



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 21-01078
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

07/12/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from her problematic federal and state income tax history. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application (SCA) on September 14, 2017. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on September 3, 2021, 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 submitted an answer (Answer) to the SOR on September 9, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government's file

of relevant material (FORM) on January 3, 2022, including documents identified as Items 1 through 6. Applicant received the FORM on January 24, 2022. 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 6 are admitted without objection. The case was assigned to me on April 27, 2022.

Findings of Fact

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

Applicant is 36 years old, has never married, and has no children. She has a bachelor's degree. Applicant has worked for a defense contractor since May 2015. This is her first application for security clearance. (Item 3.)

The SOR alleged that Applicant failed to file federal income tax returns for 2015 through 2018, as required, and state income tax returns for 2014 through 2018 for her home state, as required. (Item 1.) Applicant admitted those allegations and submitted belatedly filed state and federal tax returns. Those documents showed that on August 30, 2021, Applicant filed state and federal income tax returns for tax years 2014 through 2020 (the latter two years being unalleged in the SOR). Those returns were filed by a professional tax preparer. (Item 2.)

The record shows no tax delinquencies or tax levies. The record shows that only nominal amounts were due or refunded, e.g., \$6.50 due or \$113 refunded. (Item 2.0 Applicant's credit report shows no overdue or delinquent accounts. All are "Pays As Agreed." (Item 5, generated September 26, 2017.) During her November 20, 2018, personal subject interview (PSI), Applicant explained that she "procrastinates, is not good at record keeping, and is forgetful." (Item 6.) Applicant disclosed her failure to file income tax returns on her September 2017 SCA. (Item 3.)

Law and 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 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 Guideline F 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).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following condition is applicable in this case:

- (f) Failure to file or fraudulently filing annual Federal, state or local income tax returns . . . as required.

The SOR tax delinquencies are established by Applicant's admissions. AG ¶ 19(f) applies.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating condition under AG ¶ 20 is 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; 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 disclosed her failures to file income tax returns on her September 2017 SCA. She was candid about those failures during her November 20, 2018, PSI. On August 30, 2021, Applicant, with the aid of a professional tax preparer, rectified those failures by filing the tax returns alleged in the SOR. The SOR was issued on September 3, 2021, just days before Applicant remedied her tax defalcations. Because only nominal taxes or refunds were due, Applicant was not engaging in tax avoidance. Rather, by her own admissions, she procrastinated, was forgetful, and was poor at recording keeping.

It is a fair conclusion that the security clearance process motivated Applicant to address her tax filing deficiencies. An applicant who waits until her security clearance is in peril to cure her tax filing deficiencies does not demonstrate the reliability necessary to hold a national security clearance. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017).

It is true that Applicant's failure to file income tax returns began several years ago. That was, however, just the beginning of a pattern that continued until just days before the issuance of the SOR. And it was the security clearance process that prompted Applicant to act, not any arrangements with taxing authorities. Applicant has now, belatedly, cured her tax issues. Even so, the security risk from her conduct remains. Applicant has not established a track record of regular compliance with state and federal tax filing requirements. AG ¶¶ 20(a) and (g) do not apply.

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. AG ¶¶ 2(a) and (d)(1)-(9)

(explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

As part of my whole-person analysis, it is worth noting that Applicant’s failures to file state and federal income tax returns are the only blemishes on her financial record. Her other accounts are current. On this record, Applicant may very well benefit from financial counseling or a personal financial adviser to aid in keeping her tax filings in order.

Applicant leaves me with questions about her eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to 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
Subparagraphs 1.a. – 1.c.:	Against Applicant

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