



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



In the matter of:)
)
) ISCR Case No. 18-02975
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On January 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 18, 2019, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on April 13, 2018. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Items are admitted into evidence. The case was assigned to me on July 10, 2019.

Findings of Fact

Applicant admitted both SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. She is a high school graduate and earned some college credits, but not a degree. She married in 1994 and divorced in 2002. She has two children from the marriage, ages 24, and 17 years old. She remarried in 2003, divorced in 2008, and remarried her third husband in 2010. She has been employed by federal contractors since 2014 and the same contractor since July 2016. (Item 3)

Applicant disclosed on her April 2017 security clearance application (SCA) that she failed to file and pay her 2006, 2007, and 2008 federal income tax returns. She admitted that there are two federal tax liens filed against her for 2012 (\$11,798) and 2011 (\$49,515). (Any derogatory information that was not alleged will not be considered for disqualifying purposes, but may be considered when analyzing Applicant's credibility, in the application of mitigating conditions, and in a whole-person analysis.) (Item 3)

Applicant indicated in the SCA that her second husband was an abusive man, who refused to allow her to file their taxes or have control over her finances. She said she had filed several Offers in Compromise with the IRS, but did not know what she was doing. Documents in the record reflect some documents were filed with the IRS in approximately 2010, 2014, and 2015, but some were incomplete and required more information. Another document from the IRS indicated it closed its file because there were other investigations pending that could impact her liability. Applicant stated that she had previously hired a tax company to help her settle the tax debts, but it took her money and did not assist her. She said that she has hired a new company to resolve the matter. She said she has been trying for years to resolve the tax debts and the new company was going to do that. (Item 3)

During Applicant's April 2018 background investigation, she acknowledged she owed approximately \$70,000 in taxes and was working with a tax company to arrange a payment plan. She said her ex-husband did not file their tax returns. She was gathering the paperwork to file another Offer in Compromise with the IRS. (Item 7)

In Applicant's answer to the SOR, she stated she has been trying since 2009 to obtain an Offer in Compromise with the IRS. She said a new offer was completed and being filed. She said at the time her tax returns were due, she was unaware her ex-husband had not timely filed them. Applicant did not provide documentary evidence of any current attempt to resolve her tax liens. (Item 2)

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 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, these guidelines are applied 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." 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. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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 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 relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (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 has two federal tax liens that were filed in 2011 and 2012 and remain unresolved. She has been aware of her tax liability since at least 2009. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

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

Applicant has not paid or provided evidence of recent actions she may have taken to resolve her federal tax liens. She indicated these liens were filed for unpaid taxes from 2007 and 2008. The debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed the tax liens to her second husband who did not file their tax returns. She said he was abusive, and she did not have control over the finances. This may have been beyond her control. However, she has been divorced from him since 2008 and aware of her tax problems since 2009. She attempted to present Offers in Compromise to the IRS, but none were approved. She hired a tax company to help her resolve the tax liens, but said it was a scam. She said she has since hired another tax company to resolve the matter. No substantive documentary evidence was provided to show that she has a current Offer in Compromise with the IRS, or that she has made payments to begin resolving the liens. She is credited with making some effort in the past to address the tax liens. However, her efforts were sporadic, and there is no current evidence to show the debts are being reduced or resolved. AG ¶ 20(b) has partial application.

There is no evidence Applicant has received financial counseling and there are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) does not apply. Evidence was not provided to show Applicant has an arrangement with the IRS to pay the tax liens and is in compliance with it. AG ¶ 20(g) does not apply.

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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 45 years old. She has been aware since 2009 of her tax liens, which remain unresolved. Applicant has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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 and 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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge