



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



In the matter of:)
)
 -----) ISCR Case No. 15-04577
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphey, Esquire, Department Counsel
For Applicant: *Pro se*

02/27/2018

Decision

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

Statement of the Case

On February 19, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ In a response signed on February 25, 2017, he admitted all allegations and requested a determination based on the written record. On June 8, 2016, the Government issued a File of Relevant Material (FORM) with seven attachments (“Items”). The case was assigned to me on May 25, 2017. Based on my review of the record as a whole, I find Applicant failed to mitigate financial considerations and personal conduct security concerns.

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 September 1, 2006. Since that time, the AG has been revised for any adjudication on or after June 8, 2017. The revised AG is applied here.

Findings of Fact

Applicant is a 58-year-old project leader who has worked for the same defense contractor since 2006. From 1977 until his retirement in 1998, Applicant honorably served in the United States Air Force. After an impressive military career, he began working in the civilian defense industry. He has earned an associate's degree. He is married and has one adult child.

This matter centers on eight instances of failure to timely file federal or state income tax returns, or pay tax-related sums. Applicant failed to timely file federal tax returns for tax year (TY) 2006, ultimately filing them in about August 2009. He similarly failed to file federal tax returns for TY 2007-2009, returns that still remain unfiled. Applicant ultimately filed income tax returns to the United States Internal Revenue Service (IRS) in about March 2013 for TY 2010; he is indebted to the IRS for past due federal income taxes for TY 2010 in the approximate amount of \$17,338. As well, he failed to time file federal income tax returns for TYs 2011-2014.

In addition, Applicant failed to timely file a state income tax return for TY 2006 until about April 2009, and he has yet to file state tax income returns for TYs 2007-2014. He is indebted to his state of residence for a tax lien entered against him in 2011 for approximately \$9,290. As of the date of the SOR, it remained unpaid.

Applicant completed a Questionnaire for National Security Positions (QNSP) on August 20, 2014. On Section 26, he responded "no" to the query: "In the past seven years have you failed to file or pay federal, state, or other taxes when required by law or ordinance?" He similarly answered "no" in response to another question in that section inquiring: "In the past seven years, have you had a lien placed against your property for failure to pay taxes or other debts, and are you currently delinquent on any federal debt?" Given the preceding information regarding delinquent income tax filings and tax debts, both answers were incorrect.

In his December 2014 background interview summary, Applicant noted that he had failed to pay any taxes between 2008 and 2013 because of financial hardship related to his 2006 divorce, and his parents' medical and funeral bills. Although documentation was not then provided, he claimed he filed for an extension with the IRS in 2008 related to his income taxes. He similarly conveyed that he had met with a tax relief expert and was in the process of negotiating a repayment plan for his IRS debt. The interview summary was authenticated in his January 2016 response to a DOHA interrogatory.

In Applicant's January 2016 interrogatory response, Applicant again addressed the financial hardship caused by his 2006 divorce, his parent's medical and funeral costs, and, in 2014, the tragic death of a young family friend who was temporarily in his own family's care on a trip. Regarding his income tax return situation, he said:

I put the story of the divorce and these three deaths under the section of financial record. I did that to show how this situation snowballed. I filed for

an extension the first year and then didn't meet the October 15th date. And the second year it happened again. And again. I had a problem that I kicked down the road until the problem got too big to kick. There was always another hearing that I had to prepare for, or other financial obligation to be satisfied or another medical emergency to be resolved. . . . It's a problem I take responsibility for, and am working to fix, and once fixed, will never happen again. . . . I fully intend to enter into a payment plan to get this issue behind me and fully resolved.²

To that end, Applicant wrote that he had enlisted a tax resolution company to help him resolve his financial issues, although no further details were provided regarding their retention or strategy. He did, however, provide documentary evidence reflecting that he had filed his TY 2006 federal return in April 2009, addressing SOR allegation 1.a. His federal income tax returns for TYs 2007-2009 were still unfiled, as related to allegation 1.b. With regard to allegations 1.c and 1.d, he filed his 2010 federal income tax return in March 2013, but still owes the sum of \$17,338 to the IRS. Regarding allegation 1.e, the income tax returns for TYs 2011-2013 remain unfiled. He provided a copy of his TY 2014 federal income tax return signed in October 2014, but the 2014 IRS account transcript showed no record of it having been filed and no documentary evidence reflecting it was mailed or submitted.

With regard to the unfiled TY 2006 state income tax return noted in allegation 1.f, Applicant showed he filed that tax return in April 2009. As for allegation 1.g, regarding his failure to timely file state income tax filings for 2007-2014, Applicant offered a copy of his 2014 state tax return, dated in September 2015 and in which he owed about \$2,702. The evidence offered, however, does not indicate that it was actually filed. No documentation was offered with regard to his state tax returns for TYs 2007-2013.

On August 20, 2014, Applicant executed a security clearance application (SCA). Despite the tax issues noted above at SOR allegations 1.b, 1.c, and 1.e, Applicant incorrectly answered "no" on section 26. That section inquired: "In the past seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance." He similarly answered "no" in response to a later portion of section 26 which asked: "In the past seven years, have you had a lien placed against your property for failure to pay taxes or other debts? [and] are you currently delinquent on any federal debt?" In doing so, he failed to disclose his federal tax debt, as noted in SOR allegation 1.d, and state tax lien, reflected at SOR allegation 1.h.

In his SOR response, Applicant admitted he falsified material facts in answering "no" to these questions. He knew he was obligated to file such tax returns. He noted that he had started filing extensions for submitting his tax returns beginning in TY 2006, but he failed to follow through on multiple occasions. He provided documentary evidence

² FORM, item 7, at 29. In addition, in his 2016 SOR Response, Applicant noted that he intended to turn the remaining tax matters over to a tax resolution specialist and, where appropriate, enter into a repayment plan.

reflecting such extensions were sought for some of the TYs at issue, in at least 2007, 2011, 2012, 2014, and 2015.³ (FORM, Item 7, IRS Account Transcripts)

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. 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, in making a decision.

The protection of the national security is the paramount consideration. 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 only drawn conclusions that are reasonable, logical, and based on the evidence provided.

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. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such 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.

³ The actual requests for extension are not in the record. Generally, however, Form 4868 (Application for Automatic Extension of Time To File U.S. Individual Income Tax Return) is applicable. That form notes: "Total Time Allowed: Generally, we can't extend the due date of your return for more than 6 months," thus moving the due date of one's tax return from mid-April to mid-October of the same year.

Analysis

Guideline F, Financial Considerations

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 admits he failed to timely file federal and state income tax returns for multiple years, and that he is indebted to both the IRS and his state tax revenue bureau for past-due income taxes. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations, and

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.

Six conditions could mitigate the finance related security concerns posed here:

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;

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, 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.

The tax matters at issue are multiple in number. They range from TY 2006 to TY 2014, with some issues yet unresolved. During that timeframe, Applicant was apparently in continual distraction due to his 2006 divorce, the care and final passing of his parents, and the tragic and untimely death of a young friend on a family trip in 2014. While these factors do not rise to the level necessary to give rise to AG ¶ 20(a), they are sufficient to raise AG ¶ 20(b).

In at least five of the years between TYs 2006-2014, Applicant filed requests for extensions to file tax returns. He has since filed federal tax returns for TY 2006 (in 2009), TY 2010 (in 2013), and, it appears, a federal tax return for TY 2014 (in 2015), thus substantially addressing SOR allegations in 1.a, 1.c, and, in part, 1.e. It is noted, however, the belated filings made in 2009 and 2013 were already noted in the SOR.

Regarding his state tax return filings, Applicant filed his TY 2006 state return (in 2009), an effort previously acknowledged in the SOR. Not previously noted is his proffer of a copy of a 2015 state filing addressing TY 2014, in response, in part to SOR allegation 1.g. There is no documentary evidence indicating an effort to initiate payments on the federal and state tax liabilities owed, and as noted in SOR allegations 1.d and 1.h. Applicant wrote that he intended to turn these tax filing matters over to a specialist, and to enter into repayment agreements with the IRS and his state for the liabilities owed. No documentary evidence of such arrangements, however, were offered. Consequently, at best, AG ¶ 20(d) only applies in part.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Here, Applicant admitted that he falsely denied having failed to file federal or state income tax returns in the seven years preceding his August 2014 SCA. He similarly denied having failed to file or pay federal or state taxes owed when required by law with the seven years preceding that 2014 SCA. Therefore, the following disqualifying condition is applicable under AG ¶ 16:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Despite the fact he offered considerable narrative, Applicant gives scant insight into why he intentionally and falsely denied his tax failings. Although he volunteered that he filed for extensions for at least some of the tax years at issue, the very fact he filed for such extensions highlights his awareness of what his tax obligations were. Falsification on a SCA is a serious offense. With insufficient evidence and argument presented explaining his admissions, none of the potential mitigating conditions 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 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 58-year-old project leader who has worked for the same defense contractor since 2006. He honorably served in the United States military with distinction from 1977 until 1998. Since that time, he has been employed in the defense industry. Applicant has earned an associate's degree, is married, and has raised one adult child.

From TY 2006 through TY 2014, Applicant has persistently been tardy in his filing of both federal and state tax returns. The majority of the progress he has made on these filings were already noted in the SOR, and no new efforts were subsequently documented in response to the FORM. By way of explanation, Applicant cites to a 2006 divorce and tragic deaths that occurred between 2006 and 2014 as his reason for failing to timely file (or belatedly file in a reasonable time after making an extension request) the tax returns at issue. While these are, indeed, sad and unsettling events, they fail to explain how this situation has managed to continue unresolved for over a decade.

Applicant recognizes he needs help in this matter after having "kicked [the matter] down the road until the problem got too big to kick." He indicates that he knows what needs to be done to rectify his situation. He has failed, however, to provide any documentary evidence showing he has made efforts to initiate such measures, such as retaining an appropriate professional who is now actively remediating his tax situation or orchestrating a payment plan on his past-due taxes. In short, while Applicant provided sufficient facts to explain the initial creation of his tax situation, he provided insufficient documentary evidence reflecting that he is now addressing it.

Applicant admitted that he falsified material facts on his August 2014 SCA when he intentionally omitted information regarding unfiled or late income tax returns and past-due tax liabilities. He provided no clear explanation as to why he did so, but he did note that he requested filing extensions for multiple years. An extension request, however, does not give one an indefinite period of time to file one's tax returns, nor does it constitute a tax return filing for purposes of the SCA. Without more, Applicant failed to provide sufficient information or documentation to mitigate or extenuate his admission of intentional falsification on the 2014 SCA. Given all these factors, I find he failed to mitigate financial considerations and personal conduct 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.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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