



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



In the matter of:

ISCR Case No. 17-03892

Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Department Counsel

For Applicant: *Pro se*

July 25, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 9, 2013, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 13, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 28, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 26, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on May 2, 2018, and the

hearing was convened as scheduled on June 13, 2018. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on June 29, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 22, 2018.

Findings of Fact

Applicant is 60 years old and married a second time with two adult children and one adult step-child. He has an Associate degree. He is employed by a defense contractor as an Engineer. He is seeking to obtain a security clearance in connection with his employment. Applicant has been working for his current employer since 1981.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified eleven allegations concerning Applicant's failure to file his Federal and state income tax returns for tax years 2014, as well as his tax indebtedness. The Government contends that Applicant's Federal tax indebtedness totals approximately \$70,000, and his state tax debt is approximately \$18,000. Applicant admits all of the allegations pertaining to his tax indebtedness, and denies that he failed to file his Federal income tax returns for tax year 2014. Applicant states that he e-filed his 2014 Federal income taxes. A letter dated June 26, 2018, from his tax preparer corroborates the fact that his state and Federal income tax returns for 2014 were timely filed and acknowledged as received by both the IRS and state.

Applicant has been married to his current wife since May 2008. Since he has been married, he has always hired a professional tax preparer to file his income tax returns. He testified that in 2011 the government disputed his income tax return filing, (married filing jointly), and it has had a rippling effect over the next three years. In 2014, Applicant received a notice from the IRS that his 2011 taxes were filed incorrectly. Applicant hired a new tax preparer to file amended tax returns for 2009, 2010, 2011, 2012, and 2014. The amended returns were filed, but were rejected by the IRS. Applicant is appealing this IRS decision, but does not know when the hearing on the matter is scheduled. Applicant contends that his tax problems were caused by his wife not withholding sufficient Federal and state taxes, and the fact that she received a cancellation of debt in 2011, an IRS Form A 1099 – C, as well as a distribution from her retirement plan that she did not pay taxes on. (Applicant's Post-Hearing Exhibit A.)

Documentation from the IRS dated January 2018, indicates that Applicant was advised by the IRS that he owed significant monies in back taxes. Specifically, that he owes the IRS for delinquent back taxes in the amount of \$19,281 for tax year 2011. He also became indebted to the IRS for delinquent back taxes in the amount of \$30,253 for tax year 2012. He also became indebted to the IRS for delinquent back taxes owed in the amount of \$17,062 for tax year 2013. He also became indebted to the IRS for delinquent back taxes owed in the amount of \$4,240 for tax years 2015. This debt remains outstanding. Applicant has not yet set up a payment plan to resolve this debt. He believes that he owes a total of approximately \$50,000 in Federal back taxes. (Government Exhibit 3.)

In regard to state back taxes owed, Applicant owes \$4,787 for tax year 2011. He owes \$2,367 for tax year 2012. He owes \$487 for tax year 2013, and he owes \$47 for tax year 2015. Applicant stated that since November 2016, his wages were garnished to pay the back taxes owed to the state. At some point, the garnishment amount was as high as \$575, but Applicant modified the amount to \$250 per pay period which totals approximately \$500 monthly. (Tr. p. 38, and Applicant's Exhibit A.)

Applicant also provided a copy of a tax year computation showing payments that his wages were garnished from his payroll account beginning in July 2014 through January 2018 to pay his state taxes. (Applicant's Exhibit B.) Applicant testified that his wife's paycheck was also garnished in the amount of approximately \$6,500. (Tr. pp. 46-47.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Guideline F - Financial Considerations

The security concern for Financial Considerations 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. 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 under AG ¶ 19. One is applicable in this case:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant timely filed his income tax returns, and it is unclear why the IRS did not have record of his filing. His history shows that he has filed most if not all of his income tax returns on time. Tax liability was assessed against him due to the fact that his wife's income tax withholdings were insufficient. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under 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;

(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, or a death, divorce, or separation), 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.

Since 2014, Applicant has been working on a tax problem that surfaced in 2011. He has hired a tax preparer to repair his tax problems. As of yet, the problem has not been resolved. Amended returns were filed for tax years 2011, 2012, 2013, and 2015, but were rejected by the IRS. Applicant states that he is still waiting for his hearing on appeal. His wages are currently being garnished to pay state back taxes. He has not yet started making payments toward the Federal back taxes, for which he owes approximately \$50,000. There is documentary evidence showing that he has filed his Federal income tax returns for tax year 2014. Given this situation, there is insufficient evidence that he has acted reasonably and responsibly. His actions demonstrate unreliability, untrustworthiness, and poor judgment.

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 relevant 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 guidelines 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 conclude Applicant has not mitigated the Financial Considerations 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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge