



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08556
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Maurice Arcadier, Esq.

05/11/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by past financial issues that were largely attributable to matters beyond her control, including a business failure, unemployment, and caring for her elderly parents. After being hired by her current employer in 2011, Applicant began responsibly addressing her troubled finances. Her current financial situation does not raise a security concern. Clearance is granted.

Statement of the Case

On October 22, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a hearing to establish her eligibility for access to classified information.

On April 12, 2017, a date mutually agreed to by the parties, a hearing was held. Applicant and her husband testified at the hearing and the exhibits offered by the parties

¹ This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

were admitted into the administrative record without objection. (Government Exhibits 1 – 5; Answer, Attachments A – H; and Applicant’s Exhibits A – B.)

At the conclusion of the hearing and after carefully considering the evidence, as well as each sides’ stated position, I gave notice to the parties that the case appeared appropriate for summary disposition. The hearing transcript (Tr.) was received on April 21, 2017. Three days later, on April 24, 2017, Department Counsel objected to the resolution of the matter through summary disposition and requested a full decision.²

Findings of Fact

Applicant, 53, has been married to her husband for nearly 30 years. They have two children. She was granted a security clearance in the mid-1980s in connection with her past employment for another government agency. She held that clearance until 2000, when she began working for an employer in the private sector.

From 2003 to 2010, Applicant experienced a succession of unfortunate events that negatively impacted her family’s household finances. In 2003, she was laid off from her job due to a business downturn. Two years later, her father was diagnosed with a serious, degenerative disease. Applicant and her mother became his caretakers. Then, in 2007, Applicant’s mother suffered a stroke and Applicant became the primary caretaker for both her parents.³ Applicant and her spouse’s finances were strained during this period, but they were able to continue to pay their bills on time because his construction business was doing well. And then, in 2007-2008, the U.S. housing market collapsed and the economy went into recession. This event, coupled with the end of a government program that had for years provided construction-related jobs in the area that Applicant and her husband reside, resulted in the business’s ultimate demise.

Applicant and her husband used up their savings to pay for their household expenses. They were unable to find work and started relying on credit cards to pay for groceries and other living expenses. Eventually, they were unable to pay the monthly minimum payments due on their credit cards and became delinquent on a number of debts.⁴ Applicant provided her IRS account transcript for 2010, which shows that her and her husband’s adjusted gross income was less than \$13,000.⁵

Additionally, and unbeknownst to Applicant, her husband did not file their joint tax returns for several years in a row. Applicant’s husband, who from 2003-2011 was the sole breadwinner, had primarily been responsible for preparing and filing their joint tax returns. While the construction business was a thriving enterprise, Applicant’s husband

² Prehearing correspondence, the notice of hearing, case management order, and Department Counsel’s objection are attached to record as Appellate Exhibits (App. Exh.) I – IV.

³ Applicant’s father passed away from his medical condition in about 2009.

⁴ Tr. 22, 36-38; Answer.

⁵ Answer, Attachment B.

was able to employ a certified public accountant to prepare and file their returns. (He had found the tax forms too difficult and time consuming to fill out on his own.) Once work dried up and some of the business's former clients did not pay for work already completed, Applicant's husband could no longer afford to pay the accountant. He tried unsuccessfully to prepare the tax forms on his own. He hid the information about the delinquent tax filings from his wife (the Applicant), because he did not want to add to the stress she was already experiencing caring for her ailing parents and taking care of their then young children.⁶

In 2011, Applicant and her spouse became gainfully employed. They then started to address and resolve their delinquent debts and overdue tax filings. They contacted their overdue creditors, negotiated settlements, and paid their debts, including the \$18,000 debt referenced in SOR 1.h.⁷ In 2014, or a year before applying for a security clearance, Applicant and her husband began filing their overdue tax returns. They were entitled to refunds for tax years 2009 – 2012, and paid the nominal taxes due for 2013 and 2014.⁸ They timely filed their 2015 and 2016 tax returns, and paid any taxes due. Applicant's tax filings are up-to-date and she does not owe any taxes.⁹ She and her husband now use a generally-available tax software to prepare and file their returns.

Applicant disclosed her history of financial problems on the security clearance application that she submitted in May 2015. She fully discussed and answered questions about her finances during a clearance interview in June 2015. She responded to financial interrogatories sent to her by Department Counsel in 2016, voluntarily supplying her tax returns, IRS account transcripts, and other requested information.¹⁰

Applicant and her husband's income has increased markedly since 2010.¹¹ Their 2016 tax return reflects an AGI of nearly \$90,000.¹² Their current combined yearly income is approximately \$130,000.¹³ Notwithstanding the increase in household income, Applicant and her husband live frugally. They only buy what they can afford, paying for mostly everything with cash or debit cards. They have one credit card with a \$500 spending limit, which they only applied for to rebuild their credit. This credit card

⁶ Tr. 16-19, 25-29, 38-41; Answer.

⁷ Tr. 15-16, 22-25; Answer, Attachment H (proof of payment).

⁸ Answer, Attachments A – F.

⁹ Answer, Attachment G; Exhibit B (2015 tax return); Exhibit 3 at 28-43 (IRS account transcripts supplied by Applicant in August 2016, show that federal tax returns for tax years 2009-2014 were filed and indicated a zero balance for each of those years).

¹⁰ Exhibit 1; Exhibit 3.

¹¹ Answer, Attachments A - F.

¹² Exhibit B.

¹³ Tr. 20-21, 44.

account has a zero or nearly zero balance. Applicant supplied a current credit report that reflects no negative or derogatory accounts.¹⁴ Applicant and her husband live in the same house that he built for them when they were newlyweds nearly 25 years ago. They drive cars that are more than 10 years old, personally repairing and maintaining the cars. They have accumulated an emergency savings fund of approximately \$15,000. Applicant regularly contributes to her 401(k) retirement savings account. Her youngest child recently graduated from college and, as their children's education-related expenses has gone away, Applicant has seen their monthly net remainder (amount left over after paying recurring household expenses) triple from \$500 to \$1,500. Applicant is no longer her mother's primary caretaker, because her sister moved in with their mother a few years ago and has taken on that role.¹⁵

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

¹⁴ Exhibit A. See also Exhibit 5 (credit report supplied by Government reflects no negative or derogatory accounts, with the accounts listed on the credit report showing a "0" balance).

¹⁵ Tr. 19-22, 29-33, 41-49; Exhibit 3 at 3.

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. 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 an 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.

Analysis

Guideline F, 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 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.

As stated in the relevant portion of AG ¶ 18 quoted above, the security concern at issue is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt and other security-significant financial issues cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information.¹⁶

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

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;

¹⁶ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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;

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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

A security clearance adjudication is not a debt collection process. Instead, an administrative judge examines the way an applicant handles their personal financial obligations to assess how they may handle their security obligations.¹⁷ Applicant's eligibility for a security clearance was called into question due to overdue tax returns and a relatively large delinquent debt. Her past failure to timely file income tax returns raises heightened security concerns about her judgment and ability to abide by rules and regulations, requiring a close examination regarding the circumstances giving rise to her financial issues and her response to it.¹⁸

In examining the circumstances that led to Applicant's past financial problems, it is clear they were caused by matters largely beyond her control, including the recession, job loss, business failure, and caring for elderly and infirm parents. Applicant did not walk away from her financial obligations. Instead, after regaining employment in 2011, she responsibly addressed and resolved her debts and tax situation. She contacted her creditors, negotiated settlement agreements whenever possible, and repaid her debts in full. She also filed her overdue tax returns and paid any resulting tax debt. Her failure to file for several years was an aberration and it was not primarily her fault. She timely filed and paid her taxes before her husband's business failed, and she has resumed doing so. Based upon the record evidence, including Applicant and her husband's positive efforts in addressing and resolving their past financial issues, as well as their credible testimony at hearing, I am left firmly convinced that Applicant will continue to responsibly manage and meet her financial obligations going forward.¹⁹

¹⁷ See *also*, ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).

¹⁸ See *generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues, as follows: "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

¹⁹ *Contrast with* ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (resolution of overdue tax filing alone insufficient to mitigate heightened security concerns, where no evidence of financial reform or extenuating circumstances to explain the late filing).

Additionally, Applicant took the necessary steps to put her financial house in order well before applying for a security clearance. She has been candid about her financial situation and cooperative throughout the security clearance process.²⁰ Her financial situation is clearly under control. AG ¶¶ 20(a) – 20(d) apply.

After a complete and thorough review of the record evidence, while remaining mindful of my duty to resolve any unmitigated doubt in favor of protecting national security, I find that Applicant met her heavy burden of proof and persuasion in mitigating the security concerns at issue. Furthermore, she clearly established her eligibility for access to classified information.

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 (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.h: For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

²⁰ See, AG ¶ 2(a) (whole-person factors).