



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



In the matter of:)
)
) ISCR Case No. 15-07923
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On March 5, 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 April 14, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 6, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the

FORM on June 15, 2016. Applicant's response from June 2016 is marked as Applicant's Exhibit (AE) 1. The case was assigned to me on March 10, 2017. The Government's documents identified as Items 1 through 3 and AE 1 are admitted in evidence without objection.

Findings of Fact

Applicant is 62 years old. She obtained her high-school diploma in 1973. She was previously married from 1976 to 1983, and has one adult child.

Applicant was unemployed from September 2012 to September 2013, and April 2014 to August 2014. Applicant supported herself through personal savings during both periods of unemployment. Applicant worked part-time as a cashier from August 2014 to April 2015. She began her current job with a federal contractor in February 2015. She was first granted a DOD security clearance in 1981.¹

The SOR alleges Applicant's failure to file her federal and state income tax returns for tax years 2011 through 2014, as required. Applicant disclosed her failure to file her federal and state income tax returns in her Questionnaire for National Security Positions (SF 86) from April 2015, and during her interview by an authorized DOD investigator in May 2015. She stated that she was consulting with a tax professional and expected to file her relevant tax returns by December 2015.²

Applicant attributes her failure to timely file her relevant federal and state income tax returns to poor record keeping. In addition, she stated that she had been living in one state while simultaneously dealing with her elderly mother's health issues and living arrangements in another state. Applicant tried to maintain her own as well as her mother's finances, to include attempting to file both of their tax returns. Applicant became distracted and confused by the difficulty of doing so, and her financial records system became problematic. She thus was unable to provide appropriate tax records to file her 2011 tax returns, which then caused difficulties for subsequent tax years. Applicant provided a letter from a tax company dated April 14, 2016, which states that they have prepared Applicant's income tax returns for 2011 through 2015 and will submit them to the IRS and relevant states upon receipt of information from Applicant.³

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.

¹ Items 2, 3; AE 1.

² Items 1, 2, 3.

³ Items 1, 2, 3; AE 1.

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, 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 is potentially applicable in this case:

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

Applicant failed to file her federal and state income tax returns for tax years 2011 through 2014, as required. There is sufficient evidence to support the application of the above disqualifying condition.

Conditions that could mitigate the financial considerations security 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; 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.

As of June 2016, Applicant had yet to file her federal and state income tax returns for tax years 2011 through 2014. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her failure to timely file her relevant tax returns casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Circumstances beyond her control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. Applicant had not filed her relevant federal and state income tax returns, despite her indication that she planned to do so by December 2015. While she provided documentation from April 2016 to show that she was working with a tax company, they had not yet filed her tax returns. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances, or that she has her financial situation under control. AG ¶¶ 20(b) and 20(c) are partially applicable.

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 this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked for her current company since 2015. She was first granted a DOD security clearance in 1981. Circumstances beyond her control contributed to her failure to file her federal and state income tax returns from 2011 through 2014, as required. As of June 2016, she had yet to file her tax returns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge