



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



In the matter of:)	
)	
)	ISCR Case No. 11-07491
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 23, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DoD acted 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 within the DoD on September 1, 2006.

Applicant answered the SOR on January 15, 2013, and initially requested a decision without a hearing. Government Counsel requested a hearing on February 5, 2013.¹ The case was assigned to me on February 14, 2013. The Defense Office of

¹ Hearing Exhibit (HE) I.

Hearings and Appeals (DOHA) issued a notice of hearing on February 15, 2013, setting the hearing for February 28, 2013. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objections. Applicant testified, but did not offer any documentary evidence at the time. The record was held open for Applicant to submit additional information. She submitted Applicant Exhibits (AE) A through C in a timely manner. DOHA received the hearing transcript (Tr.) on March 7, 2013.

Procedural Issue

Applicant affirmatively waived the 15-day notice requirement contemplated by the Directive, Additional Procedural Guidance, paragraph E.3.1.8. Additionally, Department counsel indicated she orally notified Applicant on February 6th about the hearing date and location, which is more than 15 days from hearing date.²

Findings of Fact

Applicant is 53 years old and is seeking a security clearance for the first time. She is a quality assurance-production control clerk for a government contractor and has worked for the contractor since 2008. She has a high school diploma. She is divorced and has two adult children.³

The SOR alleges Applicant has two federal tax liens in the total amount of \$26,371. The liens were listed on credit reports for November and March 2012, and March 2011. Applicant admitted both liens. These admissions are incorporated as findings of fact.⁴

The tax liens were for unpaid federal income taxes for tax years 1994, 2002, 2003, 2004, 2005, 2006, 2007, and 2008. Applicant worked and supported her two children pretty much as a single mother. Although she was married on several occasions, none of her former husbands provided regular financial support for her and her children. When she was working at an earlier job, she was advised by a coworker to file “exempt” regarding her federal taxes and this would provide her more income. She did so and then did not ever change her status back to begin paying payroll taxes again. Consequently, she did not file federal income tax returns for a number of years. Knowing that she probably owed taxes began to weigh on her. In 2010, she visited the local IRS office seeking assistance. The IRS helped her prepare and file her tax returns for the years she failed to do so. Applicant also entered into a payment plan to begin paying the back taxes she owed for those years. She began paying \$100 monthly under the payment plan in January 2011 and continued until January 2012. While she was making payments under the payment plan to the IRS, she filed for bankruptcy protection under Chapter 7 for debts unrelated to the SOR. Her bankruptcy attorney advised her

² Tr. at 11-12.

³ Tr. at 5, 24, 49; GE 1.

⁴ Answer to SOR (Ans).

that her debts to the IRS would also be discharged. After receiving this advice, she stopped making payments to the IRS. The IRS filed liens against Applicant in June 2010. Applicant became aware of these liens when she applied for her security clearance. In December 2012, she reinitiated contact with the IRS and requested to enter into a payment plan. The IRS accepted Applicant's request for a payment plan and set up automatic withdrawals from her bank account beginning in March 2013. She made her January and February 2013 payments to the IRS by check and money order. Her payments are currently \$25 per month and will increase over time (\$75 in 2014 and \$480 in 2015).⁵

Applicant is current on all her other financial obligations. All of her state tax returns have been filed and she does not owe on them. Her 2012 federal tax return was filed and her tax year overpayment was automatically applied to her previous tax liability.⁶

Applicant provided her performance appraisals for 2009 and 2010, and a letter explaining why her company has not issued performance appraisals for 2011 and 2012. Her appraisals both score in the top range possible, which is "outstanding." She received debt counseling through her bankruptcy case.⁷

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 that 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 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

⁵ Tr. at 25; 28, 31-32, 38-41, 43-44; GE 4; AE A.

⁶ Tr. at 48, 50; AE A.

⁷ AE B; Ans.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about 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* Executive Order 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 as follows:

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; and
- (c) a history of not meeting financial obligations.

Applicant had multiple liens filed resulting from her federal tax debt. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several 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.

The liens attributed to Applicant were recent and numerous. She has established a payment plan that will allow her to pay her tax obligations. She filed tax returns for all the years she failed to do so. It is unlikely these type of debts will recur, nor do they cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) partially applies.

Applicant's tax liens were due to her claiming an "exempt" status and failure to file income tax returns. These were conditions within her control. The advice she received from her bankruptcy attorney about the discharge of her tax deficiencies was incorrect and was a condition beyond her control. The incorrect advice set her back in her efforts to resolve the tax liens. AG ¶ 20(b) partially applies.

Applicant received counseling through her bankruptcy, but more importantly, she sought the assistance of the IRS. The IRS was able to help her file her missing tax returns and set up a reasonable payment plan. She made a good-faith effort to resolve the liens listed on the SOR. She supplied documentary evidence showing her payments under the plan with the IRS. AG ¶ 20(c) and ¶ 20(d) apply.

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 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.

I found Applicant to be honest and candid about the circumstances that led to her tax liability. She set up a workable plan with the IRS to repay her tax obligation. I also found that she is an outstanding performer, as indicated by her work performance appraisals. I found nothing to indicate a likelihood that Applicant would find herself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations security concerns.

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

Subparagraphs 1.a – 1.b: 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.

Robert E. Coacher
Administrative Judge