



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



In the matter of:)	
)	
)	ISCR Case No. 14-03182
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

March 9, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 11, 2013.¹ On February 11, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on March 31, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on February 11, 2015. The FORM “Withdrew” the Government’s security concerns under Guideline E. Applicant did not respond to the FORM. The case was assigned to me on November 23, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

¹The e-QIP was not executed on May 29, 2013, as alleged in Subparagraph 2.a. of the Statement of Reasons.

Findings of Fact

In his Answer to the SOR, Applicant neither admits nor denies the factual allegations in the remaining Paragraph of the SOR, but provides explanation. I therefore consider his one page Answer a denial of the remaining allegation under Guideline F.

Applicant is 55 years old, and is employed as a “senior technician” by a “Federal Contractor.” (Item 4 at pages 5 and 9.)

Guideline F - Financial Considerations

1.a. It is alleged that Applicant has not filed his Federal or state income taxes for tax years 2011 and 2012. In his Answer to the SOR, he avers, in part, the following:

I have filled (*sic*) Federal and State tax returns for 2011 and 2012. I have attached copies of tax returns for 2011 and 2012. These were prepared by H&R Block and mailed by me. I will receive a refund for both years. . . . My failure to file was not due to finical (*sic*) hard ship (*sic*). I have in the past been on a deferred payment plan and fulfilled those obligations. (Item 3 at page 2.)

Attached to his Answer are both Federal and state income tax filings for the tax years in question. (Item 3 at pages 3~11.) They were filed in March of 2015. (*Id.*) His refunds total about \$3,614. (Item 3 at pages 3~11.) This allegation is found for Applicant.

Policies

When evaluating an applicant’s suitability for a security clearance, 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 useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 2(c), 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. Paragraph 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 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 protect or 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 Executive Order 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

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 18:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 19(g), a “*failure to file annual Federal, state, or local income tax returns as required*” is potentially disqualifying. Applicant failed to file his Federal and state returns in a timely fashion.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has submitted documentation showing that he has

now filed the income tax returns in question, albeit in a tardy fashion. Financial Considerations are found for the Applicant.

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. Under AG Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 2(a):

- (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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from his Financial Considerations.

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

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge