



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



In the matter of:)
)
) ISCR Case No. 18-00027
)
Applicant for Security Clearance)

Appearances

For Government: Andrew W. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2018

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 24, 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 16, 2018. The case was assigned to me on May 10, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 11, 2018, and the hearing was convened as scheduled on August 8, 2018. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Department Counsel's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A-C,

which I admitted without objection. The record was held open until February 16, 2018, for Applicant to submit additional information. Applicant submitted AE D-G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 16, 2018.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a and 1.b., but he denied the remaining allegations. The 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 36 years old. He has worked for a defense contractor since 2011 as an aircraft mechanic. He served in the Air Force from 2002 to 2010. He was honorably discharged while holding the rank of staff sergeant (E-5). He has a high school diploma. He married in 2004 and divorced in 2008. He has no children.¹

The SOR alleged that Applicant failed to timely file his federal tax returns for 2014 and 2015; that he failed to timely file his state tax returns for 2014 and 2016; and that he owes delinquent federal taxes for 2014 in the amount of approximately \$10,236, and for 2015 in the amount of \$8,377. He admitted in his security clearance application, his security clearance interview, and his hearing testimony not filing his federal and state tax returns and owing federal taxes for the stated years.²

Applicant claimed that he did not realize he had to file tax returns if he was due a tax refund. For that reason, he did not timely file his 2014 federal and state tax returns. He timely filed his 2015 federal tax return and has since timely filed all federal returns. Applicant claims he filed his 2014 state tax return, but failed to document any filing. He provided documentation establishing that he filed his 2016 state tax return, although the date of the filing is not indicated in the documentation.³

After filing his 2016 federal income tax return in March 2016, he was informed by the IRS that he owed delinquent taxes for tax years 2014 and 2015. He allowed his tax representative from a nationally known tax service to contact the IRS to set up a payment plan. Once he filed his 2014 and 2015 federal tax returns, it was determined that Applicant owed \$10,236 for 2014 and \$8,377 for 2015. Applicant was sent notices by the IRS of these delinquent taxes in May and June 2016.⁴

Applicant documented that he obtained a bank loan for \$14,000, which he used to pay \$10,540 for his 2014 federal tax debt and pay \$2,959 toward his 2015 federal tax debt. He made these payments in August 2018. He claimed that he could not afford to

¹ Tr. at 5, 18-20; GE 1.

² Tr. at 21-26; GE 1-3.

³ Tr. at 21-29; GE 2; AE F.

⁴ GE 2-3.

make any payments before then. For the remaining balance of his 2015 federal tax debt, Applicant arranged a payment plan with the IRS (no date on document) whereby he will have \$200 monthly taken out of his bank account payable to the IRS. Under the terms of his bank loan, Applicant is to pay \$340 monthly for 60 months. At the time of his hearing, he had made one payment.⁵

Applicant presented his performance evaluations for 2013 through 2017, with the resulting overall ratings: 2013—exceeds expectations; 2014—exceeds expectations; 2015—effective performer; 2016—effective performer; 2017—highly effective performer.⁶

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

⁵ Tr. at 25-26, 39-40; AE A-C, E.

⁶ AE G.

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:

- (a) inability to satisfy debts;
- (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 for 2014, and unpaid federal taxes for 2014 and 2015. I find all 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.

Even though Applicant filed his delinquent federal and state tax returns (at least his 2016 state return) before the issuance of the SOR, he failed to show significant progress toward paying his federal taxes for 2014 and 2015 until after the SOR was issued in this case. This pattern shows a lack of reliability, trustworthiness, and good judgment for someone who served in the military. AG ¶ 20(a) is not applicable.

Applicant claims he was unaware of the requirement to file tax returns if he was due to receive a refund. His mistaken belief of his legal requirement is not a condition beyond his control. AG ¶ 20(b) is not applicable.

Applicant claimed he used a professional tax service to deal with the IRS in 2016, however, he failed to make payments toward his delinquent debt until August 2018. He receives some credit for making lump-sum payments to the IRS in August 2018 and establishing a payment plan with the IRS for the remaining balance of his 2015 tax owed. However, he failed to timely address his federal tax filings and payments and failed to document that he filed his 2014 state tax return. His delayed action does not equate to a good-faith effort to pay or resolve his tax issues. AG ¶ 20(c) and AG ¶ 20(g) partially apply, and AG ¶ 20(d) does not 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 military service. However, I also considered that he delayed in dealing with his federal and state tax issues. He has not shown responsibility in exercising his lawful duty to file his federal and state tax returns and pay his taxes owed.

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
Subparagraph: 1.c:	For Applicant
Subparagraph: 1.d:	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