



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



In the matter of:)	
)	
)	ISCR Case No. 24-00005
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

10/04/2024

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 8, 2023. On February 26, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR on May 13, 2024, and requested a decision based on the written record in lieu of a hearing. On June 20, 2024, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 6. She was given an

opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on June 28, 2024. She was given 30 days to submit a response to the FORM. She did not submit a response. The case was assigned to me on September 27, 2024.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case and are part of the record. Items 3 through 6 are admitted into evidence.

Findings of Fact

Applicant, age 43, has been an employee of a DOD contractor since September 2022. She earned a bachelor's degree in 2003. She married in April 2021, but was unable to complete name-change documentation with the Social Security Administration until April 2022, when it reopened to the public after Covid. (Item 3.)

The SOR alleged Applicant failed to file federal and state income tax returns for tax years 2020 through 2022. (SOR ¶¶ 1.a-1.b) She disclosed her failure to file her 2020 and 2021 state and federal income tax returns in her SCA. (Item 3.) At that time, she indicated she planned to file her 2020 and 2021 income tax returns when she filed for 2022. However, she failed to file 2022 federal and state income tax returns too. In her response to the SOR, Applicant admitted both allegations in the SOR. She attributed her failure to timely file her federal and state income tax returns in part to getting her name changed and to deciding whether to file married together or separately. (Item 3.) She indicated that she had subsequently filed her federal and state income tax returns for tax years 2020 through 2022 in 2024. (Item 2.)

With respect to her federal tax returns, she provided copies of account transcripts from the IRS that show Applicant filed her 2020 tax return on March 25, 2024. (Item 2 at 11.) Her 2021 federal tax return was filed on February 20, 2024. (Item 2 at 14.) Her 2022 federal tax return was filed March 18, 2024. (Item 2, at 19.) She has a zero balance with the federal government for each of those tax years.

Similarly, her state tax returns are now filed. Documentation from her state tax authority shows she filed her 2020 income tax returns on February 16, 2024. At that time, she owed \$135 to the state for her 2020 state income taxes. (Item 2, 5-6.) She documented that she filed her 2021 state tax return on February 16, 2024, and owed a balance of \$405. (Item 2, at 3-4.) She did not provide documentation showing when her 2022 state income tax returns were filed, but she did document that for tax year 2022, she received a "full refund" of \$42, which is evidence that those returns were in fact filed. (Item 2 at 7.) She also documented a payment plan to make \$96 payments to her state for five months to resolve the outstanding balance totaling \$551 for tax years 2020 and 2021. (Item 2.)

Applicant's personal financial statement shows that she has a monthly net remainder of \$2,398, after her bills are satisfied. (Item 5.)

Policies

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

(f) failure to file or fraudulently filing annual [f]ederal, state, or local income tax returns or failure to pay annual [f]ederal, state, or local income tax as required.

AG ¶ 19(f) applies to Applicant's failure to timely file her federal and state income tax returns for tax years 2020 through 2022, as alleged in SOR ¶¶ 1.a – 1.b.

AG ¶ 20 describes conditions that could mitigate security concerns. The following is applicable in this case:

(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.

AG ¶ 20(g) applies. Applicant's ability to legally change her name after her marriage was impacted by closures of Social Security offices due to Covid, and this initially caused a delay in filing her federal and state income tax returns. She has since filed all her delinquent federal and state income tax returns, albeit late. Further, she has set up a payment plan to address her minimal tax debt to her state. She is acting responsibly with respect to her federal and state income tax returns and can be trusted to continue to file her income tax returns in a timely manner.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I considered Applicant's explanations for her failure to file federal and state income tax returns for tax years 2020 through 2022 in a timely manner. She filed her 2020-2022 federal and state income tax returns, she set up a payment plan to resolve her delinquent state tax debt, and she has the funds available to pay that debt. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised under Financial Considerations.

Formal Findings

Formal findings 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
Subparagraph 1.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Jennifer I. Goldstein
Administrative Judge