



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



In the matter of:)
)
) ISCR Case No. 18-00118
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

July 25 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 3, 2017, Applicant submitted Electronic Questionnaires for Investigation Processing (e-QIP). (Government Exhibit 3.) On February 2, 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 September 1, 2006.

Applicant answered the SOR on February 27, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 30, 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 three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered one exhibit at the hearing, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 20, 2018.

Findings of Fact

Applicant is 59 years old. He is married a second time, and has three biological children and one step-child. He has a bachelor's degree. He is employed by a defense contractor as a Principal Investigator. He is seeking to obtain a security clearance in connection with his employment.

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.

Applicant served on active duty in the Air Force from 1981 until 1988 when he was honorably discharged. During his military career, he was an Air Force Officer and Aviator, who flew F-4 Aircraft and was certified under the Personal Reliability Program to safeguard, control, operate, and deliver nuclear weapons, if needed during the Cold War. He has been employed in the defense industry for the past thirty years. He has been working for his current employer since 2001. Over the past thirty-seven years Applicant has worked on numerous classified programs and assignments and has consistently safeguarded all classified information entrusted to him.

The SOR identified two allegations under this guideline, one concerning Applicant's failure to file his Federal and state income tax returns for tax years 2014, 2015, and 2016, and the other based upon the fact that his wages were garnished by the state in January 2017 for delinquent taxes in the approximate amount of \$24,747. In his answer to the SOR, Applicant admitted the allegations. Applicant's failure to file his Federal and state income tax returns for tax years 2014, 2015, and 2016 was based on bad advice he received from his tax professional. Applicant was told by his accountant that if he was due a refund he may file his income tax returns prior to the expiration of the refund claims period without penalty. He did not understand that by doing that, he was not complying with his legal responsibility to file his annual income tax returns and negatively impacting his ability to obtain a security clearance. Applicant only understood from his consultant that if he was expecting a refund, according to Federal Tax Law, there is no penalty for failing to file his tax return by the deadline even if he did not ask for an extension.

Applicant testified that up until 2014, he and his wife have always prepared their income taxes themselves, and have always filed on a timely basis. In 2014, however,

Applicant's wife had become interested in investing in securities and trading, and enjoyed it, and is very good at it. So their tax preparation went instantly from routine to quite involved. They tried to hire the tax preparer to do their taxes, but she was not available. She did however provide tax advice which impacted their decision to delay their filing until they could obtain the proper documentation needed. However, as Applicant began to approach the three-year period to claim the tax refund, Applicant made an asserted effort to obtain all documentation necessary in filing the income tax returns in question. To get this done he and his wife went through each Ameritrade Transaction Notification and other relevant documents in order to properly prepare their income tax returns for filing, which was time consuming, burdensome and overwhelming. All Federal and state tax returns in question were filed on February 25, 2018, resulting in substantial refunds. (Tr. p. 32.) Applicant explained that this was an isolated incident that will never happen again. They plan to hire professional tax preparers for all income tax filings in the future.

Applicant also received two income tax refunds for wages that were garnished by the state in the amount of \$26,827.25; and by the IRS in the amount of \$1,478. (Applicant's Exhibit A, and Tr. pp. 23-24.)

Applicant acknowledges his mistake in not filing his income tax returns in a timely fashion and is remorseful. He has now filed and provided copies of his Federal and state income tax returns for tax years 2014, 2015, and 2016. He realizes that going forward, he must continue to file his income tax returns on time, if he is to continue to be security clearance worthy. Not getting around to filing income tax returns shows poor judgment and unreliability and disqualifies one from access to classified information.

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 failed to timely file his Federal and state income tax returns for tax years 2014, 2015, and 2016. He explained that the only reason he did not file for these three years was because he was told that if he was expecting a refund, he would not be penalized for failing to do so. However, by relying on and following the professional advice of a tax consultant, he got himself into trouble. He did not consider the fact that his actions demonstrate poor judgment and unreliability and a failure to fulfill his legal obligation to file his income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

(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.

It is a fact that when Applicant filed the income tax returns in question, he received substantial income tax refunds for monies that were garnished as a result of his failure to file his income tax returns in a timely fashion. This situation can be characterized as an isolated incident that will never recur. Applicant now understands that he must file the required income tax returns on an annual basis, and he must always comply with Federal and state law going forward. In the event that he fails to comply with the law, Applicant's security clearance will be in immediate jeopardy. Without reservation or delay, in order to continue to be eligible for access to classified

information, Applicant must demonstrate good judgment and reliability in every area of his life, including his financial affairs and the timely filing of his income tax returns.

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 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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge