



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



In the matter of:)
)
) ISCR Case No. 22-00682
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 4, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on June 27, 2022 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 9, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on March 24, 2023, scheduling the matter for a hearing on May 9, 2023. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through H, without objection. At Applicant's request, I kept the record open until May 23, 2023, and granted her an extension until July 6, 2023, so that she

could submit additional documentation. She timely submitted documentation that I marked collectively as AE I and admitted in evidence without objection. DOHA received the hearing transcript on June 1, 2023.

As of the date of the hearing, Applicant worked as a program area administrator for a DOD contractor since 2012. She retired from employment in August 2023. Despite her retirement, ¶ 4.41 of the Directive provides that jurisdiction in this matter continues since the hearing was already completed.

Findings of Fact

Applicant admitted both SOR allegations. She is 66 years old. She married in 1980 and has been widowed since 2006. She has three adult children. She earned a bachelor's degree in 1982. She has owned her home since 1987. (Tr. at 6-7, 25-27, 31; GE 1; AE A)

As of the date of the hearing, Applicant worked as a program area administrator for a DOD contractor since 2012. She worked only part time from 2014 to September 2022, and then she worked full time until her retirement in August 2023. She also worked as a self-employed beauty consultant since 2011. She previously worked for the same DOD contractor beginning in 2002, except for a period of unemployment from approximately May 2009 to December 2009. She worked full time for a temporary agency from 2010 to 2012. She was first granted a security clearance in approximately 2006. (Tr. at 5, 7, 26-32, 42, 51-52, 59-61, 64; GE 1-3; AE A)

The SOR alleged that Applicant failed to timely file her federal income tax returns, as required, for tax years (TY) 2011 through 2018, and that they remained unfiled as of the date of the SOR. (SOR ¶ 1.a) It also alleged that she failed to timely file her state income tax returns, as required, for tax years 2011 and 2013 through 2018, and that they remained unfiled as of the date of the SOR. (SOR ¶ 1.b) The SOR allegations are established by her admissions in her Answer; her 2020 security clearance application (SCA); her interviews with an authorized DOD investigator in 2020; and her 2021 response to interrogatories. (Answer; GE 1-3)

Applicant attributed her failure to file her income tax returns to the financial challenges that began with the death of her spouse in 2006 and that continued when she became a caregiver for her parents and best friend. In 2008, she assisted her mother with caring for her ill father until his death in 2011. To relieve some of her financial obligations after his death, she began her home-based cosmetics business that year. The exhaustion of caregiving, the responsibility of managing her husband's estate, and her grief and depression following his death hampered her ability to organize her supporting business receipts and other necessary tax-related documentation. Her disorganization continued with subsequent tax years, and she mistakenly believed that she needed to first file her older income tax returns before she could file her more recent ones. She also suffers from attention-deficit hyperactivity disorder, which further affected her ability to focus on details and important matters. (Answer; Tr. at 37-39, 42-43, 45-48, 51-52, 59-60; GE 1-3; AE C, G, I)

In 2014, Applicant assisted her mother with downsizing her marital home and her mother moved in with her. In 2017, Applicant helped care for her friend, who was diagnosed with cancer, until her friend's death in 2018. In 2020, Applicant's mother had a stroke and Applicant cared for her mother until her death in 2022, shortly after she was also diagnosed with cancer. After making the funeral arrangements and settling her mother's estate, she suffered from depression. As she slowly regained focus for her job and to begin to resolve her outstanding income tax returns, she briefly listed her home for sale, from around April 2022 to October 2022, to downsize. She ultimately took her home off the market due to the lack of interest and the change in market conditions. Her efforts were further delayed when she caught COVID in October 2022. (Answer; Tr. at 37-39, 42-43, 45-48, 55-57, 59-60; GE 1-3; AE C, G, I)

Applicant assumed she was due tax refunds for the tax years in which she did not file an income tax return because she never received any communication from the Internal Revenue Service (IRS) regarding any tax liability. When she received notice from the state tax authority that she owed state income taxes for TY 2012, she made monthly payments of \$150 for 22 months, beginning in 2019, and she paid her outstanding state taxes of approximately \$5,926 for that tax year in 2022. (Answer; Tr. at 37-39, 42-43, 45-48, 55-57, 59-60; GE 1-3; AE C, G, I)

In approximately 2019, Applicant began working with a tax professional. With his assistance, she filed her federal and state income tax return for TY 2019 in October 2020, with an approved IRS tax extension. She was due a federal and state tax refund of \$22 and \$651, respectively, for that tax year. In October 2022, the tax professional prepared her federal income tax returns for TY 2011 through 2018, however, he did so without the benefit of her business expenses or a W-2 form to prepare her state income tax returns. She had to compile such information before the income tax returns for those tax years could be filed. (Answer; Tr. at 36-37, 44, 47-48, 53-59, 61-62, 67-69; GE 1, 3; AE C, G, I)

Upon the advice of the tax professional, Applicant prioritized and filed her most recent federal and state income tax returns, for TY 2020, 2021, and 2022, in April 2023, so that she could obtain the refunds to which she was due. She expected a federal income tax refund totaling \$118 and a state income tax refund totaling \$2,873 for those tax years. With the help of the tax professional, she compiled her business expenses and filed her 2011 through 2018 federal income tax returns in June 2023. She owed federal income taxes totaling \$10,681 for those tax years. Since this tax debt was not alleged in the SOR, I will not consider this evidence for disqualification purposes, but I may use it as it relates to credibility, mitigation, and in applying the whole-person factors. She did not provide documentation reflecting that she filed her state income tax returns for TY 2011 and 2013 through 2018. She testified that the state tax authority had not contacted her concerning her unfiled state income tax returns. (Tr. at 32-36, 39-42, 44, 47-48, 53-59, 61-62, 67-69; GE 1, 3; AE C, G, I)

Applicant's annual income as of the date of the hearing was approximately \$70,000. When she worked only part time from 2014 to September 2022, her annual income was approximately \$60,000. She also earned approximately \$10,000 annually, from 2020 through the date of the hearing, from her home-based cosmetics business.

She had approximately \$144,000 in a savings account as of April 2023. After paying her monthly expenses, to include her monthly mortgage of \$1,540, her net remainder was \$700. She intends to utilize this money to resolve any outstanding taxes. Since 2020, she has worked to reduce her overall debt and improve her credit ratings. Her credit reports from 2023 reflect a “very good” credit rating. She does not have any delinquent debts. The tax professional provided her with financial counseling, in addition to helping her with her taxes. She stated that she lived modestly and within her financial means. She has developed a system to stay on top of her business expenses and she intends to timely file her future income tax returns. (Tr. at 27-30, 42-43, 48-53, 57-59, 62-63; GE 3-5; AE C, D, E, F, H, I)

In May 2022, an individual who served as Applicant’s assistant supervisor for several years and supervisor for six months, described Applicant as a “very detail-oriented person with high standards to get the work done in a professional manner.” This individual attested to Applicant’s trustworthiness, reliability, and judgment. In June 2023, a work colleague of over 15 years also attested to Applicant’s trustworthiness and strong work ethic. (AE B, I)

Policies

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 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(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 national security eligibility will be resolved in favor of the national security.”

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 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* Exec. Or. 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:

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 . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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 failed to timely file her federal income tax returns for TY 2011 through 2018. She also failed to timely file her state income tax returns for TY 2011 and 2013 through 2018. AG ¶¶ 19(c) and 19(f) are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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; 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.

Circumstances beyond Applicant's control contributed to her financial problems. Nonetheless, under AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. She did not begin working with a tax professional until 2019. Although this individual provided her with financial counseling in addition to helping her file her income tax returns, she only recently filed her federal income tax returns for 2011 through 2018 in June 2023. Moreover, she owes federal income taxes totaling \$10,681 for those tax years. She also failed to provide documentation reflecting that she filed her state income tax returns for TY 2011 and 2013 through 2018. She needs more time to establish that she has her finances under control. I find that these financial issues continue to cast doubt on her reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(g) do not apply.

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. Overall, the record evidence leaves me with questions and doubts as to

Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge