



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



In the matter of:)
)
) ISCR Case No. 15-04621
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 21, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR, and elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on April 21, 2016. Applicant received the FORM on April 29, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation.

Applicant did not object to the Government's evidence and provided no response to the FORM. The Government's documents, identified as Items 1 through 7 are admitted into evidence without objection. The case was assigned to me on March 20, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.h, 1.i, 1.k, 1.m and 1.n. She also provided supporting information in a one-page undated letter attached. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. She obtained her bachelor's degree in 1990. She has been married and divorced twice, and has one adult daughter. She has been employed by a federal contractor since May 2009. She reports having a secret clearance from 2003 – 2013 with no issues. She was laid off in November 2008, and remained unemployed until May 2009.

SOR ¶¶ 1.a and 1.b allege that Applicant owes the federal government for delinquent taxes in the approximate amount of \$41,260 because she failed to timely file federal income tax returns for tax years 2007 to 2013. In her Answer to the SOR, Applicant admitted her indebtedness to the federal government for delinquent taxes, but she disputed the amount owed. Further, she asserts that she did, in fact, file returns for each of the tax years in question, albeit late.³ She also admitted to five of the other 15 delinquent debts alleged in the SOR, totaling more than \$30,000.

Applicant disclosed her late federal income tax returns in question in section 26 of her July 2014 Questionnaire for National Security Positions, also known as her security clearance application (SCA). Applicant claimed to have worked out a payment plan with the IRS in August 2014, but she did not provide a copy of the installment agreement or proof of payments. Applicant, in explaining her tax situation, stated in the SCA that "my ex-husband said he filed and didn't. It forced subsequent delinquencies which I am in the process of clearing up."⁴ Further, she had her home repossessed in October 2009 because "I had a daughter in college and I was unemployed."⁵

The only explanation offered for her failure to timely file the income tax returns in question was that her employer at the time, a company which was supposedly owned by her stepmother, filed bogus W-2's concerning Applicant.⁶ So, Applicant was confused about whether, or how, to file her income tax returns. Applicant was also

³ GE 1, Answer to SOR.

⁴ GE 2 at p. 35.

⁵ GE 2 at p. 39.

⁶ GE 3, at p. 2.

reluctant to implicate her stepmother. She claims to have since filed the income tax returns in question but submitted no corroborating evidence.

Although Applicant claims that she was unaware of them, her credit reports, reflected her delinquencies regarding several other debts including a judgment against her by a condominium unit owner's association (SOR ¶ 1.c). The other judgment alleged at SOR ¶ 1.l by the same creditor, is a duplicate debt. SOR ¶ 1.l is resolved for Applicant. These delinquent debts were beyond her control due to unemployment and college tuition for her daughter. Nonetheless, there is no evidence that Applicant has acted responsibly to resolve them. Indeed, Applicant stated earlier that the judgements against her were the "result of my being irresponsible with my finances."⁷

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 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 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

⁷ GE 4 at p. 2.

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 an 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 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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 she did not file her federal income tax returns as required. She provided no documents or evidence to show progress on payments, or mitigation regarding the other 15 delinquent debts alleged in the SOR. Applicant endured a period of adverse circumstances, including six months of unemployment, and college expenses for her daughter. She also had a dispute with her former spouse about whose responsibility it was to file the tax returns, and she claims that her previous employer filed bogus W-2's. However, she has offered no evidence to support any of these contentions. There is sufficient evidence to support the application of 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 problems were largely beyond the person's control, and the individual acted responsibly under the circumstances; and

(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.

Applicant disclosed her failure to timely file her tax returns in her SCA and she claims to have since filed the federal income tax returns in question. Yet, Applicant has produced no evidence that she has since complied with her responsibilities and is up to date on filing income tax returns. AG ¶¶ 20(a), 20 (b) and AG ¶ 20 (c) do not 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 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 F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant's finances remain a security concern. There are ample indications that Applicant's financial problems are not under control. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, 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.k:	Against Applicant
Subparagraphs 1.l.	For Applicant
Subparagraphs 1.m-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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge