



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03919

Appearances

For Government: Gaitha Manns, Esq., Department Counsel

For Applicant: *Pro se*

02/27/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated the security concerns regarding her financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On November 22, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), effective June 8, 2006.

Applicant responded to the SOR on December 22, 2017, and requested a hearing. The case was assigned to me on August 3, 2018, and scheduled for hearing on October 23, 2018. The Government's case consisted of four exhibits (GEs 1-4) that were admitted without objection. Applicant relied on one witness (herself) and seven exhibits. The transcript was received on October 31, 2018.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documented IRS payments. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with documentation of satisfaction of payments owed to the Internal Revenue Service (IRS) for tax year 2013, an endorsement from her supervisor, and a performance evaluation. Applicant's submissions were admitted without objection as AEs H-J.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated delinquent tax debts with the IRS in the amount of \$13,273 for tax year 2013; (b) accumulated delinquent state tax debts in the amount of \$1,073 for tax year 2013; (c) failed to timely file her federal income tax returns for tax years 2013 and 2014; and (d) failed to timely file her state income tax returns for tax years 2013 and 2014. Allegedly, Applicant has not resolved her delinquent debts and filing lapses.

In her response to the SOR, Applicant admitted the allegations covered by SOR ¶¶ 1.a and 1.c-1.d with explanations. She denied the allegations covered by SOR 1.b, claiming she paid the taxes owed for tax year 2013 in September 2017. She further claimed that she filed her federal and state tax returns late due to extenuating circumstances (bad years, her words).

Findings of Fact

Applicant is a 43-year-old security systems specialist for a defense contractor who seeks a security clearance. The allegations covered in the SOR that were admitted are incorporated by reference. Allegations that were denied by Applicant are reserved for fact-finding based on the developed evidence at hearing.

Background

Applicant never married and has one three-old-son. (GE 1; Tr. 23, 25) She earned a high school diploma in June 1993. (GE 1; Tr. 23) She attended a community college between September 1994 and August 2005 but earned no diploma. (GE 1; Tr. 24) Between April 2004 and August 2004, she took college on-line courses but did not earn a diploma. (GE 1; Tr. 24) Applicant reported no military service. (GE 1)

Since February 2013, Applicant has worked for her current defense contractor as a security systems specialist. (GE 1) She previously worked for this firm between October 2005 and September 2010 as a security analyst. (GE 1; Tr. 27) Between October 2010 and February 2013, she worked for another defense contractor as a principle security analyst. (GE 1)

Applicant's finances

Applicant admits and IRS transcripts confirm that Applicant filed her federal income tax returns for tax years 2013 and 2014 out of time in September 2017, after exceeding the extension granted her by the IRS to October 2014. (GE 2 and AE A) Transcripts confirm, too, that she owed the IRS \$13,273 for delinquent taxes accrued for the 2013 tax year. (GEs 2 and 4-5 and AE A) For filing her 2013 federal tax return out of time in 2017, the IRS penalized Applicant \$1,880. (AE A) Similar penalties were imposed on Applicant by the IRS for filing her 2014 federal return out of time in 2017. (GEs 2 and 4) Applicant is credited with the timely filing of her 2015 and 2016 federal and state income tax returns.

Besides filing late federal tax returns for tax years 2013-2014, Applicant also failed to timely file her state income tax returns for these tax years. Ultimately, she filed her state income tax returns in September 2017, well past the time reserved for filing timely state returns for these tax years.

Applicant attributed her late filing of her federal and state tax returns to extenuating circumstances associated with her two surgeries, caring for her young son, and attending to her mother who became gravely ill before passing away in August 2014. (GEs 1-2 and AE F; Tr. 32-33) And she experienced emotional struggles with her father's passing. (GEs 1-2 and AE G; Tr. 26)

In December 2017, Applicant entered into an installment agreement with the IRS. In compliance with her installment agreement she has made monthly payments of \$190 since January 2016 and documented paying off the \$12,361 balance owing in federal taxes for tax year 2013 in November 2018. (AE A) Applicant also documented her paying off delinquent state taxes for tax year 2013 in September 2017 in the amount \$1,589. (AE B; Tr. 37-38)

Applicant currently grosses \$120,000 a year and is able to maintain her financial obligations (inclusive of child care and rent) in current status. (GE 3; Tr. 39-40, 44) She has a 401(k) retirement account with approximately \$50,000 in the account. (Tr. 40-41) And she is aided by the occasional child support she receives from the father of her son. (Tr. 46)

Endorsements

Applicant is highly regarded by her program manager and colleagues. (AE E) The director of the DOD program she is assigned to credited her with being one of the most

conscientious and thorough employees with whom he has ever worked. (AE E) He considered to be highly reliable and trustworthy in handling sensitive data and interacting with customers. Colleagues who have worked with her for several years described her characterize her as highly responsible in maintaining the security of the hospital networks she works she is committed to protecting. (AE H)

In October 2017, Applicant was nominated by her benefits manager for a company core value award. (AE I) And she is credited with solid performance assessments in all categories of rating for the review period of 2016-2017. (AE J)

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's failure to timely file her federal and state income tax returns for tax years 2013-2014 and her accrual of delinquent federal and state taxes for tax year 2013.

Financial Concerns

Applicant's failure to timely file federal and state income tax returns for tax years 2013-2014 and her incurring of delinquent federal and state taxes for tax year 2013 warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19(c), "a history of not meeting financial obligations"; and 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."

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of filing federal and state tax returns and resolving federal and state tax delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited extenuating circumstances (i.e., surgeries, caring for her ailing mother and young child as a single mother, and her emotional struggles associated with the passing of her father) provide some mitigation credit for her failure to timely file her federal and state income tax returns for tax years 2013-2014 and to address her federal and state taxes due for tax year 2013. Based on her cited circumstances, MC ¶ 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," has some application to Applicant's situation

Based on Applicant's cited circumstances, the "acting responsibly" prong of MC ¶ 20(b) has considerable application. She is credited with filing her federal and state income tax returns for tax years 2013-2014 in September 2017 (untimely, but still two months before the issuance of the SOR) and paying her delinquent federal and state income taxes in full for tax year 2013. While Applicant was late in filing her 2013-2014 state and federal income tax returns, the IRS implicitly accepted her late filings in approving her installment agreement. With her payoff of the delinquent taxes she owed

her state taxing authority and satisfactorily completing her installment agreement with the IRS, Applicant is able to demonstrate a good track record of compliance with the agreement's terms, and credibly claim the benefits of MC ¶ 20(b). See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)). For similar reasons, MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," is available to mitigate her federal and state tax return filing lapses regarding tax years 2013-2014 and incurring of federal and state tax delinquencies for tax year 2013.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely filing of tax returns. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In Applicant's case, she has established a measurable track record of addressing her late state and federal tax returns and paying off her delinquent federal and state tax payments due with the added benefit of an installment agreement with the IRS. Her collective efforts are enough to warrant favorable findings and conclusions with respect to raised security concerns.

Whole-Person Assessment

Whole-person assessment is favorable to Applicant. She has shown sufficient progress to date in filing her federal and state tax returns for tax years 2013-2014 and paying off delinquent federal and state taxes due for tax year 2013 with the aid of an approved IRS installment agreement to merit substantial mitigation credit. Applicant's mitigation efforts are aided by her demonstrated substantial contributions to her employer and the U.S. defense effort generally. She is highly regarded by her manager and colleagues and has received solid awards and performance evaluations recognizing her service to her employer.

Overall, Applicant's actions to date in addressing her finances reflect considerable evidence of restored financial responsibility and judgment, sufficient to overcome raised doubts about her trustworthiness, reliability, and ability to protect classified information or occupy a sensitive position. See AG ¶ 18. Conclusions are warranted that her finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Favorable conclusions are entered with respect to the allegations covered by SOR ¶¶ 1.a-1.d. Eligibility to hold a security clearance under the facts and circumstances of this case is consistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs. 1.a-1.d:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

