



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-00619
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On September 3, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. The DOD issued to Applicant a Statement of Reasons (SOR), dated December 15, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on January 15, 2016. She denied the four financial allegations. Department Counsel was prepared to proceed on March 18, 2016. The case was assigned to another administrative judge and then to me on October 19, 2016. The DOD issued a notice of hearing on January 6, 2017, for a hearing on January 11, 2017. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1, 2 and 3. Applicant testified and submitted seven exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through G. I received the transcript of the hearing (Tr.) on January 17, 2017.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is a 45-year-old high school graduate. She has taken some college-level courses, but did not receive a degree. She has been married since July 1998 and has three adult children and an adult stepson all living at home. Her children do not contribute to the family income. She is employed part time as a background investigator for a government contractor. She also works part time as a compliance manager for a defense contractor. (Tr. 11-12, 27-28; GX 1, EQIP, dated September 3, 3013)

The SOR alleges a federal tax lien entered in December 2014 against Applicant and her husband for federal income tax owed of \$48,001 (SOR 1.a). The SOR also alleges a state tax lien entered against Applicant in January 2015 for state income tax of \$13,145 (SOR 1.b). It was further alleged that Applicant did not file a federal tax return for 2013 (SOR 1.c), or state tax return for 2013 (SOR 1.d).

Applicant worked mostly from home and maintained a home office. Her husband was a plumber. Applicant's husband and his sister, who is employed by a large tax preparation firm, prepared the 2009 to 2012 tax returns for Applicant and her husband. For tax years 2009 to 2012, Applicant and her husband claimed deductions on their federal and state tax returns for home office expenses and her husband's plumbing tools. The Internal Revenue Service (IRS) audited Applicant and her husband's tax returns in 2012, and the deductions were denied. Applicant and her husband were assessed substantial tax liability in December 2013 for both federal and state taxes for 2009, 2010, 2011, and 2012. (Tr. 16-18, 28-32, 57-58)

Applicant and her husband agreed to a payment plan with the IRS and started to make payments. After they made payments for four months, Applicant's husband had a massive stroke on March 7, 2014. Applicant's husband is now bedridden and can no longer work. He is cared for in a long-term care facility. (Tr. 18-19; AX F, Letter, dated January 11, 2016)

Applicant had her own medical problems when her husband had his stroke. She had decided that she could not work full time, and she retired from full time employment on March 5, 2014. Applicant no longer had two incomes and could not make more payments to the IRS. Their last regular monthly payment to the IRS was in March 2014.

The IRS determined in December 2014 that the federal tax debt was uncollectible. The IRS will not seek payment for the taxes unless there is a change in Applicant's income. (Tr. 20-23; AX B, IRS Letter, dated December 17, 2014)

Applicant now works two part-time jobs for government contractors as a background investigator and a compliance manager. She is paid on a case basis as a background investigator and earns approximately \$500 to \$800 monthly. Her monthly income as a compliance manager is approximately \$2,200. Her total monthly income is \$3,000. Her monthly expenses are approximately \$2,900, leaving a monthly remainder of \$100. Her husband receives \$2,076 in Social Security Disability Income (SSDI). His long-term care expenses consume almost all of his disability income. Applicant still must provide for his personal needs. (Tr. 24-26, 54-56, AX G, SSDI Letter, dated September 7, 2016)

Applicant filed her 2013 tax return eight months late in December 2014 because she needed the audit completed to prepare the return. Applicant filed her 2014 and 2015 tax returns on time. She received a refund each year. The IRS applied her refunds for 2013, 2014, and 2015 to her tax debt. Applicant is eligible to make an offer-in-compromise with the IRS in January 2017. Applicant has not had an opportunity to make the offer-in-compromise, but intends to take advantage of the opportunity soon. (Tr. 27-30, 45-47, 56-57; AX C, 2013 Tax return, dated December 12, 2014; AX D, IRS Refund Notice, dated October 17, 2016)

Applicant has attempted to establish a payment plan with her state of residence. However, they have not been able to reach an agreement because the state requires a large initial payment Applicant cannot afford. She is still working with the state to reach an agreement. In addition, Applicant is working with her mortgage holder to have her mortgage modified so she can have additional funds to apply to her and her husband's care expenses and pay other debts. (Tr. 20-12, 41-45; AX E, State Tax Letter, dated January 9, 2015)

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 must be considered 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.

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 in seeking 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 that 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.

Analysis

Financial Considerations

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 a person’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant and her husband’s federal taxes were audited and some deductions were not allowed. They were accessed large federal and state tax debts. They reached a payment plan with the IRS. Shortly after starting payments on the plan, Applicant’s husband suffered a severe medical problem and could no longer work. Applicant was only able to work part time because of her own medical condition and the need to help care for her husband. Applicant could not pay on the plan. She did not file the following

year's tax returns on time because of the tax audit. Applicant's delinquent federal and state taxes, and her failure to file tax returns on time are sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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.

I considered the following Financial Considerations Mitigating Conditions under 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;
- (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 indication that the problem is being resolved or is under control; and
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply. Applicant's financial problems are the result of a federal tax audit and denial of certain deductions. When their tax liability was determined, Applicant and her husband reached a payment plan with the IRS. They made some payments on the plan before her husband had a severe medical issue prohibiting him from working again. With the loss of his income and her inability to work full time, Applicant could no longer pay the IRS agreed plan. The IRS determined the debt was not collectible.

Applicant attempted to reach a payment agreement with the state. They have not reached an agreement but negotiations on an agreement are still ongoing.

Applicant is current with filing her federal and state tax returns. The conditions that led to Applicant federal and state tax problems were beyond her control and cause by her husband's unexpected medical issues leading to his loss of employment. The circumstances are continuing and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. Applicant established that she acted responsibly

under the circumstances. She reached a payment agreement with the IRS. She was paying the debt when her husband had his unfortunate medical issue. She notified the IRS and the debt was determined to be uncollectible. She continues to negotiate a payment plan with the state. She filed her 2013 tax returns and has timely filed her 2014 and 2015 tax returns. She has shown a good-faith effort to resolve her federal and state tax liabilities. I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. Applicant incurred a federal and state tax debt. She reached a payment agreement with the IRS. She was paying the debt under the agreed plan when her husband suffered a catastrophic medical problem precluding him from working. With the loss of his income and her ability to work only part time because she had to care for her husband, Applicant could not continue to pay her tax debt under the plan. The IRS determined the debt was not collectible. She continued to negotiate a payment plan with the state. Applicant presented sufficient information to establish that she acted reasonably and responsibly towards her finances under the circumstances. There is clear evidence that she will continue to responsibly manage her financial obligations. There is ample evidence of her honesty, trustworthiness, and good judgment. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.d 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.

THOMAS M. CREAN
Administrative Judge