



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02227
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel

For Applicant: *Pro se*

01/18/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant has now filed all back federal and state income tax returns, and has satisfied all of her income tax delinquencies. Of the three remaining debts alleged in the Statement of Reasons (SOR), she has satisfied two, and the remaining debt was cancelled. I conclude that Applicant has mitigated the financial considerations security concerns.

Statement of the Case

On January 30, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the interests of national security to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG). On March 5, 2020, Applicant answered the SOR, admitting the allegations and requesting a hearing.

On October 7, 2021, the Defense Office of Hearings and Appeals issued a notice of hearing scheduling Applicant's case for October 22, 2021. The hearing was held as scheduled. I received six Government exhibits (GE 1 – GE 6) and eleven Applicant exhibits (AE A - AE K), together with the testimony of Applicant and a character witness. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the close of the hearing, I left the record open at Applicant's request, to allow her the opportunity to submit additional exhibits. Within the time allotted, she submitted four exhibits which I incorporated into the record as AE L through AE O. The transcript (Tr.) was received on October 29, 2021.

Findings of Fact

Applicant is a 47-year-old single woman with a teenage child. She earned a bachelor's degree in 1997 and has taken some master's degree-level courses. For the past three years, she has worked in the defense contracting industry. (Tr. 31) She has been working with her current employer as a project manager since February 2021. (Tr. 30)

Applicant is highly respected on the job and in her community. According to a former colleague, Applicant "cultivated a culture of openness in information sharing which improved the quality of [their work]," and was "instrumental to the success" of the company. (AE G) According to a professional mentor, Applicant is a good mentee who took everything he said "to heart" and applied his lessons effectively. (Tr. 20-21)

Between 2010 and 2013, Applicant defaulted on two credit-card accounts, collectively totaling approximately \$700 (SOR subparagraphs 1.a and 1.b), and she defaulted on a car loan (SOR subparagraph 1.c), resulting in a repossession and an \$11,472 deficiency. (Answer at 2; GE 4 at 4-5; Tr. 46) Also, Applicant failed to file federal income tax returns timely from 2006 to 2009, and 2012 through 2017, and she failed to file state income tax returns timely for tax years 2011, 2014 through 2017. (SOR subparagraphs 1.d - 1.f) (Answer at 2) Moreover, between 2011 and 2019, the state taxing authority placed three liens on Applicant's property for delinquent income tax debts totaling \$19,000, as alleged in SOR subparagraphs 1.g through 1.i. (Answer at 2)

Applicant's financial problems coincided with her unsuccessful struggle to develop a catering business that she started in 2005. Her record keeping was poor and income was erratic. (Tr. 74) She tried to make ends meet through various part-time jobs such as ride-sharing, house cleaning, substitute teaching, and working in retail. (GE 2 at 11; Tr. 34, 55; GE 1 at 18; Tr. 74) Applicant's financial problems were compounded when her son was born in 2006. Because the child's father never paid child support, she faced a situation where she was simultaneously raising a child with no support, and trying to keep a floundering business afloat. (Tr. 33) In early 2012, Applicant sought help from a deacon in her church to assist with filing her income tax returns. (Tr. 51-53) With the deacon's help, she filed her federal income tax returns for 2006 to 2011. (Tr. 53; GE 1 at 26) The

collective balance was approximately \$5,000. (GE 2 at 17-23) Applicant did not make any payment arrangements at that time. She attributed her failing to pay these taxes to “not having proper income, barely making it, just trying to survive.” (Tr.58)

Subparagraphs 1.a and 1.b are delinquencies stemming from credit cards that Applicant used to pay living expenses. Subparagraph 1.c is the deficiency from a car she purchased in 2012. (Tr. 44) After struggling to make car payments, Applicant contacted the creditor to request a refinance option. (Tr. 45) She could not afford the creditor’s proposal, whereupon the car was voluntarily repossessed in 2013. (GE 5 at 2) In 2020, the debt was cancelled and reported to the Internal Revenue Service through a Form 1099-C. (AE N)

In 2017, Applicant met a high-ranking federal government employee by happenstance. (Tr. 20) As they were talking, she mentioned the struggles with her catering business, and sought his advice regarding a career transition. He suggested that she become a certified project manager and pursue a career in the defense contracting industry. Applicant took his advice, completed the certification program, and began applying for jobs with various defense contractors and government agencies. (Tr. 36)

Applicant’s career change proved to be successful. By January 2021, she was earning \$113,000 annually, and she currently earns approximately \$135,000. This past year, she received a \$6,000 bonus. (Tr. 37) In contrast, her adjusted gross income in 2017 was \$29,000. (GE 2 at 40)

As Applicant’s earnings increased, she began addressing her delinquent finances. In 2018, Applicant inherited her father’s house after he passed away. After selling it, she netted approximately \$85,000, (Tr. 74; Answer at 12) The receipt of this income facilitated Applicant’s ability to pay the delinquent income taxes, together with bills that were not alleged in the SOR. (Tr. 73) She satisfied the debts alleged in subparagraph 1.a and subparagraph 1.b in October 2018 and December 2018, respectively. (GE 2 at 12) In 2018, Applicant retained an accountant who helped her resolve her income tax delinquencies. (GE 1) With the accountant’s help, she filed all of her remaining, late tax returns, and satisfied all of the federal income tax delinquencies. (AE D – AE F, AE H) During this time, Applicant also satisfied the state tax liens. (AE K) The state tax liens have been discharged. In sum, Applicant paid approximate \$22,000 to resolve her delinquent state and federal income taxes. (AE D, AE K)

In February 2020, Applicant filed her federal income tax returns for 2018 and 2019. (AE A) She was scheduled to receive a refund of \$136. (AE A at 4) Applicant maintains a budget. (GE N) She has approximately \$3,000 in monthly after-expense income. (AE M at 1) She has \$1,900 deposited in a savings account, and has invested approximately \$16,000 in an IRA account since beginning her current job in February 2021. (Tr. 71)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The factors under AG ¶ 2(d) are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

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

Applicant's history of financial problems and her failure to file her income tax returns on time generate concerns under AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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." The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g) the individual has made arrangements with the appropriate authority to file or pay the amount owed and is in compliance with those arrangements.

Between 2006 and 2017, Applicant filed all of her federal and state income taxes late, and incurred tax delinquencies in excess of \$20,000. Failure to file income tax returns or pay income taxes on time pose serious security concerns, as paying income taxes is a fundamental civic duty required by law. Applicant's failure to either file her income tax returns or pay her income tax returns timely stemmed from a difficult financial situation posed by a struggling business, together with difficulties posed by raising a child as a single parent with no child support. After years of struggling to keep her business afloat, Applicant decided to switch careers. To facilitate her career change, she earned a project management certification. Her effort to change careers was successful, as Applicant's earnings have increased significantly in the years following the career change. Conversely, she failed to file federal income tax returns timely for ten consecutive years. Other than contacting a deacon with her church in 2012 to help her file tax returns in 2012, there is minimal evidence of steps taken to resolve her financial problems until she obtained a well-paying job in 2018. Consequently, although she ultimately filed all of her income tax

returns, and paid the tax delinquencies and paid two of the SOR debts after ending her catering business and gaining a well-paying job, AG ¶ 20(b) and AG ¶ 20(g) apply, but have limited probative value.

Nevertheless, Applicant has satisfied all of the debts except the automobile deficiency, which was legally cancelled. She currently earns more than \$100,000 annually than she earned in 2017, the last year that she operated the catering business, and she earned \$85,000 after selling a house that she inherited. She maintains a budget, has ample after-expense income, and has accrued significant savings and investments since switching careers. Given her a significant increase in income through her career change and her inheritance windfall, Applicant's trouble keeping up with her income tax returns and her debts is unlikely to recur, and no longer cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Whole-Person Concept

The nature and seriousness of Applicant's failure to file income tax returns on time or to pay income taxes timely is outweighed by the presence of rehabilitation and minimal likelihood of recurrence evident from Applicant's significantly improved financial circumstances.

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.i:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge