



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-01395
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*
07/14/2020

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the Guideline F (Financial Considerations) security concerns raised by her failure to timely file her Federal income tax returns for multiple years. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 15, 2016. On November 26, 2019, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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) implemented by DOD on June 8, 2017.

Applicant answered the SOR on March 4, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on April 3, 2020. On April 6, 2020, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 4, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. The Defense Office of Hearings and Appeals (DOHA)

transmittal letter is dated April 6, 2020, and Applicant's receipt is dated April 22, 2020. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information. She did not file a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on July 2, 2020.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant failed to timely file her Federal tax returns for tax years 2012 through 2018. Applicant admits this allegation. Applicant disclosed her failure to timely file her tax returns on her e-QIP and discussed it during her personal subject interview (PSI) and in her responses to DOHA's interrogatories. (GX 3; GX 4.) Her admissions are incorporated in my findings of fact.

Applicant, 62, is a financial analyst working for a defense contractor since 1987. She graduated from a vocational technical college in 1980. She married and divorced twice and has three adult children. She was first granted a security clearance in 2006. (GX 3.)

Applicant was diagnosed with a serious medical condition in 2010. As a result, she was out of work on medical leave for eight months during which time she received short-term disability payments that were less than her regular pay. She incurred significant medical debt during this period and has suffered subsequent medical issues where she incurred additional medical debts. She attributes her financial difficulties to her health issues, the related medical debts, and expensive monthly prescription costs. She stated during her PSI that she was concerned that she would be unable to afford to pay any taxes she owed and did not timely file her Federal tax return for 2010. (GX 4.) On her e-QIP, Applicant also listed the first year she failed to timely file as 2010. In her responses to DOHA's interrogatories, she stated that she is "uncertain" as to whether or not she filed her returns for 2011, 2012, and 2013. After the first year of failing to timely file, the problem "snowballed" and she did not timely file her Federal tax returns through tax year 2018. (GX 2; GX 3; GX 4.) Applicant lives in a state where there is no state income tax.

On her August 2016 e-QIP, Applicant estimated that she owed \$3,000 for 2012 and also for 2013, and \$4,000 for 2014 and also for 2015. She stated that she "must take immediate action and contact the IRS for a plan of action." During her November 2018 PSI, she confirmed the amounts listed on her e-QIP and estimated that she owed \$5,000 for 2016 and also for 2017. She stated that she knew she needed to contact the IRS but was afraid to do so, stating that it could "take the rest of her life" to pay off her tax debts and described her overall financial situation as "stressed." However, she asserted her intention to contact the IRS to establish a repayment plan before the end of 2018.

In her July 20, 2019 responses to DOHA's interrogatories, Applicant stated that she filed her 2018 Federal tax return on July 19, 2019, and that she owed \$4,640 for tax year 2018. She further stated that she was sending an \$800 payment towards the 2018 taxes owed. Additionally, she stated that she would make monthly payments to the IRS

to satisfy all her delinquent taxes, but had not yet contacted the IRS to make payment arrangements. Applicant did not provide any documentation supporting her assertions that she filed her 2018 Federal tax return or that she paid \$800 towards her 2018 tax debt. SOR ¶ 1.a has not been resolved. There is no evidence that Applicant has participated in any financial counseling.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria

listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record establishes the following disqualifying conditions:

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file . . . annual Federal . . . income tax returns or failure to pay annual Federal . . . income tax as required.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(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's financial issues are recent, ongoing, and unresolved. Applicant's failure to timely file her Federal tax returns as required from at least tax year 2012 through 2018 may have been due, in part, to circumstances beyond her control. Specifically, she suffered from a serious medical condition in 2010 that resulted in a sustained period of reduced income and significant medical debt. She initially did not timely file her return because she was unable to pay the taxes she owed. She did not file the subsequent years through 2018 because she did not have the money and because she was afraid. Since 2010, she has experienced other medical issues that resulted in additional medical debts, and her monthly prescription costs are high.

Despite her unexpected medical issues and their impact on her overall finances to include her ability to pay her taxes, Applicant did not act responsibly under the circumstances. Applicant was given notice that the Government was concerned about her unfiled Federal tax returns, first when she completed her e-QIP in August 2016, again when she answered questions about the unfiled returns during her November 2018 PSI, and yet again when she received and responded to DOHA's interrogatories in July 2019. Although she asserts that she filed her 2018 tax return and made an \$800 payment to the IRS the day before she submitted her interrogatory responses, she did not provide any documentary evidence to support this assertion. However, even if she did take these actions, it is simply too little too late. She has not contacted the IRS to establish a repayment plan.

Applicant's failure to timely file her Federal tax returns for at least seven consecutive years, while aware that the Government was concerned about this conduct since at least 2016, raises concerns about her willingness to abide by rules and regulations, and about her reliability, trustworthiness, and good judgment. She has not participated in any financial counseling. None of the mitigating conditions apply.

Whole-Person Concept

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. In applying the whole-

person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guideline F in my whole-person analysis. While the SOR does not allege that Applicant owes a significant amount in delinquent Federal taxes, I have considered this in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her failure to comply with Federal tax filing requirements. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge