



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



In the matter of:)	
)	
)	ISCR Case No. 15-01132
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He was delinquent in filing his federal and state income tax returns for two tax years. He has now filed his returns and received sizable tax refunds. He has mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 22, 2015, the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. On October 1, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals

¹ 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.

(DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated November 19, 2015. The FORM contained five attachments (Items). On December 1, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On December 28, 2015, Applicant responded to the FORM and provided documentation from the Internal Revenue Service (IRS) and from his bank. There was no objection to Applicant's response to the FORM; it was admitted as Item A. On March 14, 2016, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied the allegations asserting he had filed his delinquent federal tax returns on April 15, 2015, and had filed his state tax returns. (Item 2) After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 56-year-old senior research programmer who has worked for a defense contractor since January 1985 and seeks to retain a security clearance. He has been married since 1985 and has two children. (Item 3)

On Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had not filed his 2012 and 2013 tax returns. (Item 3) He indicated in a personal subject interview (PSI) that he had failed to file due to procrastination. (Item 4)

On April 15, 2015, Applicant filed his federal tax returns for tax years 2012, 2013, and 2014². For tax year 2012, his federal taxes were \$9,844. He had \$22,899 withheld from his salary and he received a \$13,055 refund. (Item A) For tax year 2013, his taxes were \$1,071. He had \$23,719 withheld and received a \$12,647 refund. For tax year 2014, his taxes were \$13,320. He had \$26,821 withheld and received a \$13,501 refund. His federal income tax refunds for these three years totaled more than \$39,000.

For tax year 2012, Applicant's state taxes were \$5,333. He had \$6,360 withheld and received a \$1,027 refund. For tax year 2013, his state taxes were \$5,349. He had \$6,578 withheld and received a \$1,229 refund. For tax year 2014, his state taxes were \$5,863. He had \$6,817 withheld and received a \$954 refund. His state income tax refunds for these three years totaled approximately \$3,200. Applicant provided documents verifying the state income tax refunds and also provided bank statements showing the state refunds were deposited to his bank account.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

² The SOR did not allege failure to file tax returns for tax year 2014.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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. 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 Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

For two tax years Applicant failed to timely file his federal and state income tax returns in a timely manner. However, he had over withheld his state and federal taxes by more than \$42,000. Disqualifying Conditions AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," applies.

Five financial considerations mitigating conditions under AG ¶ 20 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;
- (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 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 did not timely file his federal and state income tax returns for tax years 2012 and 2013. However, he had more than sufficient funds withheld from his pay to meet his tax obligations. In fact, once he filed his returns for the two years listed in the SOR and also tax year 2014, he received a \$42,000 refund.

AG ¶ 20(a) has application because Applicant never had a delinquent debt. Applicant filed his past-due returns in 2015. Failing to timely file his income tax returns, when entitled to a substantial refund casts very limited doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant provided no information concerning factors beyond his control. He failed to file due to procrastination. However, he has now acted responsibly by filing the returns and receiving refunds.

The mitigating condition listed in AG ¶ 20(c) applies. There are clear indications the problem of filing has been resolved and clear indications his finances are under control. The mitigating condition listed in AG ¶ 20(d) and AG ¶ 20(e) do not apply because there was never an over-due or past-due obligation.

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. Applicant has been employed and held a clearance for more than 30 years. He provided no information about his duty performance. He should have filed his state and federal returns in a timelier manner. However, the returns are now filed and he has received federal and state income tax refunds of more than \$42,000. Overall, the record evidence leaves me without any doubt as to Applicant's eligibility and suitability for a security clearance. Having never been delinquent on the payment of his taxes, and having now filed his returns, he has 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a and 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 Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge