



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-01528
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Applicant for Security Clearance)

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant presented sufficient information to mitigate the security concerns about her unpaid taxes and other financial problems. Her request for continued security clearance eligibility is granted.

Statement of the Case

On March 2, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that

it is clearly consistent with the interests of national security for Applicant to have a security clearance.¹

On September 13, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on November 8, 2018, and convened the requested hearing on, December 13, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 8. Applicant testified and proffered 37 documents collectively as Applicant Exhibit (AX) A. All exhibits were admitted, although Applicant objected to GX 2 – 4 on grounds that the information was old or required updating. For reasons stated at the hearing,² I overruled her objections and admitted those exhibits along with all other exhibits to which there were no objections. I received a transcript of the hearing (Tr.) on January 2, 2019.

Findings of Fact

Under Guideline F, the Government alleged Applicant failed to timely file her federal income tax returns for the tax years 2012 through 2016 (SOR 1.a) and her state income tax returns for the tax years 2014 through 2016 (SOR 1.e). It was further alleged that Applicant owed a total of \$35,117 in past-due federal income taxes for tax years 2015 through 2017 (SOR 1.b – 1.c), and that she owed \$11,271 in past-due income taxes to State A (SOR 1.f) and \$6,941 in past-due income taxes to State B (SOR 1.g). Finally, the Government alleged that Applicant owed two unpaid medical debts (SOR 1.h and 1.i) totaling \$481, and \$139 for an unpaid music store account (SOR 1.j).

In response to the SOR, Applicant admitted each allegation and provided extensive information about related financial and personal circumstances, as well as information about actions to correct her financial problems. (Answer) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 46 years old. Since February 2017, she has worked as a technical writer for a defense contractor. In May 2000, Applicant graduated from college with a degree in mathematics. While in college, she amassed an impressive academic record that led to an internship with a large information technology company. She also is a member of a prestigious engineering society. After graduating, she worked until 2004 for another large technology firm, but none of her work was related to the defense industry. This is her first request for a security clearance. (GX 1; Tr. 6 – 7, 15 – 16)

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² Tr. 22 – 31.

Applicant and her husband, a software engineer, have been married since March 2003. They have two children, now ages 12 and 14. In 2004, when their older child was born, Applicant left the workforce to raise their children as a stay-at-home mother. Aside from a brief foray into self-employment in a childcare-related business, Applicant did not earn income between 2004 and 2017, and self-employment did not result in reportable income. (Answer; GX 1; GX 2; AX A; Tr. 16, 44 – 45, 54)

Applicant and her husband lived in State A until March 2016. They still own the house they lived in there, and they have been trying unsuccessfully to sell it since moving to State B. The housing market where they lived in State B is still depressed. They moved to State B after Applicant's husband, who had been unemployed since October 2015, found work in State B. (Answer; GX 1; GX 2; AX A; Tr. 45, 50)

While Applicant was raising their children, she relied on her husband to manage their finances. This included filing and paying their state and federal income taxes. Their finances began to suffer after he lost his job in 2015. Additionally, they had been the primary caregiver for Applicant's mother after she was diagnosed with a terminal illness in 2007 until her death in 2012. Not only did this result in additional medical and other expenses, it disrupted and stressed their home life. Also, in 2011, the mortgage for Applicant's house in State A increased unexpectedly. Applicant and her husband obtained a mortgage modification the following year after struggling to make their new payments. Their mortgage is again in good standing. Through a combination of household stress over their debts and lack of income, and an erroneous assumption that they did not have to file income tax returns when they were not bringing in any income, Applicant's husband did not file their federal income tax returns as alleged in SOR 1.a or their state income tax returns as alleged in SOR 1.e. Applicant's husband submitted a letter attesting to his failure to file their returns as required. As it turns out, they were correct as to their State A returns for 2016, because they spent most of that tax year in State B. (Answer; GX 1; GX 2; GX 8; AX A; Tr. 16 – 20, 46 – 48)

In her e-QIP, Applicant disclosed in great detail her tax and other financial difficulties. Shortly thereafter, she began the process of filing her past-due returns and paying her taxes and other debts. To date, Applicant has paid the debts at SOR 1.h – 1.j. She also has filed all of her tax returns. Available information shows she has established a repayment plan for her federal taxes, through which she has paid \$300 each month since August 2018. As for her state taxes, her State A debt has been reduced by about 40 percent from \$11,271 to \$6,683. She also has established, and is adhering to a repayment plan for her State B taxes that will resolve that debt by 2021. (GX 1; GX 2; GX 5 – 7; AX A; Tr. 36 – 43)

Applicant took over management of the household finances in early 2017. In addition to her efforts to file past-due tax returns and repay their taxes, she obtained from her husband a limited power of attorney in order to access his tax records and other financial information; she sought assistance from a financial counseling firm; and she used the services of a certified public accountant in resolving their tax status. Currently,

Applicant and her husband are sound financially. They have been able to stay current on their State A mortgage while paying the debts listed in the SOR. They currently earn about \$180,000 annually combined. Their cash on hand each month after paying their debts and other regular obligations is sufficient to guard against unexpected events. (Answer; AX A; Tr. 38, 48 – 55, 58)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG).⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access

³ See Directive. 6.3.

⁴ The current adjudicative guidelines were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Financial Considerations

The Government established Applicant failed to file her state and federal income tax returns as required, and that she incurred the delinquent tax and other debts alleged in the SOR. That information reasonably raised a security concern about Applicant’s finances that is articulated at 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.

More specifically, available information supported application of the disqualifying conditions at AG ¶¶ 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*).

By contrast, Applicant established that her debts arose from events and circumstances beyond her control that are not likely to recur. Applicant and her husband endured a combination of reduced income and unexpected expenses before moving to State B in 2016. Additionally, Applicant’s husband did not file their tax returns as required. Nonetheless, Applicant acted in a responsible manner under the circumstances. She now manages their household finances and has documented significant progress in resolving their tax and other debts. All of their returns are now filed, and she has established a

⁷ See *Egan*; AG ¶ 2(b).

reliable track record of repayment. She also has resolved her smaller, non-tax debts and has sufficient funds remaining each month with which to avoid any future financial adversity. Finally, Applicant has not incurred any new delinquencies, and the record does not show that her financial problems were caused by poor decision making, irresponsible spending, or misconduct on her part.

All of the foregoing supports application of the following AG ¶ 20 mitigating conditions:

(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 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 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.

On balance, I conclude the record as a whole is sufficient to mitigate the security concerns raised by the Government's information about Applicant's finances.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Particularly noteworthy is the information regarding Applicant's response to adverse financial circumstances. It reflects well on Applicant's judgment and reliability. A fair and commonsense assessment of the record evidence as a whole shows the security concerns about his finances are mitigated.

Formal Findings

Formal findings 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:

FOR APPLICANT

Subparagraphs 1.a - 1.j:

For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge