



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03873

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

07/26/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On November 27, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ In a December 31, 2017, response, he admitted the sole allegation and offered additional information. He also requested a determination based on the written record. On January 31, 2018, the Government issued a File of Relevant Material (FORM) with four attachments ("Items"). I was assigned the case on May 10, 2018. Based on my review of the record as a whole, I find Applicant failed to mitigate Guideline F security concerns.

Findings of Fact

Applicant is a 36-year-old male being sponsored for a security clearance by a defense contractor. He was most recently employed as a film coating technician. Applicant has been continuously employed for at least the past dozen years. He attended high school and has taken some junior college courses. He has been married since 2014.

¹ 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 (AG) effective within the DOD on or after June 8, 2017.

As based on materials contained in the FORM, the SOR sets forth one allegation (SOR § 1.a) pertaining to a finance-related security issue, which Applicant admitted:

Applicant failed to file federal income tax returns for tax years 2003 through 2012 in a timely fashion. As of the date of the November 2016 SOR, the tax returns for tax years 2003, 2004, 2010, 2011, and 2012 remain unfiled.²

By way of explanation, Applicant wrote that he was initially under the belief that the filing of a federal tax return was only required if an individual owed money, and that filing after four years “yields no return.”³ (SOR Answer) Noting that he has filed responsibly for the past four years, he does not understand why information going beyond a seven year window is now being investigated or how it could be deemed applicable.⁴

There is a history to Applicant’s failure of not timely filing federal tax returns. Applicant was previously investigated for a security clearance in 2010. During a 2010 personal subject interview, his failure to file federal tax returns from 2001 to 2009 was discussed. There, he was advised of the importance of, and the requirement to, timely file federal income tax returns - regardless of whether he owed taxes. (FORM, Item 4)

In completing his April 2016 SCA, Applicant failed to disclose his past failures to timely file federal tax returns, including those that went unfiled in the preceding seven years (*ie.* Unfiled tax returns for 2010-2012). (FORM, Item 3, at 39) During a December 2016 personal subject interview, Applicant offered that he was not required to disclose his past failures to timely file federal tax returns because they were not within the seven year window contemplated in the question, despite the fact three of those years (2010-2012) were clearly within that timeframe.⁵ Most recently, in his March 26, 2018, FORM Response, Applicant wrote that he was “currently taking steps to file all unfiled tax returns through a CPA [certified public accountant].”

Other than a 2016 automobile repossession, which he self-reported, Applicant is living within his means. He retains an average net monthly remainder of \$500 after all expenses. He reported that he is fiscally responsible and not overextended. (FORM Response) He has approximately \$40,000 in a retirement fund. Applicant loves his work

² During his 2016 personal subject interview, Applicant reported that he had filed a federal tax return for every year since 2010 except for 2012, when he was “distracted.” (FORM, Item 4, at 11) In answering the SOR, however, he admitted that he had failed to file federal tax returns for 2010-2012. (SOR Response)

³ “The very first time [Applicant] filed a tax return prior to 2001, he only got a refund of \$1 and this was a contributing factor to his not filing returns. He felt he was not going to get enough back to make it worth the effort.” (FORM, Item 4, at 11)

⁴ Section 26 of the security clearance application (SCA) asks, in part: “In the last seven years have you failed to file or pay Federal . . . taxes when required by law or ordinance?” Applicant answered “no.” (form, Item 3, at 38)

⁵ During the interview, Applicant reported that he had eventually filed federal tax returns for tax years 2006-2009, and received a refund of approximately \$4,000. No documentary evidence of these filings was offered in this proceeding.

and this country. He also notes his support for the United States military, in which his younger brother serves.

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 adjudicative goal is a fair, impartial, and commonsense decision. This 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends duty hours. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions shall be in terms of the national interest and are in no sense a determination as to an applicant's loyalty.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, Applicant admitted that he failed to timely file federal income tax returns for tax years 2003 through 2012. He also admitted that, as of the date of the November 2017 SOR, tax returns for tax years 2003, 2004, 2010, 2011, and 2012 remained unfiled. Such facts are sufficient to raise financial considerations disqualifying condition:

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 as required.

Five conditions could mitigate the finance related security concerns posed:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit 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(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Based on the documentary evidence, Applicant failed to timely file federal tax returns for multiple years. He learned of his obligation to timely file such returns during a 2010 investigation. He only offered an excuse ("distraction") for failing to timely file a federal tax return for only one tax year, 2012. As of his March 2018, FORM Response, there is no documentation reflecting progress by Applicant or his CPA on the tax returns at issue. Due to this lack of evidence, no mitigating condition applies.

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 adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 36-year-old male who has been continuously employed for at least the past 12 years. He attended high school and some junior college courses. Applicant has been married since 2014. With the exception of a 2016 auto repossession, he has been living within his means and retaining a net monthly remainder after all expenses of about \$500. He is loyal to the United States and supports the military, in which his brother serves.

The evidence of record shows that Applicant has known he had the obligation to file timely federal tax refunds, regardless of whether he was owed a refund, since at least 2010. He also should have been aware after his 2010 personal subject interview that fulfilling that obligation was expected of an individual seeking to be granted or maintain a security clearance. Despite this knowledge, Applicant continued to fail in filing federal tax returns until at least 2014.

To date, tax returns for the neglected tax years have not been filed. Judging such behavior under the whole-person analysis, this repeated failure poses serious security concerns regarding Applicant's judgment and ability to honor laws and regulations, as well as civic responsibilities. This assessment included Applicant's tax filing history, both within and outside the seven year timeframe referenced in SCA § 26. Applicant's documentation failed to mitigate the Guideline F security concerns raised.

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:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge