



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 15-08767

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

10/18/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding her finances. Eligibility for access to classified information is denied.

Statement of Case

On June 1, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 (AGs) implemented by DOD on September 1, 2006.

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new guidelines apply to all adjudicative decisions on or after June 8, 2017. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs. Application of the AGs that were in effect as of the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on July 6, 2016, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on October 12, 2016. She did not object to any of the exhibit items in the FORM or provide supplemental information. The exhibits in the FORM were admitted.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file state tax returns for tax years 2006-2011 and (b) is indebted for state tax delinquencies in the amount of \$11,514. Allegedly, these state tax debts remain outstanding. Under Guideline E, Applicant allegedly used marijuana from about 1998 with varying frequency to at least 2011. No further use was alleged.

In her response to the SOR, Applicant admitted all of the allegations with explanations. She claimed she was not required to file state tax returns while employed for a non-profit organization and did not know she was required to file state returns once she became employed by her current non-profit employer. Applicant claimed she has reached agreement with her state taxing authority to make monthly payments to cover back state taxes owed.

Addressing her use of marijuana between 1998 and 2011, Applicant claimed infrequent use, limited to social situations. She further claimed that while marijuana is now legal in her state, she is aware that it is illegal on the federal level and incompatible with DOD policy on drug use.

Findings of Fact

Applicant is a 40-year-old multimedia program analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (Item 4) She earned an associate's degree in May 2002 and a bachelor's degree in September 2015. (Items 4-5) She reported no military service. (Item 4)

Since February 2013, Applicant has worked for her current non-profit employer in different capacities, some on a full-time basis and some part-time. (Item 4) Between October 2006 and September 2011, she worked for the same non-profit employer in various assignments. (Items 4-5) She reported underemployment between September 2013 and December 2013, and between September 2011 and June 2013. (Item 4)

Applicant's finances

Applicant failed to file state tax returns for tax years 2006-2011, as required by state law. (Items 3-5) She attributed her filing failures to misunderstandings over her need to file after joining her non-profit employer in 2006.

To date, Applicant has failed to provide any evidence of her filing her state tax returns for the tax years in issue or paying all or portions of the \$11,514 tax delinquency she currently owes her state taxing authority for the years she failed to file her state tax returns as required.

Applicant provided no evidence of budgeting or financial counseling. Nor did she furnish character references, performance evaluations, or evidence of community involvement.

Applicant's Drug Use

Between July 1997 and June 2011, Applicant used marijuana with varying frequency. (Item 5) She used marijuana mostly in social situations with friends (Item 5) She estimates to have used marijuana on over 100 occasions between 1997 and 2011. (Item 5)

Since ceasing to use marijuana in June 2011 (a period of more than six years ago), Applicant has not engaged in any form of illegal drug use. (Item 5) She assured she has no intention of ever using marijuana in the future out of fear of jeopardizing her job. (Item 5) Applicant is aware of the continuing federal ban on the possession and use of illegal drugs and no longer associates with any of her old friends who used illegal drugs. (Item 5) None of her current friends use or experiment with any form of illegal drugs. (Item 5)

Addressing other areas of potential drug involvement, Applicant assured that she has never been arrested, cited, or detained for involvement in any drug-related incident. Further, she has never grown, sold, bought, or cultivated any illegal drug, and has never been the subject of any drug-related intervention. (Item 5)

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant,

as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical and mental impairment or are used

in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations AG ¶ 24.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's failure to file state tax returns for tax years 2006 through 2011, as required by her state's tax laws and her accumulation of delinquent state tax debts approximating \$11,515. Additional security concerns are raised over Applicant's past use of illegal drugs (marijuana) over a period of 14 years (1997-2011).

Financial Concerns

Applicant's failure to file state income tax returns for tax years 2006-2011 and her accumulation of a delinquent tax debt exceeding \$11,514 to her state taxing authority raises security concerns over her financial judgment and reliability. Her judgment lapses warrant the application of four disqualifying conditions of the financial considerations guideline (DCs) DC ¶¶ 19(a), "inability to satisfy debts"; 19 (b), "unwillingness to satisfy debts regardless of the ability to do so"; 19(c), "a history of not meeting financial obligations"; and 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

Applicant's pleading admissions with respect to her failure to timely file state her income tax return for tax year 2011 and accumulation of a delinquent state income tax debt negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Applicant's tax-filing failure and accumulation of a delinquent state tax owed to her state taxing authority are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in such persons. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of paying or otherwise resolving owed federal and state taxes in DOHA proceedings is critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)

Applicant provided no documented evidence of extenuating circumstances, filing of state tax returns, good-faith payments or payment plans, financial counseling, or reasonable disputes with any of the listed SOR creditors. Based on the evidence provided, none of the mitigating conditions pertaining to evidenced good-faith tax-filing and payment initiatives, extenuating circumstances, financial counseling, reasonable basis to dispute a past-due debt, or payment arrangements made with the cognizable tax authority to file or pay the amount owed are available to Applicant to mitigate the Government's concerns.

Whether Applicant has filed her back state tax returns for tax years 2006-2011 and reduced the amount owing her state government on the delinquent taxes she accrued (\$11,515) remains unclear. For she provided no documentary evidence of her filing her back state tax return (timely or otherwise), or paying or otherwise resolving her reported state tax delinquency. Without substantiating evidence of her filing and

addressing her reported state tax filing lapse and state tax debt delinquency, drawn conclusions are warranted that she has not completed her filing and payment obligations pertaining to the listed filing and debt delinquencies listed in the SOR.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). In Applicant’s case, her lack of demonstrated responsible efforts in addressing her SOR-listed tax filing and tax debt obligations preclude favorable findings and conclusions with respect to her security clearance application. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

Whole-person assessment is unfavorable to Applicant. She has shown insufficient progress to date in addressing her delinquent state tax filing and tax debt covered in the SOR. Her actions to date reflect a lack of financial responsibility and judgment and raise unresolved questions about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. More documented information about her inability to timely file her state tax returns, pay, or otherwise resolve, her delinquent state tax debts, and demonstrate financial progress with her state returns and tax lien is necessary to mitigate financial concerns under the financial guideline and consideration of the whole-person to mitigate security concerns.

Taking into account all of the documented facts and circumstances surrounding Applicant’s state tax and debt delinquencies that she has failed to address to date, Applicant has failed to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that her finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

Unfavorable conclusions are entered with respect to the allegations covered by ¶ 1.a and 1.b of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is not consistent with the national interest.

Drug Abuse Concerns

Over the course of 14 years (between July 1997 and June 2011) Applicant used marijuana with varying frequency. On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” and DC ¶ 25(c), “illegal possession ,of a controlled substance including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” Judgment concerns exist over Applicant’s past drug use. She has a history of marijuana use on a varying scale with friends in social situations.

Applicant’s last documented use of marijuana occurred more than six five years ago and has not recurred. Her use was generally limited to social situations with friends,

who she no longer associates with. She is currently committed to the avoidance of all illegal drugs out of concern for her job, avoids environments where drugs are used, and has no intention of returning to illegal drug use of any kind. Based on Applicant's credible historical accounts of her marijuana use, her adherence to abstinence for more than six years, and her disassociation from her former friends with whom she shared marijuana, she may take advantage of two mitigating conditions (MCs). MC ¶¶ 26 (a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," and 26(b), "the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used: . . ."

From a whole-person perspective, Applicant has established credible probative evidence of her limited use of marijuana in social situations and the unlikelihood that she will ever resume using marijuana or any other illegal substances. Aware that marijuana use is against federal law, Applicant acknowledged her poor judgment in using marijuana and disassociation of contacts with former friends with whom she shared marijuana. Her acknowledgments and expressions of remorse help to reinforce favorable conclusions about her overall judgment, reliability and trustworthiness. Her acknowledgments reveal important lessons she has learned about using illegal drugs and how these lessons affected her commitment to avoid in the future all illegal drugs and environments where drugs are used.

Taking into account all of the facts and circumstances surrounding Applicant's historical use of marijuana and considerable period of abstinence since her last use of the substance in 2011, Applicant mitigates security concerns related to her drug use. Favorable conclusions warrant with respect to the allegations covered by subparagraph 2.a of Guideline H.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.b:	Against Applicant
------------------------	-------------------

GUIDELINE H: (DRUG INVOLVEMENT): FOR APPLICANT

Subparagraph. 2.a:	For Applicant
--------------------	---------------

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

