



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



In the matter of:)
)
) ADP Case No. 19-00041
)
)
Applicant for National Security Eligibility)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2020

Decision

WHITE, David M., Administrative Judge:

Applicant and her former husband did not timely file some Federal and state income tax returns between 2004 and 2016. No IRS tax lien was filed against her, as erroneously alleged in the SOR. A state tax lien filed jointly against her for her ex-husband’s debt was fully satisfied, and was released in 2017. After their divorce, Applicant worked with a certified public accountant (CPA) to resolve all of her tax issues and her financial situation has stabilized. Based upon evaluation of the testimony, pleadings, and exhibits, trustworthiness concerns are mitigated and national security eligibility to occupy a designated sensitive position is granted.

History of Case

On June 13, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 18, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified*

Information or Eligibility to Hold a Sensitive Position (AG), effective June 8, 2017, as promulgated in Appendix A of SEAD 4.

Applicant answered the SOR in writing on February 26, 2019 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on June 25, 2019. Due to Applicant's cross-country relocation for assignment to work on a different contract, the case was reassigned to me on August 6, 2019. DOHA issued a Notice of Hearing on August 27, 2019, setting the hearing for September 11, 2019. Due to an unforeseeable medical emergency, not involving Applicant, the hearing was continued until November 8, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified, and offered Exhibits (AE) A through G into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until January 15, 2020, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on November 20, 2019. Applicant timely submitted several additional documents, which were admitted into evidence, without objection, as AE H through N, and the record closed as scheduled.

Findings of Fact

Applicant is 44 years old, and has one adult child. Her two marriages ended in divorce, most recently in 2013. She graduated from high school in 1994, and has completed some college coursework. She applied for a trustworthiness determination in connection with starting her DoD contract work in May 2017 as a training specialist, and later a functional analyst, with expertise in electronic medical records. She has never served in the military or worked in the Federal civil service. (GE 1; Tr. 7, 9, 54-58.)

Applicant married her first husband in October 1993, when they were both 17 years old and high school students. Their daughter was born two months later. Their marriage ended in divorce in January 1997. Applicant married her second husband in June 2002, while he was employed as the service manager at a luxury car dealership. Four months later, although performing well, he was fired by the manager of the dealership who was later replaced when ownership realized that the manager was the problem. Her husband was rehired, but had begun suffering depression from which he never recovered. Their family finances were adversely impacted by this, and he refused to cooperate in filing their Federal or state income tax returns for the duration of their marriage. (AR; GE 1; GE 2; GE 3; AE F; Tr. 58-60.)

After moving to another state for new employment opportunities, Applicant's family's financial struggles continued. Over her increasingly strenuous objections, Applicant's husband continued his refusal to address their tax filing obligations, which caused ongoing friction. In 2010, Applicant decided that she could no longer suborn her desire to live responsibly to her husband's bad choices, so she returned home to live with her brother and help him during his recovery from a kidney transplant, with financial support from their sister. (Answer; GE 2; GE 3; AE F; Tr. 51-52, 60-67.)

Applicant found employment in the health care industry, in July 2011, working to convert from paper to electronic medical records for a company. Although her job did not pay well, she gained valuable knowledge and experience. From 2012 to 2016, she lived frugally while paying for her daughter to attend college. In 2015, she began treatment with a psychologist for her diagnosed attention deficit hyperactivity disorder, which she has since successfully continued. She parlayed her electronic medical records expertise into several consulting contracts before being hired into her current position. (Answer; GE 2; GE 3; AE F; AE M; Tr. 67-75.)

In December 2017, Applicant was financially stable enough to consult and hire a CPA to help resolve her outstanding tax issues. Applicant began this successful corrective course of action more than a year before the DoD CAF issued the SOR in this case. (Tr. 51-52, 76-77, 103-104.)

The CPA initially helped Applicant to file her state and Federal returns for tax years 2011 through 2015, and 2017. Applicant contemporaneously paid all outstanding associated taxes. They were unable at the time to file Applicant's 2016 returns, due to erroneous income reporting by her former employer, but finally resolved that issue in 2019. Her CPA also began researching records to permit resolution of outstanding tax issues for 2003 through 2010. The CPA determined that, since Applicant did not earn any income during 2008 through 2010, she was not required to file or pay any taxes for those years. They subsequently obtained documentation to permit Applicant to file and resolve her state and Federal taxes for 2007, but they were unable to obtain documentation for 2004 through 2006. Applicant's 2003 taxes were actually filed and paid on time, but that year was erroneously included in the SOR allegation based on a mistake during her OPM interview. Applicant timely filed and paid her 2018 taxes, and provided documentation from the IRS and her state tax authority detailing that all of her taxes are fully paid, with nothing owed to either. (Answer; GE 2; GE 3; AE A; AE C; AE D; AE E; AE H; AE J; AE K; AE N; Tr. 76-89.)

The SOR alleged the entry of an IRS tax lien against Applicant in 2018, again based on erroneous information recorded by the OPM investigator concerning Applicant's interview. Applicant told the investigator that she had recently received notice from her state revenue department that part of her state tax refund would be applied toward a lien filed against her former husband for a tax year during which they were married, and for which she was considered to be jointly liable. Applicant's payment satisfied this lien, which was then removed. As noted above, she documented that she has satisfied and resolved all of her state and Federal tax issues. (GE 3; Tr. 52-53, 89-94.)

Applicant provided a personal financial statement demonstrating sufficient income to cover her regular living expenses and debt payments, with a substantial monthly remainder. Her most recent credit report lists no delinquent debts, and shows that her four active accounts have been paid as agreed. (AE B; GE 6.) In addition to working with her CPA to resolve all tax issues, she recently completed a nine-lesson financial management course. (AE I; Tr. 95-96.)

Applicant's older sister and her longtime family physician wrote lengthy letters describing her ultimately successful efforts to manage and overcome her difficult marital, family, and health challenges. They also discussed her lifelong integrity and good character, from which her tax issues with her ex-husband were an aberration. (AE F.) Eleven professional colleagues and supervisors from her most recent several years of employment described their high opinions of her responsibility, trustworthiness, judgment, and honesty. They further noted her commitment to following and enforcing rules and procedures for the proper maintenance of electronic medical records, and her unselfish efforts to share her expertise while training and developing those around her. (AE G.) Her bearing and demeanor during her hearing displayed her forthright acceptance of her past problems and her determination to continue her more recent pattern of responsible and accountable conduct. (Tr.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Pursuant to Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of information compromise.

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes one condition that could raise trustworthiness concerns and may be disqualifying 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 and her ex-husband failed to timely file some required Federal and state income tax returns between 2004 and 2016. These facts establish prima facie support for the foregoing disqualifying condition, and shift the burden to Applicant to mitigate the resulting security concerns. The SOR allegations that she had an outstanding tax lien, and that she failed to file required Federal and state returns for tax years 2003 and 2008 through 2010, are not true.

AG ¶ 20 includes three conditions that fully mitigate the trustworthiness concerns arising from Applicant's former financial difficulties:

(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, 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 and is in compliance with those arrangements.

Due to marital issues with her ex-husband, and despite her best efforts under the circumstances including her post-separation financial straits, Applicant was unable to timely prepare and file tax returns for 2004 to 2007 and 2011 to 2016. She addressed this situation, starting in 2016 when she obtained steady employment, by hiring the CPA to obtain the required information and file the delinquent returns. All formerly unfiled tax obligations have been fully resolved to the documented satisfaction of state and Federal tax authorities. Applicant completed a formal course of financial counselling, her financial situation is comfortably solvent, and there is minimal future risk of financial stress or tax-filing issues. These actions establish complete mitigation of trustworthiness concerns raised by Applicant's formerly delinquent tax returns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has demonstrated accountability for resolving the tax return filing issues that she and her husband formerly encountered. She, working with her CPA, has now filed all of the formerly delinquent returns for which source documents could be retrieved, and paid all applicable taxes. The failure to file timely returns did not, in this case, arise from or reflect

irresponsibility, untrustworthiness, or unwillingness to comply with laws and regulations on Applicant's part. She demonstrated strong character and has devoted herself to resolution of these issues independent of her job-necessitated application for a trustworthiness determination. Applicant proved that she has sufficient income security to ensure solvency in the future, and evinced her commitment to timely comply with all tax and information security obligations. The potential for pressure, exploitation, or duress is minimal.

Overall, the evidence has eliminated any doubt as to Applicant's suitability for national security eligibility. She successfully met her burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant national security eligibility. National security eligibility to occupy a designated sensitive position is granted.

DAVID M. WHITE
Administrative Judge