



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



In the matter of:)
)
)
[NAME REDACTED]) ISCR Case No. 18-02132
)
)
Applicant for Security Clearance)

Appearances

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

02/08/2019

Decision

MALONE, Matthew E., Administrative Judge:

A fair and commonsense assessment of the record evidence as a whole shows the security concerns raised by Applicant’s failure to timely file her income tax returns are mitigated. Her request for security clearance eligibility is granted.

Statement of the Case

On September 19, 2016, 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, Department of Defense (DOD) adjudicators could not determine that it is

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

On September 4, 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 13, 2018, and convened the requested hearing on December 13, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 and 2. Applicant testified and proffered Applicant Exhibit (AX) A. All exhibits were admitted without objection.

Additionally, I held the record open after the hearing to receive a post-hearing submission from Applicant. She timely submitted three additional exhibits, identified as AX B – D. The record closed on December 27, 2018, when I received Department Counsel's waiver of objection thereto. I received a transcript of the hearing (Tr.) on January 2, 2019.

Findings of Fact

Under Guideline F, the Government alleged Applicant did not file her federal or state income tax returns on time for the 2014 and 2015 tax years (SOR 1.a). In response, Applicant admitted the allegation. (Answer) Additionally, Applicant disclosed in her e-QIP that she had not yet filed her federal and state income tax returns for the 2014 tax year. (GX 1)

In addition to the facts thus established, I make the following additional findings of fact. Applicant is 34 years old and works as an aerospace engineer for a large corporation in support of a federal contract. She obtained her bachelor's degree in May 2007. She was hired by her current employer in April 2008. At that time, she lived in State A. In January 2008, she transferred to State B, where her family lives. In 2014, Applicant transferred to State C. (GX 1)

In 2013, while living in State B, Applicant helped her family set up and run a small business unrelated to her work as an engineer. Applicant was a named partner in the business, which was organized as a Subchapter S corporation. Her role in the business was as a bookkeeper, to include making sure taxes were filed properly. As a named partner, she received a modest flow-through income she was required to report on her personal income tax returns along with her full-time income as an engineer. When Applicant transferred to State C, she could no longer help with bookkeeping and tax duties for her family's business. Unfortunately, her family was not very well organized in such matters. This impacted Applicant's ability to file her income tax returns for 2014 and 2015 because she could not obtain the paperwork needed to correctly file her personal tax

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

returns. This circumstance continued through the 2015 tax year, when the business closed. (GX 2; Tr. 25 – 29, 32)

Applicant has since been able to file her 2014 and 2015 federal and state tax returns. She filed her 2014 return in February 2017 and paid the resulting taxes with interest and penalties at that time. She was unable to file her 2015 returns until November 2018. She owes \$14,607 for federal taxes and \$2,300 for state taxes from 2015. Applicant has sufficient funds in her retirement savings with which to satisfy both accounts; however, she is waiting to hear from the IRS and State C tax authority regarding repayment options before she decides how to resolve her 2015 taxes. Her income and personal finances are otherwise sound, and she has sufficient resources to satisfy any reasonable repayment plan. (AX A – D; Tr. 29 – 30, 33 – 35)

The record does not reflect any other financial problems. Applicant has been working to resolve her late filing status since well before the SOR was issued, and otherwise has always filed her income tax returns as required. (GX 2)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,² and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG).³ 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

² See Directive. 6.3.

³ 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.

consistent with the national interest⁴ 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.⁵ A person who has access 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.⁶

Analysis

Financial Considerations

Applicant did not file her federal and state income tax returns on time for the 2014 and 2015 tax years. This 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.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

More specifically, available information requires application of the disqualifying condition at AG ¶ 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*).

Applicant's failure to timely comply with her tax obligations arose through no fault of her own. She was unable to file on time for 2014 and 2015 because she did not yet have the requisite information to complete her tax returns. Applicant has since filed her 2014 and 2015 returns. She paid all of the taxes due from 2014, but she has not completed arrangements for paying about \$16,000 in federal and state taxes from 2015. Applicant has the resources with which to resolve those accounts. She will either make lump sum payments using retirement savings or negotiate a monthly repayment plan, choosing whichever option makes the most financial sense. Finally, aside from the 2014 and 2015 tax years, Applicant has always and timely fulfilled her income tax reporting and payment obligations. 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; 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 in the SOR.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been working to resolve her unfiled returns since well before the SOR was issued, and the facts established in SOR 1.a were an aberration. Applicant was candid and straightforward about her late tax returns, and her conduct in this regard does not adversely reflect on her overall judgment and reliability. A fair and commonsense assessment of the record evidence as a whole shows the security concerns about her 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: 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