



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



In the matter of:)	
)	
)	ISCR Case No. 19-02142
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 27, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On October 4, 2019, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 4.) On August 9, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on September 3, 2019. (Government Exhibit 3.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on November 15, 2019. A complete copy of the File of Relevant Material (FORM),

containing five Items was received by Applicant on December 1, 2019. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM within the 30-day period. DOHA assigned the case to me on January 21, 2020.

Findings of Fact

Applicant is 34 years old and is unmarried. She has a bachelor's degree. She is employed by a defense contractor as a Junior Architect/Engineer. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR identified three allegations. Applicant failed to file her Federal and state income tax returns for tax year 2016. She also failed to pay her Federal and State income taxes for tax year 2016. Applicant admits each of the allegations set forth in the SOR. Applicant began working for her current employer in August 2018.

Applicant completed a security clearance application dated October 4, 2018, wherein she indicates that her Federal and state income tax returns were not filed on time due to the fact that she experienced a period of high stress from working full time and taking care of her grandfather. Her focus was not her taxes and as a result she became delinquent. Her plan at that time was to pay her back taxes owed in the amount of approximately \$11,000 to the Federal tax authorities by obtaining a loan. She planned to pay the state approximately \$2,000 she believed she owed for the 2016 tax year. (Government Exhibit 5.)

During a personal subject interview on January 22, 2019, Applicant explained that she had attempted to file both her Federal and state income tax returns for tax year 2016 online, but was unable to do so because she did not have the money to make the full payments that were owed. She explained that she did take out a loan for the purpose of paying her taxes but instead she used it to purchase a vehicle, and for a down payment on a house. She now plans to take out another loan or use credit cards to pay the back taxes she owes. (Government Exhibit 5.)

In her answer to the SOR, Applicant contends that she has now filed her Federal income tax return for tax year 2016 and that she has set up a payment plan to resolve her delinquent back taxes owed. She states that the payments are automatically deducted from her checking account each month until the debt is paid in full. She has not provided any documentary evidence to support this assertion. The letter from the

IRS she provided reflects a tentative agreement accepting her proposal to pay the balance due for tax year 2018, not for tax year 2016. (Government Exhibit 3.)

Applicant also states that she has filed her state income tax returns and has now paid her state back taxes owed for tax year 2016. She provided a copy of a cancelled check in the amount of \$2,184 made out to the state tax authorities. (Government Exhibit 3.) However, there is still nothing in the record to support the fact that Applicant has resolved all of the back taxes owed to the state for tax year 2016, or that she is now in good standing with the state tax authorities. Applicant has not provided sufficient documentary evidence to support her contentions.

Policies

When evaluating an applicant's suitability for a security clearance, 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 to be 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, administrative judges apply the guidelines 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 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. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness 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 failed to file her 2016 Federal and state income tax returns in a timely fashion. She also failed pay her Federal and state income tax for tax year 2016. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;

(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), 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; 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.

It is understandable that taking care of an elderly family member and working full time can be stressful and is quite a responsibility. However, that is not an excuse for failing to file one's income tax returns or failing to pay taxes. At this point, it is not clear from the record evidence whether Applicant has filed the Federal and state income tax returns in question, and/or whether she has satisfied her tax obligations for tax year 2016. Applicant failed to respond to the FORM and thereby waived her opportunity to provide sufficient evidence in mitigation. From the assertions made, without additional supporting documentation, it cannot be determined if her income tax returns have been filed or her back taxes for tax year 2016 have been paid. Applicant has not explained what payments, if any, she has made or is making to the Federal tax authorities. Accordingly, mitigating conditions ¶ 20(b), 20(d), and 20(g), do not provide full mitigation in this case. There is no clear evidence in the record that she has acted reasonably and responsibly under the circumstances. In fact, her inaction reflects unreliability, untrustworthiness, and poor judgment.

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 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.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.: through 1.c:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge