



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



In the matter of:)	
)	
)	ISCR Case No. 18-01254
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: *Pro se*

January 28, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On May 1, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On May 30, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 5, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 27, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 3, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were

admitted without objection. The Applicant offered one exhibit, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. She also testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on December 11, 2018.

Findings of Fact

Applicant is 57 years old. She has been married and divorced twice. She has a high school diploma and some college. She holds the position of administrative assistant with a defense contractor and is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified four allegations under this guideline concerning Applicant's failure to file her Federal and state income tax returns for tax years 2013 through 2016, and the fact that her wages were garnished by the state tax authorities for back taxes owed for tax years 2002 and 2016. In her answer to the SOR, Applicant admits each of the allegations. Applicant attributes her failure to file her income tax returns to procrastination.

Applicant served in the United States Air Force for a year, seven months, and 13 days, from 1980 until 1981. (Tr. p. 23.) Applicant claims that while in the military, she was a woman working in a male-dominated mechanic profession and felt discriminated against. She did not get along with her supervisor. In lieu of a reprimand, she was administratively separated from the Air Force prior to the end of her service contract and received an honorable discharge. (Tr. p. 25.)

Applicant has a history of tax problems, including late filings, delinquent back taxes, and wage garnishments dating back at least twenty years. (Government Exhibit 3.) Applicant has worked for her current employer since 2001. (Government Exhibit 1.)

While married to her second husband from 1998 to 2004, Applicant states that she first encountered tax problems. In 2002, he filed their taxes and received a refund. He took an \$8,000 deduction for a tool box because he was a mechanic that was not allowed by the IRS. As a result, there was a tax liability. He and Applicant divorced, and he was on disability and moved out of state. In about January 2008, Applicant's wages were garnished to pay the taxes. (Tr. pp. 16-17.)

In regard to the other income tax returns that were not filed; namely Federal and state income tax returns for tax years 2013; 2014; 2015; 2016 and 2017, Applicant states that she is a procrastinator. (Tr. p. 32.) She did not file these Federal and state

income tax returns on a timely basis because she was overwhelmed. In 2010, she moved in with her special needs daughter. In order for the daughter to continue receiving disability, Applicant had to complete the required paperwork and had several court dates. Then, her father moved in with them, who also needed help being taken care of. Applicant knew that her income tax returns were due, but she kept putting them off. Her daughter's father passed away in May of last year, and since then, she has been working on trying to get all of the taxes caught up. At one point, Applicant refinanced her house and has been having a hard time getting a hold of the mortgage interest statements from the previous mortgage company. (Tr. p. 32.)

Applicant's wages were most recently garnished by the state tax authorities in November 2016. She stated that this garnishment was due to the denial of the rebate for a solar system that she installed in her home. She had not been advised until after the system was installed that the state said that it did not meet the qualifications for the rebate. She was left with \$2,311.70 in taxes that she did not have the money to pay. Applicant has paid the debt. (Government Exhibit 2.)

Applicant states that she is a very independent person and that she did not want to hire anyone to help her file her income tax returns until recently. (Tr. p. 29.) In September of last year, she finally hired an accountant. (Tr. p. 29.) As of yet, Applicant has not filed the income taxes in question and has not filed her most recent income tax returns for tax year 2017. (Tr. p. 34)

Applicant further states that she understands the importance of filing her income tax returns but that she was owed a refund and did not owe taxes. When her income tax returns are eventually filed, she believes that she is due a refund of approximately \$12,000. (Applicant's Exhibit A.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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.” 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 avoided drawing 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, 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 clearance 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 as to 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 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. One is possibly 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 is a procrastinator who has not filed her income tax returns on time since 2013. There is no excuse for this misconduct. Applicant has not demonstrated the high degree of judgment, reliability and trustworthiness required to hold a security clearance.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;

(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 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

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

None of the mitigating conditions are applicable here. Applicant states that she understands the importance of filing her income tax returns on time, but she has not been diligent and responsible enough to file them. Instead, she has established a pattern of failing to comply with Federal and state law that require her to do so. Applicant has not demonstrated sufficient good judgment and reliability concerning these tax issues and is clearly not eligible for access to classified information.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge