



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



In the matter of:)
)
) ISCR Case No. 19-03637
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple Esq., Department Counsel
For Applicant: *Pro se*

03/08/2022

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 March 20, 2020, the Defense Counter intelligence and Security Agency 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 June 10, 2020, and June 18, 2021, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on August 31, 2021. She was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5. (Item 1 is the SOR.) Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on November 4, 2021. After reviewing the FORM, based on Applicant's answer to the SOR, I asked Department Counsel to contact Applicant to clarify whether she submitted additional documents with her answer. After several email correspondences, which are attached as Hearing Exhibits I and II, I permitted Applicant to submit an additional document, which is marked as Applicant Exhibit (AE) A. The record closed on February 25, 2022.

Findings of Fact

Applicant admitted the sole SOR allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. She married in 1983 and divorced in 1995. She has two adult children from the marriage. She remarried in 1998 and has an adult child from the marriage. She has worked for a federal contractor since 1999 and held a security clearance since 2006.

In her December 2017 security clearance application (SCA), Applicant disclosed that she failed to timely file her 2015 and 2016 federal and state income tax returns. She stated in the SCA: "Had brain tumor/surgery in February 2017, returned to work Oct 2017, working on filing." She also stated: "Spoke with IRS, will complete NLT December 2017, most likely a refund." (Item 3)

Applicant responded to government interrogatories in April 2019. She provided IRS transcripts for tax years 2015, 2016, and 2017. Her 2015 federal income tax return was filed in July 2018; 2016 federal income tax return filed in April 2019; and 2017 federal income tax return filed in April 2019. She was entitled to refunds each year and there is no balance owed for these years. (Item 4)

During Applicant's July 2018 background interview with a government investigator, she explained that she failed to timely file her income tax returns because she had a brain tumor that eventually led to brain surgery in February 2017. Her condition made her tired. She was aware she would be receiving a tax refund so she was lazy about timely filing the returns. (Item 5)

In Applicant's June 2020 answer to the SOR she stated:

My sincere apologies for not taking care of this sooner. I thought I remedied this issue last year, but this action has made me aware that the problem still exists. I immediately made copies of my State taxes, and resent it by mail. I understand the importance of having my security clearance, and how not having it will affect my job and lively hood (sic). Please be assured, that I will not let this happen in the future. (Item 2)

Initially, Applicant failed to provide documents to substantiate that her state income taxes for 2015 through 2017 were filed. After I reopened the record, she provided a document from her state substantiating a zero balance owed as of December 2020. Although this document does not specifically address tax years 2015 to 2017, I found Applicant's statement credible and believe she resent the required tax documents to her state. I am satisfied that she is current on her state taxes. (AE A)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

(g) 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 her federal and state income tax returns for tax years 2015, 2016, and 2017. 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; 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 experienced serious medical issues that required brain surgery in February 2017. She stated this condition caused her to be fatigued. She admitted that she was subsequently lazy in not following through on her tax filings because she knew she was entitled to refunds. Her tax transcripts confirm that she filed her federal income taxes, albeit late, and was entitled to refunds. I considered Applicant's answer to the SOR indicating she resent her state income tax returns and the document she provided indicating she had a zero balance owed to the state. I find that this behavior is unlikely recur and does not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

AG ¶ 20(b) initially applied due to Applicant's medical condition, however, her failure to address her delinquent filings within a reasonable time negates the full application of his mitigating condition. The evidence indicates that Applicant does not owe federal or state income taxes. Based on her answer, it appears she believed she had filed her state income tax returns. When she was made aware that was not accurate, she said she resent the tax returns to her state. I found her statement credible and although the document she provided does not clearly state the date on which she filed her state returns, I am satisfied that they were filed and she does not owe state income taxes. I find AG ¶ 20(g) applies.

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 without questions or doubts about 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

Subparagraph 1.a: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge