



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



In the matter of:

ISCR Case No. 14-03400

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

April 15, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of failing to address her finances in a timely manner. She has resolved her delinquent property tax and has filed her Federal and state income tax returns for tax years 2010 through 2012, but she failed to produce documentation to show she has addressed her remaining delinquencies. She has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 12, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 8, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on December 15, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 10, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 10, 2015, scheduling the hearing for March 10, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through G, which were admitted without objection. Applicant testified on her own behalf. The record was left open for Applicant to submit additional exhibits until April 10, 2015. On April 10, 2015, she submitted AE H through AE P. Department Counsel had no objections to AE H through AE P and they were admitted. The record was then closed. DOHA received the transcript of the hearing (Tr.) on March 17, 2015.

Findings of Fact

Applicant is 49 years old. She earned a doctorate degree in 2002. She seeks her first security clearance in relation to a research grant. Her husband passed away in April 2006. She has three children ages 10, 20, and 26. (GE 1; AE L; Tr. 45, 55.)

The Government alleged that Applicant is ineligible for a clearance because she has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant failed to file her property taxes for 2007 to 2012 (SOR allegation 1.a); failed to file her federal income tax returns for 2010 through 2012 (SOR allegation 1.b); and failed to file her personal income and business state tax returns for 2010 through 2012 (SOR allegation 1.c). Additionally, the SOR identified 14 delinquent debts totaling \$4,316 (SOR allegations 1.d through 1.q). Applicant admitted allegations 1.a through 1.q in her Answer. The alleged debts were listed on credit reports dated April 24, 2013; April 9, 2014; January 22, 2015; and March 10, 2015. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant attributes her financial delinquencies to: marrying a person who was "financially unstable"; the high cost of living in her state; the 2006 death of her husband and her subsequent depression; the costs associated with sending her son to college and her daughter to daycare and private school; and added expense of care-taking for her elderly father. (AE M; Tr. 25-26, 35-37, 44-47, 56, 59.)

Applicant's 2010 through 2012 Federal and state income tax returns were prepared by an accountant in August 2013. For the 2010 tax year, a summary of her returns stated she owed \$3,181 in Federal taxes and \$1,212 for state taxes. For the 2011 tax year, a summary of her returns stated she owed \$3,239 in Federal taxes and \$334 for state taxes. For 2012 a summary of her returns stated she owed \$4,083 on her Federal tax obligation, but expected a refund of \$1,187 of state income taxes paid. Her 2012 Federal and state income tax returns were filed in August 2013. However, her 2010 and 2011 Federal and state income tax returns were not filed at that time, unbeknownst to Applicant. Her accountant sent her the 2010 and 2011 returns in the mail, with instructions explaining that she needed to complete and return an

authorization form allowing the accountant to electronically file those returns. Applicant failed to sign and return the authorization forms until December 15, 2014, after she received the SOR and realized that they had never been filed. She failed to present documentation showing she satisfied either her 2010 through 2012 Federal tax obligations or her 2010 or 2011 delinquent state tax obligations. She provided nothing to show she addressed her state business taxes for 2010 through 2012. She testified that she has not filed her 2013 Federal or state income taxes because she did not have access to the documentation that she needed to prepare that filing. (AE A through AE E; Tr. 25, 30-34, 47-49.)

Applicant was indebted on her property tax in the amount of \$5,050.39 for defaulted tax bill. She presented documentation that she paid her delinquent property taxes on August 11, 2014. She is current on her 2014-2015 property tax obligations. (AE F; Tr. 26-30.)

Additionally, Applicant is indebted to 14 creditors for delinquent debts totaling \$4,316 (SOR allegations 1.d through 1.q). These debts include a delinquent student loan, a water bill, unpaid parking tickets, and unpaid medical accounts. Applicant wrote a detailed letter claiming that she is either in the process of contacting these creditors, has paid, or has made payment arrangements with each of these creditors. However, she failed to present documentation to substantiate her claims that she has addressed any of these debts. They are unresolved. (AE H; AE M.)

Applicant failed to submit evidence of financial counseling, a budget, or income statement. She submitted six character letters that attested to her professional excellence and personal integrity. (AE I; AE J; AE K; AE N; AE O; AE P.)

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 are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) describing 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant spent beyond her means and as a result, could not file and pay her Federal tax obligations and other debts. She has filed her 2010 through 2012 Federal and state income tax returns. However, while she resolved her property tax debt and filed her state and Federal income tax returns for 2010 to 2012, she has done little to resolve her remaining tax debt or 14 other consumer delinquencies. She demonstrated both a history of not addressing her debt and an unwillingness to do so. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

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

Applicant presented documentation that she resolved her property tax delinquency and belatedly filed her 2010 through 2012 state and Federal income tax returns. She produced nothing to show she resolved her state business tax filing obligation. She failed to document that she has taken action on any of her 14 remaining delinquencies. Given Applicant's record of failing to pay her Federal and state tax debts, her failure to file both her state and Federal income tax returns for 2013, and her 14 other unresolved debts, I cannot find that future financial problems are unlikely to occur. While some of her financial problems are attributable to the death of her husband, a situation beyond her control, Applicant acknowledged that her personal financial

choices like paying for her son's college and sending her daughter to a private school have contributed to her current financial difficulties. Applicant failed to introduce evidence that she has acted responsibly under the circumstances. She presented no evidence of receiving financial counseling or resolving her debts in good faith. Applicant's financial problems are not currently under control. I conclude, therefore, that AG ¶¶ 20(a), 20(b), 20(c) and 20(d) do not fully apply in mitigation of the facts of Applicant's case.

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 relevant 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 all of 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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is respected for her personal and professional excellence. However, Applicant's inability to pay her financial obligations and to follow rules for filing tax returns raise concerns about her reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the whole-person concept against the Applicant.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

Conclusion

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

Jennifer I. Goldstein
Administrative Judge