



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



In the matter of:)	
)	
)	ISCR Case No. 14-04756
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/19/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 9, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 13, 2016, scheduling the hearing for February 4, 2016. The hearing was convened as scheduled. A letter from Department Counsel to Applicant was marked Hearing Exhibit

(HE) I. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant questioned the accuracy of an entry on GE 3, but he did not object to its admissibility, and it was admitted. Applicant testified and submitted Applicant's Exhibit (AE) 1 through 20, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 12, 2016.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 2008. He served on active duty in the U.S. military from 1985 until he retired in 2009. He seeks to retain a security clearance. He attended college for a period, but he did not earn a degree. He is married for the second time, but he and his wife are separated. He has three children and a stepchild.¹

Applicant did not file federal income tax returns when they were due for tax years 2002 through 2006 and 2008 through 2011. He stated that he received bad advice from other noncommissioned officers, but he also admitted that he knew better. He was serving overseas during several of the years the returns went unfiled.²

The IRS filed substitute tax returns for tax years 2002 and 2004 through 2006. Applicant filed his 2007 federal income return on time. He filed his 2002 tax return in February 2008. He filed his 2004 tax return in September 2007. He filed his 2005 and 2006 returns in September 2008.³

In 2010, the IRS filed a \$12,170 tax lien against Applicant for tax years 2002 and 2004 through 2007. That amount included penalties and interest. In June 2012, Applicant's employer received a notice from the IRS to levy Applicant's wages, and informed Applicant that his wages would be garnished. The amount due was \$14,135. Applicant contacted the IRS and started correcting his tax problems. He set up an installment plan to pay \$500 every two weeks. The levy was released by the IRS in July 2012.⁴

Applicant filed his 2008, 2009, and 2010 federal income tax returns in July 2012. He filed his 2011 tax return in August 2012. He filed his 2005 and 2006 returns in September 2008. He filed his 2012, 2013, and 2014 returns on time.⁵

Applicant consistently made the installment agreement payments, and the tax lien was released in October 2013. His back taxes were paid in November 2014. He

¹ Tr. at 19-23, 30-32; GE 1, 2; AE 1, 8, 9.

² Tr. at 21-22, 26; Applicant's response to SOR; GE 1, 2; AE 1, 8, 15.

³ Tr. at 22; GE 2; AE 1, 15.

⁴ Tr. at 23; Applicant's response to SOR; GE 1-3; AE 1, 15.

⁵ Tr. at 22; GE 2; AE 1, 15.

received a refund in December 2014. He no longer owes the IRS. His state certified that he is in good standing.⁶

Applicant's accepts responsibility for his actions, and he is embarrassed by his poor judgment. He also realizes that, with penalties and interests, he paid more in taxes than if he had filed the returns on time. He credibly testified that he learned a hard lesson and the behavior will not be repeated. He has received financial counseling.⁷

Applicant made multiple deployments while he was on active duty to locations such as Haiti, Bosnia, Kosovo, Iraq, and Afghanistan. He received numerous awards, medals, and commendations. He submitted documents and letters attesting to his excellent performance in the military and on his job. He is praised for his loyalty, dedication, leadership, work ethic, responsibility, and integrity.⁸

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 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. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

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 security decision.

⁶ Tr. at 22-23; Applicant's response to SOR; GE 2; AE 1, 6, 7, 14, 15.

⁷ Tr. at 21-25, 32-34, 36; Applicant's response to SOR; GE 1, 2.

⁸ Tr. at 26-28; GE 1, 2; AE 4, 5, 9, 19, 20.

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 of 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 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 trustworthiness concerns under AG ¶ 19. The following is potentially 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 did not file his federal income tax returns when they were due. AG ¶ 19(g) is applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; and

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

Applicant's pattern was to file his income tax returns late, if at all. The IRS finally got Applicant's attention in 2012 with the notice to levy his wages. Applicant filed his late returns and instituted an installment agreement to pay his back taxes. His 2012, 2013, and 2014 returns were filed on time, and his back taxes were completely paid by 2014. He credibly testified that he learned a hard lesson, and the behavior will not be repeated.

Applicant's financial problems are resolved. They occurred under circumstances that are unlikely to recur and no longer cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are applicable

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(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.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's favorable character evidence and honorable military service, particularly his multiple deployments to combat zones. For years, Applicant did not demonstrate the high degree of judgment and reliability required for access to classified information. See *e.g.* ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014). However, he learned his lesson and took remedial action years before the SOR was issued.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations 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: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge