



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



In the matter of:)	
)	
)	ISCR Case No. 11-00181
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

2/21/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant Statement of Reasons (SOR) detailing security concerns under Guideline F. The actions were 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 on September 1, 2006.

Applicant answered the SOR on August 31, 2011, and requested a hearing before an administrative judge. The case was originally assigned to another administrative judge on November 22, 2011 and was reassigned to me on December 7, 2011. DOHA issued a Notice of Hearing on December 15, 2011. I convened the hearing as scheduled on January 24, 2012. The Government offered Exhibits (GE) 1 through 5,

and they were admitted into evidence without objections. Applicant offered Exhibits (AE) A through F, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 1, 2012.

Procedural Issue

Department Counsel withdrew the allegation under Guideline E.

Findings of Fact

Applicant admitted all SOR allegations except ¶ 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 63 years old. She is a high school graduate. She has been married for 42 years and has four grown children. She has worked for a federal contractor since 1999.¹

On September 7, 2010, Applicant submitted a security clearance application (SCA). In the comments section of question 26 she stated: "This question asks about filing taxes. I need to file my taxes." In her answer to the SOR and at her hearing, Applicant admitted that she and her husband failed to file and pay their federal income tax returns for 2004 through 2009. Applicant's husband normally took responsibility for filing their tax returns. Applicant admitted she was aware that the tax returns were not filed.² They were both aware they needed to do it, but they kept procrastinating, and they knew that they would eventually have to file the tax returns. She admitted they did not begin to take action to file their tax returns until her security clearance and job were in jeopardy.³

In 2003, Applicant's father-in-law had health issues which required her husband to travel to his father's house and take some action on his living conditions. His sister also had health problems. Her husband testified that he was not worried about filing their taxes returns because they had received tax refunds in the past. In 2007, his father came to live with them. His father paid for the remodeling of his house, while Applicant's husband managed the renovations. His father passed away in 2008. Applicant's husband has been involved in administering his father's estate and there have been some family disputes that involved litigation. Applicant testified that her mother was ill during this period of time.⁴

¹ Tr. 26-28.

² Applicant's failure to file her 2005 federal income tax returns and her 2005 through 2009 state income tax returns will not be considered for disqualifying purposes. It will be considered when analyzing the "whole-person." ISCR Case No. 10-00922 at 3 (App. Bd. Nov. 3, 2011).

³ Tr. 50-53, 66, 75-78, 80.

⁴ Tr. 36-52.

Applicant's husband withdrew money from his 401K retirement plan which had tax consequences. He used the money to help pay bills. He stated he understood when he withdrew the retirement funds from his 401K that he would have to pay additional taxes, but he was focused on his father. He testified that he did not know how much tax he actually owed because he did not file. He knew they would eventually have to pay the taxes. Applicant also testified that she knew the taxes would have to be paid and they intended to pay them. In 2010, after Applicant disclosed on her security clearance application that she needed to file her tax returns, she and her husband contacted and paid a person to assist them in doing so.⁵

Internal Revenue Service (IRS) statements provided by Applicant show that she and her husband had an adjusted gross income of \$54,000 in 2006, \$57,000 in 2007, \$126,000 in 2008, and \$123,000 in 2009. The dramatic increase in their adjusted gross income was due to the 401K withdrawal. Applicant's husband indicated that they used the money to pay travel expenses associated with his father. He also indicated that during this period he did not earn income because he was managing the renovation of his father's house, and expended some of his funds to fix the house. His father's house was sold in August 2011, and Applicant's husband received about \$25,000. He testified that he is expecting to be reimbursed approximately \$30,000 for his expenses in repairing the house that is being held in escrow. This money has not yet been distributed to him. After Applicant and her husband failed to file their federal income taxes for one year, it began to cascade and they became overwhelmed with the problem.⁶

Applicant and her husband do not have other delinquent debts. On their financial statements from March 2011 and January 2012 they list a first and second mortgage for approximately \$75,000. At the hearing, that amount was corrected and the estimate is \$60,000. They also have approximately \$36,000 in loans and consumer debt that Applicant and her husband are making monthly payments toward.⁷ Applicant admitted she was actively involved in handling their finances. She admitted that they were clearly negligent in their failure to file their income tax returns. They did increase their tax withholdings when their income increased. They addressed their state taxes and were in compliance as of February 2011. Applicant testified that she and her husband have filed their delinquent federal income tax returns. She did not provide copies of their filed tax returns. Without the tax returns, I am unable to verify the amount of taxes that they actually owe. Applicant provided a document that represented a payoff calculator from the IRS. It showed a balance of \$23,988 for tax years 2007 through 2010. Applicant and her husband paid this amount to the IRS on January 13, 2012. I was unable to confirm

⁵ Tr. 36-53.

⁶ Tr. 59-65, 67-68.

⁷ Applicant's mortgage, loans, and consumer debt are not delinquent. All of her finances will be considered when analyzing the "whole-person."

that this payment constituted their entire delinquent tax debt and they are now in compliance.⁸

Applicant provided numerous character letters, awards, and performance appraisals. She is considered ethical, loyal, conscientious, trustworthy, organized, efficient, and competent. She has excellent communication skills. Her work ethic is commendable and her integrity is unquestionable. On her performance appraisal she received grades of “very good” and “good.” She received awards noting her dedication, loyalty and professionalism.⁹

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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

⁸ Tr. 53-59, 68-75; GE 2, 3; AE A, B, F.

⁹ AE C, D, E.

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 of 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 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. I have considered all of the disqualifying conditions under AG ¶ 19 and the following three are potentially applicable:

- (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 admitted that she failed to file her federal income tax returns from at least 2006 through 2009. She admitted that she failed to pay her taxes for these years, until her security clearance and job were in jeopardy. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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's behavior is recent because she repeatedly failed to file her federal tax returns for at least a four-year period. She did not file her federal income tax returns until after she was notified that her security clearance was in jeopardy. She made a lump sum payment to the IRS on January 13, 2012. Although she testified that this payment satisfied all of her delinquent tax debt, she did not provide copies of her federal income tax returns or a final accounting from the IRS to show she is in complete compliance and all of her tax debt is satisfied. I find AG ¶ 20(a) does not apply because her conduct was frequent and casts doubt on her reliability, trustworthiness, and good judgment.

Applicant's husband usually filed their income tax returns. Applicant admitted she was aware that they had repeatedly not filed their income tax returns and repeatedly failed to pay them timely. Her explanation was that they procrastinated. They had some family issues that were happening during some of this time period, but there was nothing that prevented them from filing their income tax returns. Her husband had received a lump sum withdrawal from his 401K account, but did not use any of the proceeds to pay their taxes. They did not make an installment payment agreement with the IRS when their taxes were due. I find there is insufficient evidence to apply AG ¶ 20(b). Applicant testified they have now filed their delinquent tax returns and they made a lump sum payment towards the tax debt. Proof that they filed was not provided. A final accounting from the IRS confirming their tax debt is now totally resolved was not provided. I find there is some evidence her financial issues are being resolved. I find AG ¶ 20(c) partially applies, and AG ¶ 20(d) applies.

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 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 provided character letters and awards detailing her professionalism and dedication. Applicant was aware that she and her husband did not file their federal and state income tax returns for at least four years. She also was aware they did not pay their federal and state income taxes for the years when they were due. Although her husband normally filed their tax returns, Applicant admitted she participated in handling their finances and was fully aware that they were not filing their tax returns. After her security clearance was in jeopardy, she began to address the issues. I find Applicant repeatedly acted irresponsibly by her failure to comply with the federal tax rules. Her actions raise questions about her judgment and reliability. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline 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.e:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge