



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



In the matter of:)
)
) ISCR Case No. 17-03458
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant did not present sufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 16, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 25, 2018, scheduling the hearing for August 30, 2018. The hearing was rescheduled for good cause, and held on September 27, 2018. The hearing was convened as scheduled. The Government offered Government Exhibits (GE) 1 through 5, which were admitted. Applicant testified on his own behalf, and presented Applicant Exhibits (AE) A through C, which were admitted into the record without objection. I held the record open until October

11, 2018. Applicant submitted an additional document, which was marked as AE D, and entered into the record without objection. DOHA received the transcript of the hearing (Tr.) on October 5, 2018.

Findings of Fact

Applicant, age 37, is single and has no children. Applicant graduated from high school in 1995, and has taken many college courses, but has not yet obtained a degree. He completed a security clearance application on April 29, 2016. He has never held a security clearance. (GE 1) He has worked for his current employer for 15 years. (Tr. 15)

The SOR alleges that Applicant failed to file Federal income tax returns for tax years 2010 through 2016; failed to file state income tax returns for tax years 2010 through 2016; had a collection account in the amount of \$838; a delinquent medical account in the amount of \$671; and a state tax lien in the amount of \$559. Applicant admitted 1.a, 1.b, and 1.d. As to SOR 1.e, the allegation was withdrawn at the beginning of the hearing. (Tr. 7) He provided explanations and documentation that the SOR debt in 1.c (\$838) is settled. (AE D) The medical account in 1.d is also paid. (AE C) Therefore the case centers on SOR 1.a and 1.b, failure to timely file Federal and state income tax returns from about 2010 to 2016.

Applicant acknowledged his financial difficulties in the past. He stated that it was during the time when the housing bubble burst and his medical issues that he became burdened with debt. He owned about four properties that were foreclosed due in part to the death of a property manager who had been remiss in handling the property. (Tr. 16) He tried short sales but that was not successful. He hired another company, which also went under. He sought aid to prepare his taxes. The person who was handling the taxes had a flood in his basement, and all documents were lost. (Tr. 17). This occurred in about 2008 or 2009. He takes responsibility and has worked hard to find a competent person to file his federal and state income tax returns. However, he does not recall asking the IRS for extensions. Applicant was credible when he testified that he called the IRS and attempted to gather the necessary paperwork that was lost in the flood. He learned that he owed no money. He obtained the help of two other accountants before he found the current one who is handling the tax issues. (AE B) He admits that he hired his current accountant in 2017.

As to SOR 1.a, and SOR 1.b, Applicant admitted he did not file the Federal or state income tax returns due to a variety of reasons. He first lost documents in the above-mentioned flood, and then he became ill in 2012 and was hospitalized. He does not recall asking for extensions to file. (Tr. 24) Applicant stated that he decided after the hospitalizations to pay medical bills and that he just did not file the income tax returns. (Tr. 25) He believes that he has paid about \$5,000 in medical bills. At one point, he stated he did not realize that he could ask for extensions to file income tax returns. (Tr. 26)

Applicant timely filed his Federal and state income tax returns each year before the tax years at issue. He believed that he did not have to file each year. He was trying to organize documents and his poor health had a detrimental effect on his ability to file

his tax returns. (Tr. 46) After the foreclosure of the properties in 2010 or 2011, he stated that he went online with the IRS to see if he owed anything. He was going to meet with financial advisors, but stated that he could not afford them. The record was a bit confusing as to Applicant's knowledge of asking for an extension for one year versus each tax year. (Tr. 50)

Applicant's current annual salary is about \$60,000 to \$63,000. In 2010, he believes it was about \$58,000. He now uses a budget. He has a retirement account. His current accountant is working on preparing and filing his Federal and state income tax returns for tax years 2010 through 2017. At the time of the hearing, Applicant indicated, according to his accountant's information, his past-due Federal and state tax returns would be filed by September 2018. (AX B) At the close of the record, none of the income tax returns alleged in the SOR had been filed.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, and failure to timely file his Federal and state income tax returns, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and 19(f) ("failure to file . . . annual Federal, state, or local . . income tax returns as required."

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

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's debts are the result of health issues and the foreclosure of four properties. He lost paperwork in 2008 or 2009 when his accountant's business was flooded. However, it is not clear what took so long to find someone competent to help him file his tax returns. He has done so, but he did not provide copies of any tax returns that were filed. He has paid medical debts and the other debts on the SOR. AG ¶ 20(a) is fully established as to the delinquent debts in the SOR, but not the failure to file the Federal and state income tax returns His accountant planned to file the tax returns in September 2018, but he did not prove that they were actually filed.

AG ¶ 20(b) is not established. While Applicant's health was beyond his control, he has not acted responsibly to address the filing of tax returns. He has resolved the other delinquent debts and paid about \$5,000 in medical debts. He is in the process of working with an accountant to have the income tax returns filed.

AG ¶ 20(c) is not established. AG 20(d) and 20(g) are not fully established. Applicant did not receive financial counseling due to a lack of money. He provided documentation that he has paid his delinquent debts, but he started last year to file the required income tax returns and had not asked for an extension for each year. He provided insufficient documentation to meet his burden to mitigate the financial concerns set out in the SOR as 1.a and 1.b.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security

must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his many years of work with his employer and his health issues, I conclude that Applicant has not mitigated the security concerns raised by his failure to timely file his Federal and state income tax returns for many years. The Federal and state income tax returns alleged in the SOR remain unfilled. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-b:	Against Applicant
Subparagraphs 1.c-e:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge

