



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



In the matter of:)
)
) ISCR Case No: 15-07813
)
)
Applicant for Security Clearance)

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

04/14/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of failing to file Federal and state tax returns and not resolving delinquent debts. She did not mitigate the resulting financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 3, 2016, 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 (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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on May 19, 2016, and requested a hearing before an administrative judge. On September 8, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On November 15, 2016, DOHA issued a Notice of Hearing setting the case for December 7, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified and offered Exhibits (AE) 1 through 7 into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on December 16, 2016. The record remained open until January 6, 2017, to give Applicant an opportunity to submit additional evidence. She timely submitted AE 8. Department Counsel had no objection to the document and it is admitted into evidence.

Findings of Fact

Applicant admitted all nine allegations in the SOR. Those admissions are incorporated into these findings of fact.

Applicant is 47 years old and unmarried. She has a 27-year-old son from a former relationship. She is a high school graduate and has a technical degree from a community college that she earned in 2007. (Tr. 18-19.)

Applicant began her current position with a defense contractor in March 2015. Prior to then, she had short-term jobs with non-defense contractors, including work overseas. Over the past ten years, she has experienced periods of unemployment between jobs. (Tr. 19-20, 23; GE 1.)

On April 15, 2015, Applicant submitted a security clearance application (SF-86). In response to questions related to her financial record, she disclosed that she failed to file Federal and state tax returns from 2009 to 2014. She stated that she used online tax software to file her 2009 taxes and received confirmation that the returns were filed. When she attempted to file her 2010 taxes in 2011 through the same software program, she was unable to do so. She then called the Internal Revenue Service (IRS) and learned that her 2009 returns had not been filed. (GE 1.)

In June 2015, a government investigator interviewed Applicant regarding information in her SF-86. During that interview, Applicant discussed her unfiled tax returns, delinquent medical debts, and a delinquent debt owed to an apartment complex. (GE 3.)

While testifying about the unfiled tax returns, Applicant explained that after speaking to the IRS in 2011, she contacted a tax preparation company to refile the 2009 tax returns and prepare her 2010 tax returns. Applicant did not hire the company because she could not afford the \$850 service fee. Subsequently, she became overwhelmed by the tax problems, and did not know how to resolve them. (Tr. 26-28.) She said the matter “snowballed from there as the years went on.” (Tr. 27.) At some

point, she felt scared to address the tax problems, knowing she did not have enough money to pay the costs for preparation of the returns. (Tr. 34.)

On April 6, 2016, a tax consultant prepared Applicant's Federal taxes for 2009, 2010, 2011, 2012, and 2015. The documents do not reference a filed date; however, Applicant assumed the preparer filed them electronically at that time. (Tr. 32-33, 56; Answer.)

In early December 2016, the IRS notified Applicant that it filed a \$5,600 tax lien for 2011 taxes and offered her an opportunity to establish a repayment plan. She promptly returned the documents necessary to initiate a monthly payment plan of \$200. (Tr. 30-32.) She did not submit evidence of payments made into that plan.

Applicant's 2013 and 2014 Federal tax returns remain unfiled. During those years, she lived overseas and has had difficulty finding a tax consultant with an expertise in foreign earnings. She made efforts to find an appropriate professional in 2013 and 2014, but was unsuccessful. (Tr. 36-40, 58.)

In 2009, Applicant lived in State 1, and in 2010, 2011, 2012, and 2014 she lived in State 2. She did not timely file state tax returns for any of those years. She testified that the tax preparer she hired in December 2016 told her that she was not required to file returns for those states because the costs for filing were greater than her anticipated refunds. (Tr. 42.) According to a letter from the tax preparer, he reiterated that advice for some tax years. He also determined that she had State 2 tax liabilities for a couple years, and that he prepared the relevant returns for Applicant to file. There is no evidence that she filed those returns, which years were involved, or which years she was exempt from filing. (AE 8.)

In addition to alleging unfiled Federal and state tax returns, the SOR alleged five delinquent medical debts totaling \$7,827, and a \$1,210 delinquent debt owed to an apartment complex for a broken lease. The medical bills were incurred in September and December 2010. The apartment debt became delinquent in January 2009. (GE 2.)

Applicant was unaware of those specific delinquent medical bills from 2010. The only medical complication that she experienced and resulted in large medical bills occurred in 2014. (Tr. 52.) The alleged medical debts are unresolved. Applicant made one \$139 payment toward the delinquent rental debt in May 2016. It remains unresolved. (Tr. 50; Answer.)

Applicant attributed her financial problems to being a single mother, experiencing periods of unemployment, and having insufficient money to pay bills, including living expenses and her son's education. She was homeless and living out of her car twice: once for six-months in late 2008, when she could not afford her bills and the second time was in 2009 after a layoff when she could no longer pay rent. (Tr. 23-24.)

Applicant's net monthly income is about \$2,772. Her expenses are approximately \$2,208, leaving about \$564 remaining at the end of the month. (Her budget did not include any payments on debts. (Tr. 22; AE 4.) She participated in credit or financial counseling about 20 years ago, but has not done so since then. She is able to stay current on her bills (Tr. 51-52.) She proudly testified that through her efforts, her son graduated from college last year with a degree in engineering. (Tr. 24.)

Applicant's supervisor is aware of this proceeding and the underlying security concerns. (Tr. 20.) Three people submitted letters of recommendation. A colleague and supervisor wrote that Applicant is a dedicated and honest employee. He has known her for over nine years. (AE 5.) A former supervisor stated that she is a professional and trustworthy individual. He recommends her for a security clearance. (AE 6.) Applicant's son wrote a heart-felt letter about her. He attested to her endless hard work, integrity, and moral behavior. He is thankful for her courage and compassion. (AE 7.)

Applicant admitted that she exercised poor judgment in handling her taxes. She realized that the tax issues were affecting employment opportunities. (Tr. 67-68.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2(a), describing 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.

According to 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 the applicant or proven by Department Counsel,

and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

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.¹

AG ¶ 19 notes three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and

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

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of unwillingness to timely file Federal tax returns for 2009, 2010, 2011, 2012, 2013, and 2014, and state returns for 2009, 2010, 2011, 2012, and 2014. She also has been unwilling or unable to resolve delinquent debts, which arose in 2009 and 2010. The evidence is sufficient to raise the above disqualifying condition.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate financial security concerns under this guideline:

(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's failure to file Federal tax returns on a timely basis is ongoing. She filed Federal returns for 2009, 2010, 2011, and 2012 in December 2016, but has not filed her 2013 and 2014 Federal tax returns. In or about December 2016, she also filed certain state tax returns for State 2, which were required based on her past income. Her failure to comply with legal obligations for so many years casts doubt on her current judgment and reliability. AG ¶ 20(a) does not apply.

Applicant established limited mitigation under AG ¶ 20(b), as there is some evidence that a problem with a tax software program contributed to her failure to timely file 2009 tax returns. That was a circumstance beyond her control. However, there is insufficient evidence to conclude that her failure to file subsequent returns was related to circumstances beyond her control, or constituted responsible action under the circumstances.

The evidence is insufficient to establish mitigation under AG ¶ 20(c). Applicant filed her 2009, 2010, 2011, and 2012 Federal tax returns the day before her hearing.

She also filed some state tax returns around or after the same time. Her 2013 and 2014 Federal returns remain unfiled because she cannot locate a tax preparer with experience in foreign earnings. She has not researched or addressed the five delinquent medical debts. She made one payment in May 2016 to the apartment complex creditor. The last time she participated in credit or financial counseling was over 20 years ago. The evidence does not indicate that the alleged security concerns are under control.

Applicant did not sufficiently demonstrate that she made good-faith efforts to address the unfiled Federal and state tax returns or pay delinquent debts. In her April 2015 SF-86, she disclosed her unfiled Federal and state tax returns for years 2009 through 2014. In June 2015, she discussed those matters with an investigator. In December 2016, she filed Federal tax returns for 2009, 2010, 2011, and 2012, and some state tax returns, but not all, based on a tax preparer's advice. Around the same time, she made a payment arrangement with the IRS to resolve a 2011 Federal tax lien. She did not provide evidence of any payments into that plan. She has not resolved any 2010 medical debts, and made one small partial payment in March 2016 to the apartment complex creditor on a debt that arose in early January 2009. AG ¶ 20(d) does 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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) 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 include 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 facts and circumstances surrounding this case. Applicant is an intelligent, articulate, and candid 47-year-old woman, who has worked for an employer since April 2015. She has earned the support and recommendation of her employer and colleagues. She has done a commendable job as a single parent in raising her son. She regrets her financial mistakes. These are positive factors in this case.

However, Applicant's history of failing to timely file Federal tax returns from 2009 through 2014, along with unresolved delinquent debts, preclude her from obtaining a security clearance. She filed four outstanding Federal tax returns shortly before this hearing. She also filed some state returns around the same time, although the years involved are unknown. Federal tax returns for 2013 and 2014 remain unfiled. Her explanation for not filing them because she could not locate a competent tax specialist, is not persuasive. She did not investigate the alleged medical bills in an attempt to resolve them. She has not consistently made payments toward the delinquent apartment debt. Although she she recently made progress in managing unfiled taxes, she has not yet established a consistent record of complying with tax laws or managing financial obligations. Her actions to date are not sufficient to outweigh a history of non-compliance with a fundamental legal obligation to file and pay taxes. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).²

The record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.i:

Against Applicant

² ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge