



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



In the matter of:

ISCR Case No. 10-02184

Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

June 28, 2011

Decision

HOGAN, Erin C., Administrative Judge:

On March 17, 2011, the Defense Office of Hearings and Appeals (DOHA) 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 April 18, 2011, Applicant answered the SOR and requested a decision based on the administrative record. On April 22, 2011, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on May 6, 2011. She was given thirty days to provide a response to the FORM. On June 2, 2011, she submitted a six-page response to the FORM. On June 13, 2011, Department Counsel indicated that she had no objection to Applicant's response to the FORM. On June 17, 2011, the case was forwarded to the Hearing Office. The case was assigned to me on June 21, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted to all of the allegations in the SOR.

Applicant is a 48-year-old female employed by a Department of Defense contractor seeking to maintain her security clearance. She has worked for her current employer since August 2006. In December 2000, she retired from the U.S. Navy in the grade of E-6 after 20 years of active duty service. She previously held a security clearance. She is single and has no children. She is a high school graduate. (Item 4)

After Applicant retired from the U.S. Navy, she has been continuously employed by various DoD contractors at overseas deployed locations. Applicant owes federal income taxes for tax years 2003, 2004, 2005, 2006, and 2007. As of February 2011, she had not filed federal income tax returns for tax years 2008 and 2009. As of March 2, 2011, the Internal Revenue Service (IRS) claimed Applicant owes the following amounts:

Tax Year 2003: \$22,260.11

Tax Year 2004: \$9,300.78

Tax Year 2005: \$41,011.64

Tax Year 2006: \$37,472.15

Tax Year 2007: \$10,075.00

The total amount of taxes owed the IRS is \$120,119.68. (Item 3 at 5 – 18; Item 5)

Applicant hired a certified public accountant (CPA) who prepared amendments to her federal income tax returns. It is not clear whether the amendments were filed with the IRS. If the amendments are approved by the IRS, Applicant's tax debt will be reduced. She will owe \$4,260 for tax year 2003. She will receive a refund of \$2,131 for tax year 2004. She will owe \$14,278 for tax year 2005; \$21,658 for tax year 2006, and \$10,504 for tax year 2007. The total amount for taxes owed between tax years 2003 and 2007 would be \$50,700. (Item 6)

Applicant is also likely to owe additional federal income taxes to the IRS for tax years 2008, 2009, and 2010. As of March 2011, she had not filed her federal income tax returns for tax years 2008 and 2009. Her income for the 2008 tax year is unknown. (Item 3 at 1, 16-18) Her total income in 2009 was \$211,640. (Item 8 at 7) As of October 17, 2010, her total income for 2010 was \$198,975. (Item 8 at 5)

When she completed her security clearance questionnaire on March 19, 2009, Applicant listed that she had a tax lien filed against her and that she owed the IRS \$40,000. In the additional comments section, she states it is her fault that her taxes were not filed in a timely manner and said she was taking out an automatic deduction from her paycheck to apply towards her tax debt. (Item 4, questions 27c and 30b)

During her security background interview on November 18, 2009, Applicant stated that she inherited her parents' home after they passed away. The IRS placed a lien against the home because of her failure to properly file her income tax returns for tax years 2004 to 2007. After Applicant contacted the IRS, the lien was lifted. She indicated that she has been paying the IRS \$2,000 a month since November 2008. She is trying to resolve the tax debt as quickly as possible. Aside from the federal income tax debt, she has no other financial problems. (Item 7)

In her response to the SOR, Applicant provided a letter from a taxpayer advocate service, dated April 14, 2011. Her case advocate mentioned Applicant requested an installment agreement with the IRS but the law prevents the IRS from placing her on an installment agreement status because her account is in a combat zone status. The case advocate indicated Applicant intends to make voluntary payments towards her federal tax debt on a monthly basis. (Item 3)

In her response to the FORM, dated June 2, 2011, Applicant indicated that she stopped making payments to the IRS because the IRS did not provide her a balance owed. Applicant intends to resolve this issue as soon as possible. She asks that her security clearance be reinstated. She is 48 years old and requires a security clearance to work in her career field. If her security clearance is reinstated, it would help her pay off the IRS in a timely manner. Applicant provided a list of payments that she made to the IRS. She made 13 payments from April 14, 2008 to September 27, 2010. Eleven payments were for \$2,000, one payment on December 1, 2008, was for \$1,500, and one payment on October 16, 2009, was for \$1,000. Based on the information provided, Applicant paid the IRS approximately \$24,500 towards the tax debt. On May 10, 2011, she entered into another agreement with a firm which specializes in resolving IRS problems. She provided no documents indicating that she filed her tax returns for tax years 2008 and 2009. (Response to FORM, dated June 2, 2011)

Applicant's former supervisor wrote a letter indicating that he worked with Applicant as her supervisor and as her co-worker for nine years. He describes Applicant as exceptional on and off the job. She is very dependable. (Response to FORM at 5) Another co-worker wrote a letter indicating that he has worked with Applicant since 2005. He states she has been a dedicated employee who understands her duties in support of the U.S. mission. She is caring, dedicated to the mission, and supportive of her teammates. He would gladly consider her for any job opening if her security clearance issue is resolved. (Response to FORM at 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's annual income from 2003 to 2010 has been significant which indicates her failure to file and pay her federal income tax debts was the result of an unwillingness to pay rather than an inability to pay her federal income taxes. She owes federal income taxes for tax years 2003 through at least 2009. She provided no proof that she filed her federal income tax returns for tax years 2008 and 2009 which raises disqualifying condition AG ¶ 19(g).

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 or her 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 or her finances in such a way as to meet his or her 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. September 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) is not applicable. Applicant owes federal income taxes for tax years 2003 to 2009. She admits that her failure to pay her federal income taxes was her fault, but provided no detailed explanation for not paying her federal taxes over seven-year period. During those years she earned enough income to be able to pay her tax debts. While she made some

payments towards the tax debts, the payments were not made on a consistent monthly basis and she stopped making payments in October 2010. She has not filed her federal income tax returns for tax years 2008 and 2009. Questions remain about Applicant's reliability, trustworthiness and good judgment based on the extent of her federal tax problems.

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) does not apply. Aside from the federal tax debt, Applicant has no financial problems. Her income was more than sufficient to allow her to pay her federal tax debt for each year that she owes federal taxes. There were no circumstances beyond Applicant's control which prevented her from paying her federal income taxes from 2003 to 2009.

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) does not apply. Applicant just recently contacted a new taxpayer service to represent her in resolving her federal income tax debts. While she has made some payments, her federal tax debt is significant and is not likely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant made some payments towards the federal tax debt. However, a significant amount of the federal tax debt remains unresolved. Applicant did not provide evidence that she filed her federal income tax returns for tax years 2008 and 2009. When these two tax years are considered, the balance on her tax debt is likely to increase. I cannot conclude that Applicant made a good-faith effort to resolve her federal tax debt.

AG ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) does not apply. While Applicant apparently attempted to amend her federal income tax returns which would result in a lower amount owed, she does not dispute that she owes the federal tax debts. She is disputing the amount owed. Even if the amended returns are accepted, Applicant still owes a significant amount of federal income taxes.

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 20 years of honorable service in the U.S. Navy. I considered the favorable recommendations of her supervisor and co-worker. I also considered that Applicant's income was substantial in tax years 2003 to 2009. Applicant's failure to pay her federal income taxes on a timely basis each year raises significant questions about Applicant's trustworthiness, judgment, and reliability. As a U.S. citizen, it is her duty to file annual income tax returns and pay any taxes owed. She has not timely paid her federal income tax obligations since 2003. There is no proof in the record that she filed her income tax returns for 2008 and 2009. The federal income tax debt is likely to increase when the taxes owed for these tax years are considered. While she made some payments to the IRS, a significant amount of tax debt remains unresolved. She stopped making payments to the IRS in October 2010. While Applicant recently began to take steps to resolve her federal tax debts, it is too soon to conclude that she will follow through with her intentions to resolve her federal tax debts. She did not mitigate the 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:

AGAINST APPLICANT

Subparagraphs 1.a -1.f:

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge