilitation outweighs the nature and seriousness of the security concern, and renders it unlikely to recur. Applicant has mitigated the security concern.

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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge