



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



In the matter of:)	
)	
)	ISCR Case No. 19-02033
)	
Applicant for Security Clearance)	

Appearances

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

04/30/2020

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On November 5, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 on June 8, 2017.

Applicant answered the SOR on May 18, 2019. The case was reassigned to me on February 3, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2020, and the hearing was convened as scheduled on March 5, 2020. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel’s exhibit list was marked as

hearing exhibit (HE) I. Applicant testified at the hearing, and offered exhibits (AE) A through M, which were admitted without objection. Applicant submitted one post-hearing exhibit, AE N, which was admitted without objection. DOHA received the hearing transcript (Tr.) on March 13, 2020.

Findings of Fact

In her SOR answer, Applicant admitted all the SOR allegations, with explanations. Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 35-year-old employee of a defense contractor. She began working at her present job in August 2018. She has a high school diploma and has taken some college courses. She is single, never married, and has no children. (Tr. at 6, 25; GE 1)

The SOR alleged that Applicant failed to file her 2012-2018 federal and state income tax returns as required; and that she was indebted on two charged-off credit cards totaling approximately \$7,800. She admitted failing to file her federal and state tax returns during her December 2018 background interview and when she answered interrogatories in September 2019. The charged-off debts were listed in a credit report from January 2020 (SOR ¶¶ 1.a – 1.d). (GE 2, 3)

Applicant attributed her tax-filing problems, beginning in 2012, to the break-up of a nine-year engagement; transitioning into a new job; being involved in a car accident; being arrested for driving under the influence of alcohol; and being advised by an attorney that she would not qualify for bankruptcy. She calculated that she owed approximately \$6,000 for her 2012 federal taxes. She decided not to file her 2012 federal or state tax returns because she did not have the funds to pay the taxes owed. Applicant also did not timely file her 2011 federal and state tax returns. This year is not alleged in the SOR and this evidence will not be considered for disqualification purposes, however, I may use it to consider the applicability of mitigating conditions and whole-person considerations. (Tr. 26, 33; AE D)

In early 2014, after receiving some financial counseling, Applicant received assistance from a bookkeeping service, which prepared her 2011-2013 federal and state tax returns. Applicant filed those returns in June 2014, making them all untimely filings. (2013 was untimely because no extension was requested) Additionally, at the time she filed the returns, she failed to pay the federal taxes owed for 2012 and 2013. Her failure to pay her taxes also will not be considered for disqualifying purposes, but may be considered for mitigation and whole-person considerations. (Tr. 27; AE C, D, J)

Applicant failed to timely file her 2014-2018 federal and state tax returns. In late July or early August 2019, Applicant hired an accountant, and she filed her 2014-2018 federal and state tax returns. She also made a series of payments to the IRS in July 2019, August 2019, and November 2019 that resolved her federal tax debt for all years. She also presented documentation showing that she filed all required state tax returns and paid all taxes owed. Applicant was able to pay a large part of her tax debt from the

proceeds of a car accident settlement she received. All of her tax filings and payments (for tax years 2014-2018) came after she received interrogatories in this case. (Tr. 29-32, 36-38; GE 2; AE A, B, E-H, N)

Applicant admitted that she stopped paying on the two delinquent credit cards (SOR ¶¶ 1.c-1.d) in 2013. She claims that she called the creditor for these accounts and was told that the debts were uncollectable because of the statute of limitations. She also pointed out that neither debt is listed in her two credit reports from February 2020. Both debts are listed in the Government-provided credit report from January 2020. The debts were charged off and reflect the date of the first major delinquency as October 2013. (Tr. 27-28, 39; GE 3; AE I, M)

Applicant's annual income is approximately \$60,000. She currently maintains about \$6,000 in her checking and savings accounts combined. She has a retirement account with approximately \$30,000 invested and a separate investment account valued at about \$7,000. She has resided with her parents since 2013, but does not pay them rent. She assists with the household expenses. She has no other major expense items. She claims to have filed her 2019 federal tax return. (Tr. 42-44)

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 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an 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.

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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 failed to file her 2012-2018 federal and state income tax returns and is responsible for two charged-off credit cards. While she ultimately filed all of her federal and state tax returns for years 2012-2018, all were filed late. She provided no documentation showing payment of the delinquent credit cards. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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's credit cards remain unpaid since 2013. She failed to produce evidence showing that recurrence of her financial problems is unlikely. Her inability to address these two debts in the past seven years is a poor reflection of her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant presented evidence that she faced some circumstances in 2013 that were beyond her control, such as her break-up with her fiancé, and her job change. However, her driving under the influence arrest was caused by her own misconduct. Additionally, these events occurred in approximately 2013. Applicant has had sufficient time to address her tax issues and delinquent credit cards since then, but has only recently taken action. She filed her delinquent tax returns from 2014-2018 after she received the interrogatories in this case. She did not make any payments toward the charged-off credit cards in the past seven years when she was gainfully employed.

Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is not fully applicable.

Applicant presented some evidence of financial counseling. She finally addressed her federal and state tax issues in late July 2019. AG ¶ 20(g) is applicable. Her two delinquent credit cards remain unpaid. She believes the statute of limitations makes those debts unenforceable. While that may be true, for the purpose of seeking a security clearance, relying on a legal remedy, does not amount to a good-faith effort to resolve the debts. None of the remaining mitigating conditions fully 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's federal contractor service, and the circumstances surrounding her indebtedness. However, I also considered that she has made no efforts to resolve her debts and only filed her federal and state tax returns after receiving interrogatories for this case. She has not established a meaningful track record of debt management, which causes me to question her reliability, trustworthiness, and good judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

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 – 1.d 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge