



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



In the matter of:)	
)	
)	ISCR Case No. 19-03009
)	
Applicant for Security Clearance)	

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Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On November 22, 2019, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 within the DOD on June 8, 2017.

Applicant answered the SOR on December 18, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 26, 2021. The

¹ Applicant changed her last and middle name after her divorce.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2021. I convened the hearing as scheduled on February 23, 2021. The Government offered exhibits (GE) 1 through 4. Applicant offered exhibits (AE) A through F. The record was held open for Applicant to submit additional exhibits. She timely submitted AE G. Hearing Exhibit I is Department Counsel's email noting he had no objection. There were no objections to any exhibits and all exhibits were admitted into evidence without objection. DOHA received the hearing transcript on March 3, 2021.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.d and denied the allegations in ¶¶ 1.e and 1.f. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She is a college graduate. She married in 2005 and divorced in 2019. She has one child, age seven, from the marriage. She has been employed by her present employer since March 2018. (Tr. 17-19)

In October 2017, Applicant separated from her husband who was participating in an alcohol and drug rehabilitation program. He left it early and had his girlfriend pick him up from the location. Applicant was in an abusive marriage and at that point she decided to leave it. She filed for divorce the same month. Her husband is remarried and has a new family. Applicant credibly testified that her husband took responsibility in the marriage for filing their federal and state income tax returns and paying their taxes. She learned through discovery as part of her divorce that he failed to file their 2015 and 2016 federal and state tax returns. (Tr. 19-25)

As part of Applicant's and her husband's divorce decree, he was ordered to file their 2015, 2016, and 2017 federal and state tax returns as "married filing jointly." It was also ordered that he would be responsible for 60% of the tax liability, and Applicant would be responsible for the remaining 40%. He did not file the 2015 and 2016 returns until July 2018 and November 2018, respectively. Applicant testified that he prepared the 2017 tax returns, and she signed them electronically, but he did not file them as so ordered. Later she learned that he filed them as "single." (Tr. 19-25; Answer; GE 2)

Applicant's attorney was forced to file motions to show cause with the court to enforce the terms of the divorce decree. The judge subsequently ordered Applicant to file her 2017 tax returns as "head of household," which she did in February 2020, immediately after her court date. She repeatedly contacted the IRS to confirm receipt of her tax returns, but due to the COVID-19 pandemic lockdown it was difficult to get a response. In September 2020, after Applicant's inquiry, the IRS confirmed it did not receive the returns. Applicant resent the tax returns by certified mail and receipt was confirmed. (Tr. 23-29; Answer; GE 2)

Applicant began paying her share of the delinquent federal taxes for 2015 in September 2018. She paid the entire federal tax liability. Her ex-husband failed to pay

any of his share. Applicant testified that she repeatedly had to go to court to enforce the terms of their divorce decree. She believed her ex-husband was aware that her finances and tax liability would jeopardize her security clearance, and he was deliberately and intentionally creating financial roadblocks for her to be vindictive. She paid her share of the 2016 federal tax debt, but her ex-husband failed to pay his share until December 2020. Applicant's 2015 and 2016 federal tax debts are resolved. (Tr. 19-26, 33-35; AE C, D)

Applicant owes federal income taxes for 2017 in the approximate amount of \$25,000, which includes penalties and interest. She explained the amount owed was impacted because when she separated from her husband, she was unemployed and had no money. She withdrew money from her 401K pension plan and incurred the additional tax liability for early withdrawal. She used this money to support herself and her son. She did not receive any child support from her husband from October 2017 until February 2018. She became employed in March 2018. Applicant timely filed her 2018 and 2019 federal and state income tax returns and her refunds were applied to her tax debts. (Tr. 27-33, 44-46; AE A, B, F)

Applicant entered into an installment agreement with the IRS in October 2020. She stated that direct withdrawals were supposed to begin in December 2020 or January 2021, but they did not, so she has been making the required payments manually. She stated that she began making payments to the IRS before she had an installment agreement because she was aware that she had a tax liability for 2017 that had to be paid. She has been pleading with her ex-husband to begin making his share of the payments, but he refuses. (Tr. 26-29; AE A, B, F)

Regarding Applicant's 2015 and 2016 state tax liability, she testified that she paid those tax liabilities right after the returns were filed. She paid the whole amount owed. Her ex-husband did not pay his share. She has a payment plan with the state to pay her 2017 state tax liability. She has been making \$500 monthly payments since December 2020, and the debt will be completely resolved in May 2021. She timely filed and paid her 2018 and 2019 state income tax returns. Refunds were applied to the balance owed for past years. (Tr. 35-38; AE E, G)

Applicant testified that she and her ex-husband own two properties, their former marital residence and a rental property. He lives in the marital residence. In the divorce decree, he was ordered to refinance the residence and remove Applicant from the property's title. Applicant was ordered to do the same for the rental property. She has maintained the mortgage on the rental property. He failed to pay the mortgage on the residence for numerous months and just prior to foreclosure he brought the loan current. A lien was placed on the property due to his failure to pay his taxes (SOR ¶ 1.b). Because Applicant's name is still on the title of the residential property, her husband's delinquency in paying the mortgage, has impacted Applicant's ability to obtain a loan to refinance the mortgage on the rental property. She discussed her financial situation with a prospective lender who advised her that she would not be eligible to refinance the rental property loan until there was 12 months of timely mortgage payments on the marital property. Applicant

has no control over those payments and is frustrated that she cannot resolve the transfer of ownership on the properties due to her ex-husband's actions. She intends to refinance the rental property as soon as she is permitted. (Tr. 39-44)

Applicant credibly testified that she lives within her means and does not have any other outstanding debts. She has had some financial counseling through her accountant and family to ensure that she is proceeding correctly in resolving her tax issues. She intends to complete the IRS installment agreement and rebuild her savings. She has a budget. Prior to her divorce, she had an outstanding credit rating and intends to work towards rehabilitating it. She does not intend to make any nonessential purchases until her tax debt is paid. Applicant stated that except for her poor choice in whom she married, the financial problems were beyond her control, but she is working hard to rectify and pay the remaining tax owed. (Tr. 38, 46-47)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(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 timely file and pay her 2015, 2016, and 2017 federal and state income tax returns. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 believed her 2015, 2016, and 2017 federal and state income tax returns were timely filed by her husband. After she separated from him, she learned he did not file them. The divorce decree ordered her to pay 40% of the tax debts. She has paid the entire amount owed on the federal tax debt for tax year 2015 and her share of the 2016 federal tax debt. She paid the entire amount owed for state taxes owed for 2015 and 2016 tax years. Her ex-husband did not pay as required. Her ex-husband has repeatedly been uncooperative, requiring her to seek legal action to enforce their divorce decree. She believes he is intentionally attempting to disrupt her ability to resolve the issues to be vindictive. Despite that, she has installment agreements with the IRS and her state tax authority and is making payments to resolve the remaining 2017 tax debt. Her financial problems were beyond her control, and she has acted responsibly under the circumstances. She has received some financial counseling and is adhering to a good-faith effort to resolve her tax debt. She has timely filed her 2018 and 2019 federal and state income tax returns and has no other outstanding debts. It is unlikely there will be a recurrence of any financial or tax issues. Her behavior does not cast doubt on her current reliability, trustworthiness or good judgment. All of the above mitigating conditions 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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under Guideline F, financial considerations.

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:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge