



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



In the matter of:)
)
) ISCR Case No. 15-08820
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 1, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 2, 2016, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 8, 2016, and reassigned to me on October 12, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 20, 2016, scheduling the hearing for March 23, 2017. The hearing was convened as scheduled.

Department Counsel amended the SOR by withdrawing the allegation under SOR ¶ 1.m. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on March 31, 2017.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She has worked for her current employer or a predecessor contractor since January 2015. She served on active duty in the U.S. military from 1999 until she was honorably discharged in 2009. She attended college for a period without earning a degree. She married in 2001 and divorced in 2006. She has four minor children.¹

Applicant worked for a defense contractor in Afghanistan from 2010 to 2013. She lost her job after she returned to the United States because of an injury. She was unemployed from October 2013 through April 2014 and from October 2014 to January 2015, which resulted in financial problems and delinquent debts. She also is the only wage earner of a large family without the benefit of child support.²

Applicant has not filed her federal income tax returns for tax years 2010 through 2015. Because of her service in Afghanistan, she may have been eligible for an automatic extension to file her income tax returns for tax years 2010 through 2013, but if eligible for those extensions, she would have been required to file the returns upon her return to the United States (180 days plus whatever time was left for Applicant to file the returns before she entered the combat zone).³ She stated that when she returned from overseas, she was unable to afford a tax professional to assist her in filing her tax returns.⁴

The amended SOR alleges two delinquent medical debts totaling \$1,520 (SOR ¶¶ 1.k and 1.l), nine miscellaneous delinquent debts totaling \$28,570 (SOR ¶¶ 1.b through 1.j), and that Applicant failed to file her federal income tax returns for tax year 2010 through 2014 when they were due (SOR ¶ 1.a). Applicant admitted owing all of the debts at one point, but she established that the debts alleged in SOR ¶¶ 1.h, 1.i, 1.k, and 1.l have been paid.⁵

¹ Tr. at 24-28, 34, 61, 64-65; GE 1.

² Tr. at 15-17, 34-35, 38-39, 55; GE 1.

³ See https://www.irs.gov/publications/p3/ar02.html#en_US_2016_publink100050111.

⁴ Tr. at 17-19, 28-31; Applicant's response to SOR; GE 1. The SOR only alleged that Applicant did not file income tax returns for tax years 2010 through 2014. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in the application of mitigating conditions, and in the whole-person analysis.

⁵ Tr. at 19-22, 31-33; Applicant's response to SOR; GE 1, 2; AE A.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2015. She listed a number of delinquent debts and that she had not filed her federal income tax returns for 2010 through 2013. She wrote that she was working overseas in a tax-free environment and that she was told that she did not have to file her returns until she returned home permanently. She wrote that she was still having financial difficulties at that time, but she intended to pay her debts as soon as she was able.⁶

In her June 2016 response to the SOR, Applicant stated that she called a tax company in June 2016 to file her back returns, but the company wanted \$995. She did not have the funds at that time to pay the tax company. She retained the tax company about a month before the hearing, but she still had not filed the returns as of the date of the hearing. She stated that she initiated payment plans on several of her debts. In February and March 2017, Applicant paid \$3,416 to resolve an unalleged debt and the debts alleged in SOR ¶¶ 1.h, 1.i, 1.k, and 1.l. She did not submit documents establishing any other payments. She is working overseas again in order to make more money to support her family and pay her debts. She stated that she saves until she has enough to pay a debt, and that she intends to pay her debts. She has not received financial counseling.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, which 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."

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,

⁶ GE 1.

⁷ Tr. at 22, 28-29, 32, 37-41, 49-50, 60-63, 70; AE A.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the 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.

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* EO 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:

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. The following are potentially applicable in this case:

- (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 accumulated delinquent debts and was unable or unwilling to pay her financial obligations. She has not filed her federal income tax returns for tax years 2010 through 2014. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations concerns are provided under AG ¶ 20. The following 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.

Applicant was unemployed for extended periods after she returned from working overseas. She also is the only wage earner of a large family without the benefit of child support. Those events were beyond Applicant's control. Her failure to file tax returns was not.

In February and March 2017, Applicant paid \$3,416 to resolve an unalleged debt and the debts alleged in SOR ¶¶ 1.h, 1.i, 1.k, and 1.l. Those allegations are mitigated. She is working overseas again in order to make more money to support her family and pay her debts. She stated that she intends to pay her debts. Intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant has still not filed her tax returns for 2010 through 2015. Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Applicant's repeated failure to file her federal income tax returns in a timely manner does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable, except for the paid debts. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I considered Applicant's honorable military service and the factors that led to her financial problems. However, she shirked her tax responsibilities for years, and she is still not in compliance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraph 1.m:	Withdrawn

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge