



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 19-01850
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Applicant for Security Clearance)

Appearances

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

01/27/2020

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not provide sufficient information to overcome the security concerns raised by her failure to timely file her federal income tax returns for three of the last four tax years. She also did not address her unpaid debts despite the passage of nearly seven years while having the resources to do so. Applicant’s request for eligibility for access to classified information is denied.

Statement of the Case

On September 25, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of her employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information, as

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

On June 26, 2019, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

On October 3, 2019, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a File of Relevant Material (FORM). The FORM contained eight documents (Items 1 – 8) on which the Government relies to establish the facts alleged in the SOR. Applicant received the FORM on October 15, 2019, and she was informed she had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM. Additionally, Applicant was specifically advised in Section IV of the FORM that she could comment on the accuracy of, or object to the admission of, FORM Item 5 (Summary of Personal Subject Interview, dated July 20, 2018).

Applicant was granted an extension of the deadline for responding and subsequently provided additional information in response to the FORM within the time allotted. The record closed on November 29, 2019, after Applicant responded to the FORM. She did not object to the consideration of any of the Government's exhibits. I received this case for decision on December 16, 2019.

Findings of Fact

The SOR alleged that as of June 26, 2019, Applicant had not yet filed her federal income tax returns for the 2015, 2016, and 2017 tax years (SOR 1.a); and that she owes \$2,857 for three delinquent or past-due debts (SOR 1.b – 1.d). In response to the SOR, Applicant admitted SOR 1.a, but denied SOR 1.b – 1.d. With her response she provided an explanatory statement and a credit report, dated July 26, 2019. (FORM, Items 1 and 3). In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor, for whom she has worked, first as a temporary agency employee then as a permanent company employee, since April 2012. She was unemployed between January 2010 and April 2012 after being laid off due to a reduction in force from a previous employer. Applicant was otherwise steadily employed between June 2000 and January 2010. She attributes the debts alleged in the SOR to her two years of unemployment. As to SOR 1.b, she averred that the debt was not valid, that she disputed it (reason not specified), and that it has been removed from her credit history. As to SOR 1.c and 1.d, Applicant stated that she has resolved both debts through a repayment agreement with the collection agency to which both credit card debts had been referred. (FORM, Items 1 and 3)

All three debts are documented in the credit reports produced by the Government. The date of last activity or payment on those debts was in either September or October 2012. They do not appear on a July 2019 credit report provided by Applicant with her Answer. In her response to the FORM, Applicant provided information that established that the SOR 1.c and 1.d debts have been satisfied. She continued to rely on the absence of the SOR 1.b debt from her credit history for the past two years to support her claim that it was removed for being invalid. Generally, the absence of an account from a credit report, without more, is not sufficient to show that a debt has been resolved. In this instance, in addition to Applicant's claim about SOR 1.d, the record shows she acted to resolve her other debts; however, the passage of more than seven years since the SOR 1.b debt became delinquent could also suggest it is no longer being reported due to the Fair Credit Reporting Act (FCRA) statute of limitations. (FORM, Items 3, 7, and 8)

When Applicant submitted her e-QIP in September 2017, she disclosed that she had not yet filed her federal income tax return for the 2016 tax year because "I am behind on paperwork. (Terrible excuse)." She further stated, "I will file within the next 30 days." In November 2018, Applicant was interviewed as part of her background investigation by a government investigator. During the interview, she stated that she did not file her 2016 return because she had no reportable income. As discussed below, this was not true. She also acknowledged that she knew she had to file a return anyway. In April 2019, in response to interrogatories about her taxes from the DOD CAF, Applicant provided information that shows she had not yet filed her federal returns for the years alleged in SOR 1.a. The same information showed her 2014 return was filed seven months late but she did not timely file an extension when the return was first due. Also in response to the interrogatories, Applicant stated her intention to file her past-due returns by July 2019. (FORM, Items 4 – 6)

In response to the FORM, Applicant provided copies of her past-due federal income tax returns. They were signed on October 1, 2019. The IRS received the returns on November 19, 2019. As to her 2016 return, it shows she earned about \$50,000 in reportable income that year. Applicant does not appear to owe any unpaid taxes for the years at issue. She did not show that she has filed her 2018 return or if all of her state income tax returns have been filed.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) 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 consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

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. (See Egan, 484 U.S. at 528, 531) 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. (See Egan; AG ¶ 2(b))

Analysis

Financial Considerations

Available information shows that Applicant did not timely comply with her federal income tax reporting obligations for three of the last four tax years. The Government also established that Applicant was delinquent for almost seven years on three collection accounts. This information reasonably raises the security concerns 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.

More specifically, the Government's information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (b) 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.

I have also considered 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

Of these mitigating conditions, only AG ¶ 20(g) has any basis for application because Applicant has filed her past-due returns; however, its value is attenuated by Applicant's inaction until after she received the SOR. As to her debts, they may have arisen from a period of unemployment, but Applicant has been steadily employed since early 2012, yet took no action to pay two debts for nearly seven years. While she claims she disputed the third debt, she offered no indication of the nature of the dispute or proof

that she actually filed a dispute with the creditor. None of Applicant's actions regarding her debts or her income tax returns can be considered prompt or responsible under these circumstances. Applicant did not provide an acceptable reason for not filing her income tax returns, and the information she has provided in response to the SOR and the FORM does not show that her financial problems will not recur. On balance, Applicant has not met her burden of production or persuasion to mitigate the security concerns raised by the Government's information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). My review of all of the available information leaves unanswered the doubts about Applicant's suitability for access to classified information that were raised by her debts and by her failure to comply with basic income tax reporting obligations. Her conduct regarding her tax returns more specifically undermines confidence in her judgment and reliability. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is denied.

MATTHEW E. MALONE
Administrative Judge