



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02746

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel

For Applicant: *Pro se*

05/20/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant did not mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On August 27, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on October 14, 2014, and requested a hearing. The case was assigned to me on February 5, 2015, and was scheduled for hearing on March 24, 2015. At the hearing, the Government's case consisted of two exhibits (GEs 1-2). Applicant relied on one witness (herself) and one exhibit. The transcript (Tr.) was received on April 3, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file her federal tax returns for tax years 2007 through 2012; (b) is indebted to the Internal revenue Service (IRS) in the approximate amount of \$7,000 for unpaid tax for tax years 2007 through 2012; and (c) failed to file her state tax returns for tax years 2007 through 2012.

In her response to the SOR, Applicant denied each of the allegations. She claimed she has been working with a tax firm to clear ups her tax issues. She claimed she received assurances from her tax firm that all of her federal and state tax forms have been filed for tax years 2007 through 2012. She also claimed that any owed federal and state taxes for these years have been paid.

Findings of Fact

Applicant is a 57-year-old employee for a defense contractor who seeks a security clearance. Additional findings follow.

Background

Applicant married her first spouse in November 1977 and divorced him December 1978. (GE 1) She remarried in July 1979 and divorced her husband in December 1999. She has two adult children from her second marriage. (GE 1) Applicant claimed no post-high school educational credits. She enlisted in the Navy in December 1978 and served over 20 years of active duty. (GE 1) She received her honorable discharge in May 1999. (GE 1)

Applicant's finances

Applicant failed to file federal and state income tax returns for tax years 2007 through 2012. (GE 1) She attributed her filing failures to the lack of professional advice on how to prepare tax returns and the lack of money to engage a tax preparer. (Tr. 22-23, 35-36) She believes the tax filing firm she engaged filed all of her back federal and state returns in April 2014, but could provide no assurances or documentation to validate her beliefs. (Tr. 23-24) Without documentation of the filing of her federal and state returns for the years in issue, no reasonable inferences can be drawn about which returns were filed and when they were filed.

Applicant retained her tax firm in 2013. (Tr. 32-40) Shortly thereafter, the IRS filed a tax lien to cover \$7,000 in back federal taxes owed for the tax years of 2007 through 2012. (GE 2; Tr. 26) During the same year the IRS filed its tax lien against Applicant's

interests, it initiated garnishment proceedings against Applicant. While acknowledging she owed approximately \$7,000 in back federal taxes for the tax years in issue, she claimed the IRS levied on her bank account over a nine to 12 month period in 2013 and collected between \$1,875 and \$2,000 a month in 2013 and the first few months of 2014. (GE 2; Tr. 27-28) She believes the alleged \$7,000 owed to the IRS for the previous tax years covered (i.e., 2007 through 2012) has been repaid through sustained garnishment of her bank account at the rate of \$900 per pay period. (Tr. 28-29) Applicant's claims and beliefs cannot be verified without access to her bank account. She provided no updates of tax filings from her tax preparer or copies of any of her returns and schedules. Although, she previously received two refund checks from the IRS, which totaled \$12,000, she continues to receive letters from the IRS, claiming she owes back taxes. (Tr. 31-32)

Applicant currently has her tax firm's subcontractor working on the filing of her 2014 federal and state tax returns. (Tr. 32-33) Her tax firm was also responsible for facilitating the filing of her 2013 returns. However, she cannot verify whether either her 2013 return or 2014 return was filed. (Tr. 34, 40)

In her prepared personal financial statement, Applicant reported net monthly income of \$4,196 and additional net spousal income of \$3,119. (GE 2) She listed monthly expenses of \$2,890 and monthly debt payments of \$2,457. This leaves her with a net monthly remainder of \$1,968. (GE 2)

Endorsements

Applicant's operations center manager values Applicant's integrity and diligence. (AE A) He expressed familiarity with Applicant's tax issues and credited her with having the highest possible regard for the nation and its core principles. (AE A)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's history of failure to file federal and state tax returns for tax years 2007 through 2012 and her incurring of delinquent federal tax debts approximating \$7,000, all or some of which has been levied by the IRS through its initiated garnishment proceedings. Applicant's actions warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts;” DC ¶ 19(c) “a history of not meeting financial obligations;” and DC ¶ 19(g) , “failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant's tax filing and collection problems were mostly attributable to her lack of professional advice on how to prepare tax returns and her inability to find a tax preparer and her lack of resources to engage a tax preparer to file her returns. Applicant's past financial problems merit partial application of MC ¶ 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.”

Because Applicant has not developed any verifiable evidence of her filing back federal and state returns for tax years 2007 through 2012 and satisfying the IRS's \$7,000 tax lien through garnishment initiatives, full application of MC ¶ 20(b) is not available to her. Absent any documented evidence of filing of her back returns and satisfying the IRS's tax lien, Applicant may not take advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Prospects for her obtaining the necessary tax filing and payment documentation in the foreseeable are uncertain and difficult to gauge.

Without more tangible resources and initiatives to work with, Applicant cannot demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her poor financial condition with responsible efforts considering her circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's lack of any repayment actions of her own with the resources available to her prevent her from meeting the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant failed to document any positive steps she has taken with her tax filing firm to file the federal and state tax returns owed for tax years 2007 through 2012, or satisfaction of the IRS's \$ \$7,0000 tax lien, either through garnishment or other means. While she is well regarded by her supervisor and has demonstrated reliability and trustworthiness in her work, she has failed to demonstrate progress in addressing her listed tax filing obligations and tax debt accruals consistent with meeting overall requirements for holding a security clearance. Whole-person assessment, while helpful to Applicant, is not enough to overcome her lack of a filing and payment track history over the past six years.

Considering all of the circumstances surrounding Applicant's tax filing and payment delinquencies, her actions to date in addressing her finances are insufficient to meet mitigation requirements imposed by the guideline governing her finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.c of Guideline F.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a-1.c:

Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

