



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-00747
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel,
Benjamin Dorsey, Esq., Department Counsel
For Applicant: Nina Ren, Esq.

08/30/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns.
Eligibility for access to classified information is denied.

Statement of the Case

On March 26, 2018, 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 (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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on April 13, 2018 and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on September 24, 2018, scheduling the hearing for November 1, 2018. With no

objection, I granted Applicant's request for a hearing continuance to provide her with the opportunity to obtain counsel. DOHA issued a second NOH on December 17, 2018, rescheduling the hearing for January 17, 2019. I convened the hearing as rescheduled.

I admitted Government Exhibits (GE) 1 through 3 in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant Exhibits (AE) A through Y, which I admitted in evidence without objection. At Applicant's request, and with no objection from the Government, I left the record open until March 18, 2019. With no objection, I granted Applicant's March 14, 2019, request for an extension of time until April 17, 2019 to submit additional documentation. Applicant timely provided additional evidence, which I collectively marked as AE Z and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on January 28, 2019.

Findings of Fact

Applicant admitted both of the SOR allegations. She is 48 years old. She was born in Guyana. She immigrated to the United States in 1974 and became a U.S. citizen in 1985. She married in 2001. She has two children, one adult and one minor, and an adult stepchild. She has owned her home since 2001. (Tr. at 21-22, 77, 81, 123-124, 125-136; GE 1; AE M).

Applicant earned a bachelor's degree in 1992 and a master's degree in 1993. She has worked for various U.S. Government contractors since approximately 1997. She was unemployed after the birth of her child from May to December 2007, and she was briefly unemployed in November 2015 and January 2017. As of the date of the hearing, she worked as a program analyst for her employer, a Department of State (DOS) contractor, since February 2017. She was first granted a security clearance in 1996. (Tr. at 6, 17-21, 62-63, 85-90, 100-101, 136-148; GE 1; AE T).

The SOR alleges that Applicant failed to timely file her federal income tax returns for tax years 2012 through 2016, as required (SOR ¶ 1.a). It also alleges that she was delinquently indebted to the state tax authority for \$6,230 in state income taxes for tax years 2012 and 2013 (SOR ¶ 1.b). She listed her failure to timely file and pay her federal income tax returns for tax years 2012 through 2016 and her state income tax returns for tax years 2014 through 2016 on her April 2017 security clearance application (SCA). She also listed her failure to timely file her state income tax returns for tax years 2012 and 2013 on her 2017 SCA, stating that the state tax authority filed on her behalf as a result. December 2017 IRS account transcripts reflect that Applicant did not timely file her federal income tax returns for tax periods 2012 through 2016, and though she was given extensions until October 2013, October 2014, and October 2015 for tax periods 2012, 2013, and 2014, respectively, she failed to file the relevant tax returns by the extension deadlines. (Tr. at 26-28, 90-91; GE 1, 2; AE B, C).

Applicant attributes her untimely filing of her relevant federal and state income tax returns and her delinquent state taxes to unforeseen circumstances that began in 2013, when her husband was fired from his job. His employer of approximately 19 years lost its contract to a new company that required her husband to provide proof of a

bachelor's degree for continued employment. He had misled both her and his previous employer to believe that he had such a degree. She unsuccessfully attempted, from January to March 2013, to prevent her husband from losing his job as he was only a few classes short and had worked in his field for nearly 20 years. Their household income dropped from \$200,000 to \$90,000, and he was unemployed from about March to August 2013 and April 2014 to April 2015. (Tr. at 26-27, 35-75, 91-101, 120-121, 125-136; GE 1).

During this period, Applicant also assisted her stepson with paying an indeterminate amount in legal fees for his then-pending criminal charges. She incurred the additional expense of housing both her stepson, after his apartment eviction, and his mother, after her incarceration release, when she temporarily permitted them to reside in her home until they became self-sufficient. (Tr. at 26-27, 35-75, 91-101, 120-121, 125-136; GE 1; AE N).

From approximately late 2013 to November 2014, Applicant faced issues with her then-employer of nearly seven years, which in turn affected her health. She also experienced issues involving her children from 2014 through 2018, to include three incidents in which one child was assaulted by school bullies and led to her pursuit of criminal charges against the assailants, and behavioral incidents for her other child that led to an ADHD diagnosis and the implementation of a reasonable accommodation plan at that child's school. She testified that she notified both the IRS and the state tax authority about her circumstances that impeded her ability to timely file her income tax returns and of her intention to eventually file them. (Tr. at 26-27, 35-75, 91-101, 125-136, 148-155; GE 1; AE O, P, Q, R, S).

Applicant testified that at different times during this period:

When I would try to sit down at different times, I would try to work on my taxes, the weight of everything and knowing the importance of getting the taxes done, but knowing everything that I had to look through and all of the paperwork, it just was making me get -- I would start getting really anxious. And I couldn't really, like, be still to do what I needed to do, even though I knew I needed to do it. And I was getting, like, really, most of the times, a lot of the times, these crying spells. I would have, like, when I felt really overwhelmed, I'd just go off somewhere and just really be crying . . . I kind of feel like I was fighting depression, but I never really went to a doctor or anything like that, to get diagnosed with depression.

(Tr. at 73).

While Applicant asked her husband for help, his efforts were also stymied by his struggle, then, with depression. Though she understood she had a legal obligation to file her tax returns, she did not prioritize doing so, in part because of her perception that she did not believe she would owe any taxes and she was "basically holding up my own refund." She also testified that she did not think about the impact that failing to file her tax returns would have on her security clearance. In her SCA, she listed that she

traveled for pleasure to the Bahamas in December 2014 and to the Dominican Republic in November 2015. (Tr. at 73, 93-120, 125-136; GE 1).

Applicant filed her 2012 through 2017 state and federal income tax returns in January 2019. She hired a tax advisor in February 2018 to assist her, though she personally sorted through “seven to ten boxes” of paperwork to support the exemptions and deductions that both she and her husband claimed for their home office. She acknowledged that her 2017 SCA prompted her to file her relevant tax returns. (Tr. at 22-35, 68, 93-120; GE 1; AE A-F, H, J, V, W, X, Z).

IRS account transcripts from March 2019 reflect that she has a zero balance for tax periods 2012, 2013, 2015, 2016, and 2017. An April 2019 letter from the IRS reflects receipt of her federal income tax return for tax year 2014, but necessary documentation that was missing needed to be received before her return was processed. (Tr. at 22-35, 68, 93-120; GE 1; AE A-E, H, V, W, Z).

Applicant testified that when the state tax authority filed her 2012 and 2013 state income tax returns on her behalf in 2016, after she had failed to timely file them, the tax authority gave her the option of paying her outstanding state taxes of approximately \$8,000 to \$9,000 in full or through a payment plan. She elected the payment plan and began payments accordingly in December 2016. In approximately late 2018, the state tax authority notified her that it had also filed her 2014 and 2015 state income tax returns on her behalf after she failed to timely file them and tacked on her outstanding state taxes for these tax years to her existing payment plan. (Tr. at 22-35, 68, 93-120; GE 3; AE D, F, G, I, J, W, Y, Z).

A January 2018 state tax authority record reflects that Applicant’s outstanding balance for tax years 2012 and 2013 was \$6,230; she established a monthly payment plan in July 2017 of \$235 for 36 months; her first installment was due in August 2017; and she was in good standing. January 2019 records from the state tax authority reflect that Applicant has no outstanding state tax income liability after her filed returns for tax years 2012 through 2017 were processed. The records state that such a determination could be subject to change if the IRS made any adjustments that would, in turn, necessitate adjustments to her state income tax returns. (Tr. at 22-35, 68, 93-120; GE 3; AE D, F, G, I, J, W, Y, Z).

Applicant received an extension of time to file her 2018 federal and state income tax returns and she filed them on April 17, 2019. She testified that prior to tax year 2012, she timely filed all of her federal and state income tax returns. She described her current financial health as “pretty good.” She stated that her husband recently changed employers in October 2018, but he previously worked for the same employer since 2015, and his salary was approaching the amount he earned prior to 2013; he was also completing his courses towards his bachelor’s degree in May 2019. She also stated that their household annual salary was approximately \$200,000, they have \$6,200 in savings, \$140,000 in equity in their home, and they intend to resume setting aside money in their 401(k) retirement accounts. They do not have any other delinquent

debts. They have not sought financial counseling, but they received tax assistance from their tax advisor. (Tr. at 71, 75-85, 121-136; AE K, L, M, Z).

Applicant's U.S. Government supervisor from January 2017 to the date of the hearing testified that he interacted with her daily. He testified that she told him about her tax issues in late 2018 and he considered them a "blip within her career." He described her as a straightforward, astute, and trustworthy individual who observes rules and exercises good judgment. He testified that "she really keeps us between the lines on financial issues" and adheres to government finance regulations. He has provided input to her contract supervisor that he considers her an excellent employee. (Tr. at 136-148).

A friend, who previously worked with Applicant from 2012 to 2014, testified that she was aware of the issues Applicant faced with their previous employer, and her accompanying health issues. The witness also testified that she was aware of Applicant's tax issues. She described Applicant as a dedicated worker and a reliable, law abiding individual with sound judgment. This witness testified that she was aware of Applicant's tax issues. (Tr. at 148-155).

Applicant was selected as "Staff of the Month" in 2009 for her outstanding work. Her performance appraisals from 2010 through 2014 reflect that she was a highly-regarded employee. She received a commendation in 2016 from an employer for whom she was on a one-year contract. Her employer noted in her 2017 to 2018 performance review that she has continued to demonstrate exemplary work performance. (Tr. at 59-63; AE T, U).

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(a), 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 national security eligibility will be resolved in favor of the 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.

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 Exec. Or. 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* Exec. Or. 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 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 or otherwise questionable acts to generate funds

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(c) a history of not meeting financial obligations; and

(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.

Applicant failed to timely file her federal income tax returns for tax years 2012 through 2016, as required. She failed to timely file her state income tax returns for tax years 2012 and 2013, as required, and consequently owed approximately \$6,230 in back taxes. The evidence is sufficient to raise AG ¶¶ 19(c) and 19(f) as disqualifying conditions.

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;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant hired a tax advisor in February 2018 to assist her with filing her 2012 through 2016 federal and state income tax returns and resolve her outstanding 2012 and 2013 state tax liability. She filed her relevant tax returns in January 2019. She is working on completing her 2014 federal income tax return by providing the IRS with the necessary missing documentation. In filing her relevant tax returns, she resolved any previously outstanding state tax liability for tax years 2012 and 2013. She demonstrated that she also filed her federal and state income tax returns for 2017 in January 2019 and she filed her federal and state income tax returns for 2018 by the extension deadline. AG ¶¶ 20(c), 20(d), and 20(g) are established.

It is well established that failure to comply with tax laws suggests that an applicant has difficulty with abiding by government rules and regulations. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). It is also well established that the mere filing of past-due returns or resolution of delinquent tax debts does not compel a favorable security-clearance adjudication. ISCR Case No. 17-01907 (App. Bd. Mar. 7,

2018). The timing of corrective action is an important factor in determining whether security concerns raised by tax delinquencies are mitigated. Applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Conditions beyond Applicant's control, as previously discussed, contributed to Applicant's failure to timely file her 2012 through 2016 federal income tax returns and timely pay her state income taxes for tax years 2012 and 2013. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. She did not hire a tax advisor to assist her with filing her relevant delinquent tax returns until February 2018, after she completed her 2017 SCA, and she did not file her delinquent tax returns until January 2019. Only then did the state tax authority determine that she does not have any outstanding tax liability. Prior to that, though she made payments on her state income taxes for tax years 2012 and 2013, she only did so in December 2016, after the state tax authority notified her that it had filed her state income tax returns on her behalf, because she had failed to timely do so and gave her the option of payment in full or a payment plan. As such, AG ¶ 20(b) is not established.

Applicant failed to timely file her 2012 through 2016 federal income tax returns and timely resolve her previously delinquent state taxes for tax years 2012 and 2013. I find that such behavior did not happen so long ago, was not infrequent, and did not occur under such circumstances that are unlikely to recur. It continues to cast doubt on her current reliability, trustworthiness, and judgment. AG ¶ 20(a) is not established.

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(d):

- (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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	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's continued eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge