



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



In the matter of:)
)
) ISCR Case No. 18-02736
)
Applicant for Security Clearance)

Appearances

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

09/25/2019

Decision

Gregg A. Cervi, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 12, 2018, requesting renewal of a Department of Defense (DOD) security clearance. On December 6, 2018, the DOD Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on January 8, 2019, and requested a hearing before an administrative judge.¹

The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2019, scheduling

¹ The DOD CAF acted 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

the hearing for June 3, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, and Applicant Exhibits (AE) A and B were admitted without objection. In post-hearing submissions, Applicant submitted several documents marked together as AE C that were admitted without objection.

Findings of Fact

Applicant is a 34-year-old logistics management specialist, employed by a government contractor since 2017. She received her bachelor's degree in 2009. She married in 2009 and divorced in 2018. She has two children, ages 12 and 4. Applicant currently holds a security clearance, granted in 2013.

The SOR alleges Applicant failed to file Federal income tax returns for tax years 2014 to 2016. Applicant admitted the SOR allegation, and provided an explanation with her answer. While married, Applicant's spouse filed joint Federal income tax returns. Her spouse's business began to show distress in 2014, and he delayed in filing the joint returns. They also began to experience marital difficulties. As a result, Applicant's 2014 to 2016 Federal income tax returns were not filed when due.

Applicant typically did not question her spouse about his business and family financial issues, and she did not know she could file individual, but married, tax returns. Her divorce was finalized in January 2018, and she hired a tax accountant to assist her with past-due returns. Her accountant advised that filing a joint return was advantageous. Applicant's ex-spouse refused to cooperate with her to provide documentation for her to file the past-due returns, but her accountant was able to convince him that his ex-spouse's security clearance was in jeopardy. He provided the information, and Applicant filed all past-due returns by March 2019. The IRS owes Applicant a total refund of about \$3,070. Tax returns for 2017 and 2018 were filed on time, with nothing owed.

Applicant testified that she learned from this experience, and she is a different, more assertive person than she was when she was married. She registered to attend the soonest possible class offering financial counseling; a seminar to learn about budgeting, controlling expenses, and eliminating debt. She is also able to meet all of her monthly expenses, and has about \$200 per month remaining. She has savings and retirement accounts valued at about \$2,200, and she is making required monthly payments on a medical debt. She is strongly supported by her work colleagues, including her deputy division chief, friends, and family. They describe her as an honest, dependable, and trustworthy professional, and a superb mother and friend.

Law and 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(c), 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 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. . . .

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

(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 file Federal income tax returns for tax years 2014 to 2016, when due. The evidence is sufficient to raise the above disqualifying condition.

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; 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 did not ensure that her Federal tax returns were filed when due, for tax years 2014 to 2016, while she was married. She relied on her spouse to file the joint tax returns, and when she divorced, she was unsuccessful in collecting the necessary information from him to file past-due returns. Applicant's accountant was able to convince her ex-husband to provide the information, and Applicant filed the returns in March 2019. She is owed about \$3,070 in refunds.

Applicant has taken responsible action to gain control over her tax filings. She retained the services of an accountant, and she filed past-due returns. Her returns for 2017 and 2018 were filed on time, and no tax is owed. She also registered to attend a financial counseling course. She has sufficient income to meet her current financial obligations, and is building her savings. I believe Applicant's finances and tax obligations are now firmly under control and will remain so in the future. I find that her past tax issues no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), and (g) are applicable.

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(a):

(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.

I considered Applicant's testimony, documents provided during and after the hearing, her financial challenges as a result of her marriage and divorce, and the support from her colleagues, family and friends. Applicant has shown current financial responsibility and appears to have full control of her finances and tax obligations. She is able to meet her financial obligations and has resolved her Federal tax issues satisfactorily.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge