



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



In the matter of:)	
)	
)	ISCR Case No. 23-01221
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant’s failure to timely file her Federal and state income tax returns occurred under such circumstances that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, and good judgment. She acted responsibly after facing conditions beyond her control. Guideline F (financial considerations) security concerns are mitigated. National security eligibility for access to classified information is granted.

Statement of the Case

On July 17, 2019, Applicant completed and signed her security clearance application (SCA). On July 17, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On September 29, 2023, Applicant provided a response to the SOR. She requested a hearing before an administrative judge. The case was assigned to me on November 28, 2023. On January 23, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 7, 2024. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6, and a discovery letter dated October 25, 2023, marked as Hearing Exhibit (HE) 1. Applicant provided six documents, which were labeled as Applicant Exhibits (AE) A through F. All proffered documents were entered into evidence without objection. DOHA received the hearing transcript (Tr.) on February 14, 2024.

Findings of Fact

Applicant is 63 years old. She is currently single after her two previous marriages ended in divorce. She does not have any children. She has four years of college credits, but not enough for a college degree. From 2004 to 2010 she worked for a federal government contractor as a graphic designer. She unexpectedly lost her job in late 2010, and she was unemployed for about 18 months until she became employed in April 2012. She worked about eight months until her contract ended. For the next nine months she freelanced as a graphic designer, but she did not earn sufficient income. She worked various jobs from 2013 to late 2018, but the income from these jobs was nominal. In late 2018, she was hired by an employment servicer to work for a large federal government contractor. In February 2019, the government contractor hired her directly. Applicant's current annual salary is approximately \$72,000. Her employer is sponsoring Applicant for a DOD security clearance. (Tr. 18-23; GE 1)

Financial Considerations

The SOR alleges Applicant failed to file her 2009, 2010, and 2012 Federal income tax returns. She also failed to file her state income tax returns for the same years. She admitted both SOR allegations (§ 1.a and § 1.b) She stated in her SOR response that she was unable to file these income tax returns due to grief, divorce, medical issues, unemployment, and underemployment. She stated that she had filed her 2009, 2010, and 2012 Federal income tax returns, and she had filed her 2012 state income tax return. Her tax preparer was currently working on her 2009 and 2010 state tax returns, and she expected to have those filed soon. (SOR response)

Applicant stated that her financial problems occurred in 2010, after she separated from her second husband, and she also unexpectedly lost her job. During the summer of 2010, she discovered from her husband that he had not filed their income tax returns for 2009. He had always been the one to handle their tax returns. This was during a tumultuous period in their marriage. He told Applicant he would file the 2009 tax returns when he filed their 2010 income tax returns. Not long after that statement, they separated. He had her W-2s and all the other necessary tax documents. She kept asking him if he had filed their tax returns, but she was unable to get a response from him. She did not learn until the spring of 2011 that he had not filed their 2009 or 2010 Federal and state

tax returns. She confronted him about it, and he told her he was still working to get their tax returns filed. She was responsible by filing her 2011 income tax returns because they were still married but living separate. (Tr. 24-25; SOR response)

In 2012, Applicant was dealing with significant back issues. She was getting epidurals for pain management. She was working parttime, and the medication her doctor prescribed for her pain kept her in a mental fog. She was not earning enough income, and she depleted her full retirement account by 2012. Due to these withdrawals, she was worried she would owe taxes for 2012, but she did not have any money at the time. She was more focused on paying her living expenses and trying to find employment with a decent wage. She did not file her 2012 Federal or state income tax returns. (Tr. 25-27; SOR response)

Applicant was hired in February 2019 by her current employer. It was at this time she started to address her income tax filing problem. She was now earning enough income to take care of these issues by finding a tax preparer, but she was having difficulty finding W-2s and other documents for specific tax years. She filed her 2018 and 2019 Federal and state tax returns timely. In July 2019, she was asked by her employer to apply for a DOD security clearance. She filed all of her delinquent income tax returns for tax years 2013 through 2017. She owed approximately \$14,000 in back taxes for these years, which has been completely satisfied. Her tax preparer advised her that she did not need to file tax returns for years 2009, 2010, or 2012. (SOR response; Tr. 27-31)

After Applicant received her July 2023 SOR, she realized that she still needed to file her tax returns for 2009, 2010, and 2012, despite the advice she had been given by the tax preparer. She was able to get her tax documents from her ex-husband, and she hired a tax service in August 2023. By the end of 2023, her Federal and state tax returns from 2009, 2010, and 2012 were filed. She paid in full Federal back taxes owed for 2010 which totaled \$1,673. If filed timely she could have received state tax refunds for tax years 2009 and 2012. She does not believe she will owe any back taxes for the other tax years based on what the tax service told her, but she has money saved if she is otherwise notified by the IRS or state tax authority. She stated that she has filed all tax returns timely since 2018, and she never will allow herself to file her tax returns late again. She is financially responsible, and she feels a sense of pride concerning her current financial and tax status. (SOR response; Tr. 31-34; AE A, B, C and D)

Character References

Two character references, a project manager and a technical illustrator from Applicant's current place of employment, provided character reference letters. They described Applicant as a hard worker, reliable, and responsible. They both stated that Applicant provides important graphic art contributions to keep U.S. soldiers safe. Both references highly recommend that Applicant be granted a DOD security clearance. (AE E and F)

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 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 access to classified information will be resolved in favor of 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 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 Executive Order 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

AG ¶ 18 articulates the security concern for financial problems:

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 is potentially applicable in this case:

(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's admissions that she failed to timely file her Federal and state income tax returns for 2009, 2010, and 2012 support the application of AG ¶ 19(f).

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; 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 is fully aware that she is responsible for filing annual Federal and state income tax returns, but due to a divorce, unemployment, underemployment, and health issues, which were all circumstances beyond her control, she was unable to comply with

this requirement. When she obtained a permanent position in February 2019 with her current employer, she immediately took corrective action by getting her delinquent income tax returns filed and back taxes repaid. She has been fully compliant in filing her tax returns in a timely manner since 2018.

Applicant's tax preparer gave her bad advice by telling her that she was not required to file returns for the tax years 2009, 2010, and 2012. When she received the July 2023 SOR, however, she immediately realized that her tax preparer was wrong. In August 2023, she worked with her ex-husband and was able to file the Federal and state tax returns for those years. She owed Federal back taxes for 2010, which she paid. She does not believe she will owe any other back taxes, but in the event she receives a statement from a tax authority, she has money saved so she can take care of it right away. Applicant has learned a valuable lesson and will timely file all of her income tax returns in the future.

Under the current circumstances, there are clear indications that Applicant's tax problem is resolved. Her failure to timely file her Federal and state income tax returns occurred under such circumstances that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, and good judgment. Financial considerations security concerns are mitigated.

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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into

account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his or her off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant took responsible action to file her delinquent Federal and state income tax returns when she found suitable employment with a decent wage. All of her tax returns are filed and there is no evidence that she owes any back taxes. She provided employment character references who state that she is hard worker, responsible, and reliable. After evaluating all the evidence in the context of the whole person, I conclude Applicant has 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: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge