



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 20-00852
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2021

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from her failure to timely file federal income tax returns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 1, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on November 6, 2020, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on December 2, 2020, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA). On January 27, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5 (Items). Applicant was sent the FORM on January 28, 2021. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 are admitted without objection. The case was assigned to me on June 4, 2021.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old, a high school graduate, never married, with an adult son. Since August 2017, she has been employed by a defense contractor. (Items 3 and 5.)

The SOR alleges that Applicant failed to timely file her federal income tax returns for 2011 through 2018 and that as of the date of the SOR, the 2011 through 2015 returns remained unfiled. The SOR also alleges that Applicant owed \$255 to the IRS. (Item 1.) Although Applicant denied the failure-to-file allegations (Item 2), the record shows that she belatedly filed those returns in 2018 and 2020. (Item 5 at 6.) Applicant proffered a number of reasons for her failure to timely file her returns:

She was waiting to hear from the IRS that she calculated her return correctly;

She had financial challenges (car repairs and a water leak at her home);

She had trouble getting the required documentation (e.g., W-2s and 1098s);

She was working full-time and had a part-time job as well;

She was busy as the primary care giver of her mother who had dementia; and

She did not know how to file returns for previous unfiled years. (Items 2, 4, and 5.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 access to classified information 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, 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.

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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes the following condition that could raise security concerns under AG ¶ 19 in this case:

(f) Failure to file ... annual Federal ... income tax ... returns ... as required.

The record shows that the SOR allegations are established. AG ¶ 19(f) applies.

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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(g) the individual has made arrangements with appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements,

Applicant's failure to file runs from 2011 to as recently as 2020. Applicant's failure to file was neither infrequent nor long ago. AG ¶ 20(a) does not apply. None of the conditions cited by Applicant as excuses for her failure to file are contemplated by AG ¶ 20(b). It does not apply. Applicant did not submit any documents showing any arrangement with the IRS about her failure to file. AG ¶ 20(g) does not apply. Nor does Applicant's belated filing of her returns cure the security concerns she raised by those numerous failures. *See, e. g.*, ISCR Case No. 15-08385 at 3 (App. Bd. May 23, 2018). I find against Applicant on SOR ¶ 1.a.

The magnitude of Applicant's \$255 debt to the IRS does not, in itself, raise security concerns. I find in favor of Applicant on SOR ¶ 1.b.

Under AG ¶ 2(a), 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 also considered the whole-person concept.

Applicant leaves me with questions and doubts as to her eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
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Subparagraph 1.b:	For Applicant
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Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge