



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



In the matter of:

)
)
) ISCR Case No: 15-08458
)
)

Applicant for Security Clearance)

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

03/30/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of Federal income tax problems and delinquent debts. She did not mitigate those financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 2, 2015, Applicant submitted a security clearance application (SF-86). On June 17, 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 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 July 8, 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 16, 2016, DOHA issued a Notice of Hearing setting the case for December 8, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified, called one witness, and offered Applicant Exhibit (AE) A into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on December 19, 2016. The record remained open until January 13, 2017, to give Applicant an opportunity to submit additional evidence. She timely submitted AE B, to which Department Counsel had no objection.

Findings of Fact

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

Applicant is 43 years old and unmarried. She earned a bachelor's degree in 2001 and a master's degree in 2011. In 2000, she began a position with a private company that has a defense contract. (Tr. 21-22.)

On March 2, 2015, Applicant submitted an SF-86. In response to questions related to her financial record, she disclosed that she failed to file and pay Federal taxes for 2012 and 2013. She stated that the reason for her failure was procrastination. She estimated that she owed \$5,000 for each year. (GE 1.) On April 17, 2015, a government investigator interviewed Applicant and discussed, among other things, her finances and tax issues. In response to questions about a June 2008 tax lien for \$13,866, Applicant acknowledged owing the tax and stated that she intended to address it soon, along with other matters, subsequently alleged in the SOR. (GE4.)

Applicant has a history of income tax problems and delinquent debts, dating back to 2003. In June 2008, the Internal Revenue Service (IRS) filed a \$13,866 tax lien for unpaid taxes for 2003, 2004, and 2005. Applicant paid that debt on March 25, 2016, after which the tax lien was released. She did not recall making any payments on the lien between 2008 and March 2016, because paying it was not her priority. (Tr. 33, 36-37; Answer.)

Applicant failed to timely file Federal income tax returns for 2012 and 2013, and to pay taxes due for those years. (Answer.) A contributing factor to her failure to file was her mother's illness and death in 2012. Subsequently, Applicant became responsible for managing her mother's estate and affairs. She later began to feel depressed and overwhelmed by her life and her mother's death, which caused her to procrastinate and ignore personal financial obligations. (Tr. 23-27.)

Applicant filed her 2012 and 2013 Federal income tax returns on May 1, 2015, two months after she completed her March 2, 2015 SF-86. (Tr. 27-28.) According to the returns, she owed \$5,724 for 2012, and \$9,666 for 2013. On March 25, 2016, she made

a payment to the IRS for \$13,784 for tax year 2013, as noted on the payment receipt.¹ (Tr. 31-34; Answer; AE B.)

Between March 22 and 25, 2016, Applicant made four additional payments to the IRS: \$2,369.91; \$14,172.45; \$10,117.69; and \$3,698.87. These four payments totaled \$30,358.92. (AE B.) There is no record evidence clarifying the tax years to which these payments applied, including for 2012. (Tr. 29.) Applicant's exhibit indicated that on March 18, 2016, she transferred \$48,000 from an investment account to a checking account to cover the \$44,143 tax debts she paid that month. (AE B.)

Applicant timely filed her 2014 and 2015 Federal tax returns. However, she owes the IRS \$25,000 for about five years of unpaid taxes, including 2014 and 2015. She started a payment plan with the IRS in May 2016.² She is paying \$550 through monthly automatic deductions from her paycheck. She usually owes money to the IRS each year because she does not have sufficient money withheld from her salary. She noted that she has essentially owed money to the IRS for tax years from 2003 to 2015. She said she has had difficulty locating a competent tax professional to assist her with tax withholding issues, but found an individual a couple years ago. (Tr. 38-41, 48.)

In addition to alleging tax matters, the SOR alleged two delinquent debts: a \$270 debt owed to an apartment complex, and a \$221 medical debt. She paid the \$270 debt in March 2016 and the \$221 debt in July 2016. (Tr. 42-42; Answer, AE A.)

Applicant's annual salary is \$77,000. After paying living expenses and the IRS, she has about \$900 remaining at the end of the month. She said her finances are stable. She participated in credit counseling in 2000 or 2001. (Tr. 43-46.)

Applicant's manager for the past two years testified. He is aware of this proceeding and the underlying security concerns. He has not observed Applicant engaging in any behaviors that affect her job performance. He stated that Applicant's coworkers have a high regard for her and her work ethic. He said that she has a strong performance rating with the company. (Tr. 17-20.)

Applicant acknowledged that she has been irresponsible in resolving tax issues. She did not want to use her mother's death as an excuse for not filing her 2012 and 2013 taxes. She admitted that in the past she has not taken time to resolve these issues. (Tr. 51; AE B.)

¹This amount was more than the estimated amount recorded on Applicant's 2013 return.

² According to AE B, Applicant started the payment plan to the IRS in September 2016, and not May 2016.

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.³

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

Applicant has a long history of unwillingness to satisfy her Federal tax obligations, beginning in 2003. She failed to timely file Federal income tax returns for 2012 and 2013. She also has been unwilling to resolve delinquent debts. The evidence is sufficient to raise the above disqualifying condition.

After the Government produced substantial evidence of the disqualifying condition, 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

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

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 resolve unpaid Federal taxes on a timely basis is ongoing. As of March (or December) 2016, she entered a payment plan with the IRS to resolve \$25,000 of unpaid taxes, which accrued over five tax years. Her failure to comply with legal obligations for years casts doubt on her current judgment. AG ¶ 20(a) does not apply. Applicant failed to establish mitigation under AG ¶ 20(b), as there is insufficient evidence to conclude that circumstances beyond her control prevented her from timely filing Federal tax returns for 2012 and 2013. In fact, she admitted that procrastination contributed to the late filings of the tax returns, and her failure to responsibly resolve unpaid taxes. The evidence does not establish sufficient mitigation under AG ¶ 20(c), as the credit counseling she stated she took was over 15 years ago, and there is no indication that her tax issues are under control. She is currently making payments to the IRS for unpaid taxes that accumulated over five tax years.

Applicant has not made good-faith efforts to address tax problems or pay delinquent debts since 2003. In March 2015, she disclosed information pertinent to unfiled and unpaid 2012 and 2013 Federal taxes. In April 2015, she discussed the matters with an investigator and indicated she intended to resolve the issues. However, she waited another month to file the income tax returns, and did not pay the 2013 taxes until March 2016. Although she made several payments to the IRS in March 2016, it is unclear whether any of them addressed her 2012 tax liability or what years those payments were applied to. She did not resolve the two small delinquent debts until mid-2016. 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 truthful 43-year-old woman, who has successfully worked for her employer since 2000. She is dedicated to her job. She has earned the support and recommendation of her employer. These are positive factors in this case.

However, Applicant's long history of tax problems precludes her from obtaining a security clearance. She acknowledged that she has owed taxes each year from 2003 to 2015, because she failed to have sufficient money withheld from her paycheck. In March 2016, she paid the IRS over \$44,000 to resolve many of those years, including 2003, 2004, and 2005. The other years involved are unknown. She is currently making payments on unpaid taxes for five (unspecified) years. She filed her 2012 and 2013 Federal tax returns late. Within the past year, she paid two old debts. While testifying, she displayed candor about her financial issues, but was unclear as to the status of her tax problems and at times confused. At this time, she has not established a record of complying with tax laws and managing financial obligations. Her actions to date are not sufficient to outweigh a long 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).⁴

⁴ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

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.e:

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

SHARI DAM
Administrative Judge