



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-02316
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

11/20/2015

Decision

HOGAN, Erin C., Administrative Judge:

On July 9, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On August 6, 2014, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on March 3, 2015. Applicant received the FORM on March 19, 2015. She had 30 days from her receipt of the FORM to submit additional information in response to the FORM. Applicant did not submit a response to the FORM. On May 21, 2015, the FORM was forwarded to the Hearing Office and assigned to me on May 22, 2015. On June 9, 2015, I reopened the record to allow Applicant to retrieve a tax form from the Internal Revenue Service (IRS). A copy of my Order is marked and admitted as Item 4. On July 7, 2015, Applicant requested information from the IRS about her 2009 tax filing. A copy of her request is marked and admitted as Item 5. She was informed it would take

several months to get the information as a result of reduced staffing and budgets. On November 12, 2015, she forwarded the information to me after receiving it from the IRS. The documents provided are marked and admitted as Item 6. On November 18, 2015, Department Counsel indicated they did not object to the admission of the document, but provided a statement regarding Applicant's submissions. Department Counsel's Response is marked as Item 7. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her response to the SOR, Applicant denies the SOR allegations. (Item 1)

Applicant is an employee of a DOD contractor seeking to maintain a security clearance. She has worked for her employer since 1979. She has held a security clearance since 2003. She is married and has three adult children. (Item 2)

On May 8, 2013, Applicant submitted an electronic questionnaire for investigation processing (e-QIP). In response to Section 26 – Financial Record - Taxes, Applicant listed that she failed to file tax returns for tax years 2008, 2009, 2010 and 2012. For tax years 2008 and 2009, Applicant's reason for not filing her tax returns was "Return indicated a refund. Wanted to wait and apply dollars to future return rather than receive money back." Applicant was owed a refund for tax years 2008 and 2009. She filed the tax returns for these years in May 2013. She was going to request the returns be applied to reduce taxes owed for 2012. (Item 2, at 26-27)

Applicant indicated on her e-QIP, that she owed taxes for tax years 2010 and 2011. She owed the IRS money for these years and did not have the money to pay the amount owed. (Item 2 at 27-28). There was no other documentation in the file, such as tax records from the IRS, which would explain the amount of taxes owed by Applicant.

The SOR alleged that Applicant failed to file and pay income taxes for tax years ending in 2009, 2010, and 2011. In her Response to the SOR, Applicant denies failing to file income taxes for tax years 2009, 2010 and 2011. She indicated her income tax returns for 2009, 2010, and 2011 have been filed and paid. She provided an unsigned copy of her 2009 federal income tax return. She was owed a refund of \$667. It did not indicate that her 2009 return was filed with the IRS. (Item 1 at 3, 5-7)

Applicant provided a copy of her 2010 tax return. The tax return was filed on September 6, 2013. She also provided a letter from the IRS dated March 3, 2014, titled, "Notice of Intent to Seize ("levy") Your State Tax Refund of Other Property." The IRS notified Applicant and her husband that they owed \$2,101.80 for tax year 2010. (AE 1 at 8-10) Applicant provided proof that she paid this debt in full on March 21, 2014. (AE 1 at 11)

Applicant provided a copy of her 2011 tax return. The tax return was filed on September 6, 2013. She also provided a letter from the IRS dated March 3, 2014, titled,

“Notice of Intent to Seize (“levy”) Your State Tax Refund of Other Property.” The IRS notified Applicant and her husband that they owed \$1,902.23 for tax year 2011. (AE 1 at 12-14) Applicant provided proof that she paid this debt in full on March 22, 2014. (AE 1 at 15)

Upon reviewing the case file, I reopened the record, to allow Applicant the opportunity to provide proof that her 2009 federal income tax return was filed with the IRS. She promptly requested the information on July 7, 2015. The IRS did not provide it until November 2015. Applicant provided proof that she filed her 2009 federal tax returns on June 12, 2013. She received a refund that year. (Item 6)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

The security concern relating to the guideline for Financial Considerations 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); 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) apply to Applicant's case. Applicant admitted on her security clearance application that she failed to timely file income tax returns for 2009, 2010 and 2011. She owed taxes for tax years 2010 and 2011. She did not pay them because she did not have the money.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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; and

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

AG ¶ 20(a) applies because Applicant's tax issues in 2009 initially resulted because of a misunderstanding that she did not have to file her tax returns if she was getting a refund. She assumed the refund could be applied to the taxes owed for the next year without filing any paperwork. In response to the SOR, Applicant provided an unsigned copy of her 2009 federal income tax return. There was no proof that she filed it. I reopened the record to give her the opportunity to provide proof that her 2009 federal income tax return was filed. She provided proof as soon as she received it from the IRS. Applicant provided proof that she has filed her tax returns for tax years 2009, 2010, and 2011.

Applicant and her husband owed taxes for tax years 2010 and 2011. Both tax returns were filed in September 2013. They initially did not have the money, but were able to pay both tax debts in full in March 2014. Applicant's tax problems are resolved and she does not have any delinquent accounts. Her financial problems are unlikely to recur and no longer cast doubt on her reliability, trustworthiness, or good judgment.

AG ¶ 20(d) applies because Applicant demonstrated she made a good-faith effort towards resolving her tax debts. While her payments were late, she paid in full the taxes owed for tax years 2010 and 2011. Her tax debts are resolved.

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(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's long history of employment with a government contractor. I considered Applicant's tax problems. I considered her efforts to resolve her tax problems which resulted in all tax returns being filed and her tax debts being paid in full. Applicant mitigated the security concerns raised under financial considerations.

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

Subparagraph 1.a: 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.

ERIN C. HOGAN
Administrative Judge