



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



In the matter of:)
)
) ISCR Case No. 20-00998
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Douglas W. Otto, Attorney At Law

June 29, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On October 23, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on December 10, 2020, and requested a hearing before an administrative judge. The case was assigned to me on March 16, 2021. DOHA issued a notice of hearing on April 7, 2021, and the hearing was convened as scheduled on May 14, 2021. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered nineteen exhibits, referred to as Applicant's Exhibits A through S, which were admitted without objection. Applicant also testified on her own behalf. The record

remained open until close of business on May 28, 2021, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on May 27, 2021.

Findings of Fact

Applicant is 59 years old and married with children. She has a Bachelor's degree in history. She holds the position of Quality Mission Assurance Manager for a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense industry.

The SOR alleges that Applicant failed to file Federal and state income tax returns for tax years 2014, 2015, 2016, 2017 and 2018; that she owes the Federal Government delinquent back taxes in the amount of approximately \$31,000; that she is delinquent on a department store credit card debt; and that she is behind on her second mortgage line of credit. In her Answer, Applicant admitted allegations 1.a. and 1.c., and denied allegations 1.b. and 1.d., and provided explanations. Credit reports of the Applicant dated March 6, 2018; August 29, 2019; and February 16, 2021, reflect that each of these debts were at one time owing. (Government Exhibits 3, 4 and 5.)

Applicant has worked in the defense industry for over forty years, and has held a security clearance about that long without incident. She has worked for her current employer since July 1994. During her current employment, she has received a number of raises, promotions and accolades. Until 2015, Applicant had always filed her income tax returns in a timely fashion. Until 2012, she had always paid her bills and lived within her means without struggle or difficulty.

Beginning in 2012, and extending through 2020, Applicant encountered a series of catastrophic events in her personal life that became so overwhelming and complicated that she lost track of her tax and financial obligations. She accumulated piles of paperwork in preparation to file the taxes, but other family matters became the priority. She also spent money she could not afford to spend. As a result, Applicant became indebted to the following creditors:

1.a. and 1.b. Applicant failed to file her Federal and state income tax returns for a five year period, from 2014 through 2018. As a result, she became indebted to the Federal Government for delinquent taxes in the amount of approximately \$31,000.

1.c. Applicant became indebted to a bank for an account that was charged off in the amount of \$125,853. This debt is a second line of credit on Applicant's current mortgage. Applicant's home was in foreclosure proceedings in 2012 and again in 2014.

1.d. Applicant became delinquent on a department store credit card account in the approximate amount of \$650 with a total balance of \$7,938.

Applicant testified that in 2010 her daughter began to have serious health problems, beginning with paralysis in her limbs, and then brain issues that ultimately affected her ability to walk. (Tr. pp. 18-19.) This mystery illness continued for about eight months. After searching for answers and seeing many doctors for a diagnosis, it was finally determined that Applicant's daughter suffered from peripheral nerve damage due to West Nile Virus. (Applicant's Exhibit O.) Applicant's daughter suffered from this disease for over two years. She still experiences its effects. This was not only devastating for the Applicant, but very costly, as well as mentally and emotionally exhaustive.

In 2014, Applicant underwent knee surgery. In April 2015, an accident at work caused a large catalog case to roll off the back of an incline truck and fall on Applicant's foot. Applicant suffered a crushing foot injury. (Applicant's Exhibit P.) This caused her to be on disability for eight months. Between 2015 and 2017, Applicant had custodial care and full responsibility for her aunt and uncle and their personal affairs. Her aunt suffered from dementia. (Applicant's Exhibit Q.) Since 1998, Applicant had been assisting her father, with the care of her mother who suffered from a progressive lung disease requiring multiple hospitalizations. (Applicant's Exhibit R.)

These numerous family medical problems "fell on the back" of the Applicant. Applicant was responsible to take these family members to their doctor appointments, make decisions regarding their care, and generally be responsible for their well-being, while still working full time. These issues are no longer of concern. Applicant's aunt, uncle and mother have now passed away. Her daughter's health has now greatly improved. (Applicant's Exhibits O, P, Q and R.)

During this same time, Applicant also experienced financial difficulties. Applicant's husband's business, which had been declining for years, ultimately closed in 2021. Between 2009 and 2011, Applicant loaned \$80,000 to \$120,000 to her husband's brother, which was not paid back as agreed. To support their household income, Applicant was forced to borrow money against her 401k, and had to pay the penalties. In 2012 and 2014, Applicant was able to avoid foreclosure proceedings on their home. (Tr. pp. 75 and 78.)

Applicant now realizes that she should never have ignored her tax issues or her financial problems. Applicant has now filed all of the Federal and state income tax returns for the years in question. When Applicant filed the income tax returns in question, her tax liability was adjusted, (since she now filed jointly instead of single), and she paid off all tax liabilities associated with those tax years. She no longer owes any back taxes to the Federal Government or the state. (Applicant's Exhibits B, H, and S, and Post-Hearing Exhibit A.)

Regarding her second mortgage line of credit, Applicant had attempted to make payments to the creditor after becoming delinquent but the creditor would not accept less than full payment. After many attempts to make a payment, the creditor finally agreed to accept payments. Applicant and the creditor have now agreed upon \$500 payments monthly. Since December 2020, Applicant has made regular monthly

payments of \$500 to the creditor. Applicant plans to continue payments in accordance with the creditor's wishes until the debt is paid in full. (Applicant's Exhibit J, and Tr. pp. 52-53.)

In May 2020, Applicant paid off the balance owed on her department store credit card, and there is no outstanding balance. (Applicant's Exhibit L, and Tr. pp. 55-56.)

Applicant understands that by neglecting her taxes and her finances she made her problems worse. Applicant now has a clear picture and understands how important her security clearance is, and how she must always be responsible to the Government by following strict rules in her personal life to meet the eligibility requirements.

Applicant also understands that these horrendous life events, no matter how difficult they may become, are never excuses for failing to file her annual Federal and state income tax returns. She further understands that she must always file her income tax returns in a timely fashion. Simply filing an extension to file her returns does not mean that she is excused from filing. It only means that she has a little more time to file her annual income tax returns while still complying with the law.

Performance evaluations of the Applicant for the period from 2015 through 2020 reflect that Applicant either "meets" or "exceeds" her job requirements in every category. (Applicant's Exhibit P.)

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 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 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, 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 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 the applicant may deliberately or inadvertently fail to protect or 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, as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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 lived beyond her means and incurred debt she could not afford to pay. She also neglected filing her annual Federal and state income tax filings and incurred significant tax liability. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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, or 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 serious family medical issues were conditions outside of her control. Her daughter's illness, her own injury at work, complicated by her responsibilities to her aunt and uncle and mother did not help. Applicant's financial problems occurred because of her husband's business loss, and the fact that Applicant had to borrow from her 401k and pay steep penalties in order to maintain the household expenses, and to avoid foreclosure on their home. These occurrences were also conditions that Applicant did not expect to have to deal with.

Despite these setbacks, Applicant has filed all of the income tax returns in question and paid all of her back taxes. She has completely resolved her outstanding department store credit card debt, and is making regular monthly payments toward resolving the debt she incurred on her line of credit. She has redirected her focus on what is important and understands that to possess a security clearance she must consistently show that she is responsible. She has acted reasonably and responsibly under the circumstances. Applicant has shown good judgment and reliability. There

are clear indications that her financial problems of the past are resolved and are under control. She has also demonstrated a good-faith effort to resolve her debts. The Financial Considerations concern has been mitigated.

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 the 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. Applicant is a career employee with a defense contractor. She has performed admirably at work and is well respected among her colleagues. She has held a security clearance for about 40 years without incident until these extraordinary life events. Under the particular facts of this case, she has sufficiently addressed the concerns set forth in the SOR.

Applicant clearly understands the responsibilities of holding a security clearance, and that she must always file annual income tax returns according to Federal and state laws. By not filing her income tax returns on time or within the extension period, she places the onus on the taxing authorities to file for her, which is not their legal responsibility. Applicant also understands that being overwhelmed with life's responsibilities is not an excuse for failing to comply with the tax filing laws. Furthermore, Applicant must live within her means, and be able to pay her bills comfortably at all times. If she is unable to do this, she must reduce her expenses, or she will find herself once again in serious trouble with her security clearance. The conclusion next time may not be so favorable.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.d.:	For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge