



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



In the matter of:)
)
) ISCR Case No. 24-01249
)
Applicant for Security Clearance)

Appearances

For Government: Lauren A. Shure, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

History of the Case

On September 12, 2024, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 implemented by DOD on June 8, 2017 (AG).

Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. Department Counsel prepared the Government's File of Relevant Material (FORM), which was sent to Applicant on November 5, 2024. I have labeled the evidence included in the FORM (although labeled as exhibits, I will refer to

them as Items) as Items 3-6 (Items 1 and 2 include pleadings and transmittal information). The FORM was received by Applicant on November 12, 2024. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted evidence in response to the FORM, which is admitted without objection as Appellant Exhibit (AE) A. Also, the Government's evidence is admitted into the record without objection. (Items 3-6). The case was assigned to me on February 7, 2025.

Findings of Fact

Applicant denied both SOR allegations (§§ 1.a and 1.b), with explanations. I make the following findings of fact.

Applicant is a 35-year-old employee of a U.S. defense contractor. She began working at her present job in November 2022. She also currently serves in the U.S. Army Reserve holding the rank of staff sergeant (E-6). In 2018 and 2020, she deployed with her unit. She holds a bachelor's degree, which she earned in 2015. She is single, never married, and has no children. (Items 3-4)

Under Guideline F, the SOR alleged that Applicant failed to timely file her federal and state income tax returns for tax year 2021, as required. (SOR §§ 1.a and 1.b).

Applicant explained that she did not timely file her 2021 federal and state income tax returns because in 2022, she became her brother's fulltime caretaker as a result of his medical conditions. Those conditions included his failing kidneys, the loss of his legs, and bone infections in his hands. She took care of him while also working a full-time job. She did not receive any assistance from other family members. Consequently, she forgot to file her 2021 tax returns. She stated that she did not remember to file her 2021 tax returns until she was reminded when she completed her security clearance application (SCA) in December 2022. She admitted not filing those returns in her SCA. (Item 2)

Applicant discovered that when she was trying to gather the information to file her 2021 returns that she did not have all the necessary supporting documentation. She also did not know how to file a missing tax return. She had always used a commercial tax program to file her returns in the past. She researched commercial tax preparation services to possibly prepare and file her returns, but she discovered they were too expensive. (Item 2)

Applicant provided documentation showing that she filed both her federal and state 2021 income returns. Her federal return shows a "proof of delivery" date stamp by the "Internal Revenue Service Taxpayer Services, Washington, DC 20002" on September 27, 2024. Her state return, which is a certified copy, endorsed by the state's comptroller's office, is also dated as filed on September 27, 2024. Since her untimely filing of her 2021 returns, she timely filed her 2022 and 2023 federal and state tax returns. There is no

evidence that any of her federal or state tax returns before 2021, were not filed or were untimely filed. (Items 2, 6; AE A)

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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 that an 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.

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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially applies:

(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.

The evidence showed Applicant failed to timely file her federal and state income tax returns for tax year 2021. I find the above disqualifying condition is raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 should have resolved her tax issues in a more timely fashion. However, she was distracted from her tax filing responsibility by becoming her brother's fulltime caretaker in 2022, a circumstance beyond her control. She demonstrated responsible action by collecting her missing 2021 tax documentation and filing her returns. By timely filing her preceding and subsequent tax returns for 2022 and 2023, the evidence supports this was a one-off transgression. As such, there are clear indications that her tax issues are resolved, and recurrence is unlikely. AG ¶¶ 20(b) and 20(g) both substantially 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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service, including her deployments, and her caretaking efforts for her disabled brother. I am convinced she will act in a timely manner filing her federal and state tax returns from now on.

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 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 - 1.b:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge