



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-05795
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

02/09/2016

Decision

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

Applicant submitted insufficient documentary evidence to mitigate Guideline F security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 17, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (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 (AG) effective within the DOD on September 1, 2006.

In a response to the SOR, dated July 2, 2015, Applicant admitted the three allegations raised. He also requested a determination based on the written record in lieu of a hearing. On August 28, 2015, the Government issued a File of Relevant Material (FORM) that contained five attachments (“Items”). Applicant did not respond within the 30 days provided. The case was assigned to me on December 1, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 26-year-old software developer who has attended approximately five years of college. He held multiple internships during those years. His undergraduate education ended in mid-2013. He has no military experience. Applicant is single and has no children.

At issue in the SOR are three allegations:

- 1) Applicant failed to file Federal income tax returns for tax years 2012 and 2013;
- 2) Applicant failed to file State income tax returns for tax years 2012 and 2013; and
- 3) Applicant owes \$88 on a local collection account with a date of last activity in early 2013.

Applicant appears to admit all three allegations. He explained that he forgot to file the tax returns at issue after a relative who previously filed on his behalf retired. He asserts, however, that he filed the neglected 2012 and 2013 tax year tax returns through a representative in May 2015, after receiving the SOR. No documentary evidence of such filings, however, was offered to substantiate this assertion.

As for the collection account balance at issue, Applicant notes only that he has not been able to reach the collection entity regarding the \$88 balance during its regular business hours. No documentary evidence was presented indicating any alternative methods attempted by Applicant to contact the collection entity or otherwise either address or dispute this debt.

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. 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.” 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 not drawn 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, 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 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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

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

Here, the Government introduced credible evidence showing Applicant failed to timely file Federal and State tax forms for tax years 2012 and 2013. It also showed he has neglected an \$88 collection balance from 2013. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(g) failure to file annual Federal, state, or local income tax returns as required.

Five conditions could mitigate these finance-related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated 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.

Applicant attributed his failure to timely file his tax returns to his having forgotten to do so after his usual tax representative retired. He offers no explanation with regard to the 2013 collection account balance except that he has not, for some unspecified reason, been able to contact the entity during normal working hours. No evidence was introduced to show that either his debt or his failure to timely file tax returns was caused by circumstances beyond his control. There is no evidence he has received financial counseling. Applicant provided no documentary evidence showing that his tax filings were actually completed. Moreover, there is no documentary evidence showing he has made any efforts to validate, dispute, honor, or take any action on his delinquent \$88 debt. While there is no reason to suggest Applicant's statements regarding these allegations are untrue, documentary evidence is necessary to substantiate his assertions. Lacking such proof, financial considerations security concerns are sustained.

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 at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 26-year-old software developer who has attended college and held multiple academic internships. His undergraduate education ended in 2013. He is single and has no children. He forgot to file his Federal and State tax returns for tax years 2012 and 2013 after a relative, who had previously prepared his taxes, retired. Applicant stated that those forms have since been filed, but provided no documentary evidence to that effect. Moreover, he has neither investigated nor addressed a 2013 collection account balance for \$88 in his name.

The burden in these proceedings is on the applicant to provide documented evidence rebutting, refuting, or otherwise challenging evidence of delinquent debt or suggestions of failing to timely comply with tax burdens. Applicant's explanations and commentary do little to establish progress on the allegations raised. With no documentary evidence tending to mitigate the security concerns raised, those concerns remain unmitigated.

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.c:	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