



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 12-09982
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

09/03/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on January 19, 2012. On January 20, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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 September 1, 2006.

Applicant answered the SOR on March 6, 2015, and requested a decision on the record without a hearing. She subsequently requested a hearing. Department Counsel was ready to proceed on April 30, 2015, and the case was assigned to me on June 8, 2015. On June 22, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 22, 2015. I convened the hearing as

scheduled. Government Exhibits (GX) 1 and 3 were admitted in evidence without objection. GX 2 was admitted, except for one paragraph, to which Applicant objected. (Tr. 35-36.) Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until August 5, 2015, to enable her to present additional documentary evidence. On August 5, 2015, I extended the deadline until August 14, 2015. She timely submitted AX D through G, which were admitted without objection. DOHA received the transcript (Tr.) on July 29, 2015.

Findings of Fact

In her answer to the SOR, Applicant denied SOR ¶ 1.a, admitted SOR ¶ 1.b in part, and denied SOR ¶ 1.c. At the hearing, she admitted SOR ¶¶ 1.a and 1.b. Her admissions in her answer and at the hearing are incorporated in my findings of fact. At the hearing, Department Counsel withdrew SOR ¶ 1.c. (Tr. 18.)

Applicant is a 63-year-old security administrator employed by a federal contractor since January 2007. She was employed by another federal contractor as an office manager and facility security officer from January 1995 to October 2006. She was laid off due to a reduction in force and was unemployed for about two months before beginning her current job. She has held a security clearance since 1996.

Applicant married in April 1974 and has been separated since August 1999. She and her husband have not divorced for religious reasons. She has three adult children.

At the hearing, Applicant admitted that she did not timely file her federal income tax returns for 2004, 2005, 2006, and 2008 through 2011, as alleged in SOR ¶ 1.a. She admitted that she did not timely file her state income tax returns for 2004 through 2011, as alleged in SOR ¶ 1.b. She has since filed all her federal and state income tax returns and paid the taxes due. (Tr. 38-39.) She testified that she initially denied the allegations of failure to file alleged in the SOR because she had filed all her returns by the time she answered the SOR. She filed her 2007 federal return in 2009 and received a refund. She filed all the remaining returns in February 2015. (Tr. 45-47; Answer to SOR; AX A-C.)

Applicant testified that her failure to timely file her tax returns was due to "an accumulation of things" that were happening to her. (Tr. 50.) Her son was shot in the head in 2001 and became permanently disabled. Applicant cared for her son and helped him with his rehabilitation. She was his primary caregiver until he married in 2012. Her out-of-pocket medical expenses were minimal, because most of her son's care was paid for by Medicaid. (Tr. 50-54.) In 2008, Applicant was diagnosed with breast cancer, had surgery in January 2009, and was hospitalized for three months due to complications. She was on chemotherapy from February to July 2009 and received radiation treatment until October 2009. (Tr. 55-59.)

Applicant testified that she did not seek or receive help with her income taxes until 2012. However, even after receiving tax advice, she did not file her returns for

2012, 2013, and 2014 until June 2015.¹ (Tr. 59-63.) Her untimely filings in 2012 through 2014 were caused by the “same problem.” She testified that she needs to talk to someone about her feelings and learn to deal with them. (Tr. 59, 60-63.) She described herself as a procrastinator and a hoarder. She testified, “If it’s something involving someone else I’ll take care of it so that I don’t inconvenience anyone else. If it’s me I may put it aside and say I’ll get to it. . . . In the past it has always seemed like something minor, and I would get to it. Nothing has ever gotten to this state before. So obviously it’s totally out of control.” She has not sought mental or psychological counseling. (Tr. 64-65.)

Applicant’s former supervisor and facility security officer, who has known her since 2007, describes her as extremely competent, conscientious, hardworking, dependable, and responsible. Even when Applicant was “under the weather,” she took work home, never complained, and looked for ways to improve her department. (AX D.)

Applicant’s former supervisor from December 2012 through September 2014 considers her patient, helpful, and a problem-solver. She frequently handled difficult and complex projects, never complained, and sacrificed her personal time to ensure timely completion of every task. (AX E.)

Applicant’s current supervisor for the past 11 months describes her as conscientious, dependable, and hardworking. She is reliable and works independently, sacrificing her weekend time to solve problems. (AX F.)

Applicant’s colleague and supervisor from December 2010 to December 2012 describes her work during that period as exceptional. She was considered the focal point for administering the security program, and was always courteous and professional. (AX G.)

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.” *Id.* 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.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

¹ Failure to file federal and state income tax returns for 2012 through 2014 was not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the unalleged conduct for these limited purposes.

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." See Exec. Or. 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. See *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. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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. See 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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions establish two disqualifying conditions under this guideline: AG ¶ 19(c) ("a history of not meeting financial obligations") and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same").

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not fully established. Applicant's untimely tax returns are recent and numerous. The shooting of her son and her own health problems did not prevent her from timely filing her tax returns, but they substantially contributed to her emotional problems. However, she has not sought help for her emotional problems, which are ongoing.

AG ¶ 20(b) is not fully established. The disabling injuries to Applicant's son and her own health problems were conditions beyond her control, but it was her emotional problems in reaction to her circumstances that caused her to neglect her obligations. Furthermore, she did not act responsibly. Even after received professional tax advice in 2012, she continued to neglect her tax-filing obligations.

AG ¶ 20(c) is not fully established. Applicant received some tax advice in 2012, but she did not act on it until June 2015. She admits that the circumstances causing her to neglect her tax-filing obligations have persisted, but she has not sought help for her emotional problems. She admits that her situation is out of control.

AG ¶ 20(d) is not fully established. Applicant has paid all her tax obligations, but not in a timely manner. She did not resolve her delinquent returns and tax debts until well after she received the SOR. "Good faith" within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts or filing of delinquent tax returns motivated by the pressure of qualifying for a security clearance.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid and sincere at the hearing. She has a good reputation at work among colleagues and supervisors. Unfortunately, her long record of neglecting her tax-filing obligations raises serious doubt about her reliability, trustworthiness, and good judgment.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her neglect of her tax-filing obligations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.b: Against Applicant

Subparagraph 1.c: Withdrawn

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge