



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



In the matter of:)
)
) ISCR Case No. 17-03183
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 19, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 (AG).

Applicant answered (Ans.) the SOR on February 2, 2018. The case was assigned to me on August 3, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 4, 2018, and the hearing was convened as scheduled on September 20, 2018. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's discovery letter was marked as hearing exhibit (HE) I. Applicant testified and

offered exhibits (AE) A-G, which I admitted without objection. DOHA received the hearing transcript (Tr.) on September 28, 2018.

Findings of Fact

Applicant admitted the SOR allegations. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 58 years old. He has worked for defense contractors for 40 years. He has held a security clearance for 38 years. He works as a machinist-manufacturing engineer. He has a high school diploma and has earned college credits. He is married and has five stepchildren.¹

The SOR alleged that Applicant failed to timely file federal and state income tax returns from 2012 to 2016. He admitted in his security clearance application, his security clearance interview, his response to interrogatories, his SOR answer, and his hearing testimony not timely filing his federal and state tax returns for those years.²

Applicant attributed his tax problems to three main factors. First, in 2012, he received proceeds from a state abandoned-asset fund, to which he contributed early in his working career, of approximately \$20,000. He did not know how to deal with the tax gain associated with the transaction, so he did not file his 2012 federal or state returns. He failed to file his 2013 to 2016 federal and state returns for the same reason. Second, he admitted that he was a procrastinator. Third, because of his wife's medical issues starting in 2013 and 2014, where he became her primary caregiver, he could not find the time to take care of his tax issues. He admitted that it took putting his security clearance in jeopardy before he realized he needed to address his tax issues. He did not use an accountant or tax preparation firm to file his returns. He used a commercial computer tax program and filed the returns himself. He was interviewed by a defense investigator in June 2017 and subsequently filed his federal and state returns for 2012 to 2015 in either June or July of 2017. He filed his 2016 returns in November 2017. He had not requested an extension for 2016. For tax year 2016, he was assessed penalties and interest on his federal tax return in the amount of \$1,802, which he paid in December 2017. He timely filed his 2017 returns.³

Applicant documented that his current financial picture includes a retirement account in excess of \$750,000, bank accounts with total balances of approximately \$85,000, and he testified that his home and cars are debt free. He also presented his credit report, which showed no delinquent debts.⁴

¹ Tr. at 6, 7, 20-21; GE 1.

² Tr. at 21; GE 1-3.

³ Tr. at 22-31, 33-34, 36-37; GE 3; AE F-G.

⁴ Tr. at 29; AE A-D.

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 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, these guidelines are applied 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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 EO 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).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

(c) a history of not meeting financial obligations; and

(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 had unfiled federal and state tax returns from 2012 to 2016. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(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 failed to show significant efforts toward resolving his federal and state tax issues until after he was interviewed for his background check in June 2016. This pattern shows a lack of reliability, trustworthiness, and good judgment for someone who served in has worked for a federal contractor for over 40 years. AG ¶ 20(a) is not applicable.

Applicant's wife had serious medical issues beginning in 2013, which required Applicant to become her caregiver while still performing his regular job. That circumstance beyond his control is overcome by his admitted procrastination in failing to timely file both his federal and state tax returns from 2012 to 2016. He had the means to hire a professional to assist him with his taxes, but he failed to do so. AG ¶ 20(b) is not applicable.

Applicant provided evidence that his tax problems are under control. He receives some credit for eventually filing all his delinquent federal and state tax returns. However, since it took him over five years to do so, despite having the means to address his tax issues, good-faith efforts to pay or resolve his tax issues are lacking. AG ¶¶ 20(c), 20(d), and AG ¶ 20(g) partially 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 the 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 guideline 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's lengthy contractor service and his family circumstances. However, I also considered that his federal and state returns went unfiled from 2012 to 2016. He has not shown responsibility in exercising his lawful duty to file his federal and state tax returns in a timely manner.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security 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: AGAINST APPLICANT

Subparagraphs: 1.a – 1.b: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge