



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



In the matter of:

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) ISCR Case No.16-01068
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Applicant for Security Clearance

Appearances

For Government: Benjamin Dorsey, Esq. Department Counsel
For Applicant: *Pro se*

11/03/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

On September 14, 2016, The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising 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 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.¹

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 7, 2017. The hearing was scheduled by notice on June 6, 2017 for September 7, 2017. Government Exhibits (GX) 1-4 were admitted into

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-N, which were accepted into the record. The transcript was received on September 15, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a-d and also provided explanations with her responses.

Applicant is a 32-year-old employee for a defense contractor. Her husband left her in 2015, after she had a baby. (Tr. 36) She obtained her undergraduate degree in 2017. She served in the U.S. Marine Corps from 2003 to 2010, receiving an honorable discharge. She has been with her current employer since 2011. She completed her most recent security clearance application (SCA) in 2014. She has held a security clearance since 2006. (GX 1)

Financial Considerations

The SOR alleges that Applicant has a past-due account in the amount of \$727; a home foreclosure in 2010, and that Applicant failed to timely file and pay Federal and state income tax returns for tax years 2012 and 2013.

Applicant's answer provided reasons for the delinquent accounts. During her personal subject interview, she noted that her husband always handled the finances. She did not know that he did not file the federal income tax returns for 2012 and 2013 until she received a notice in 2014. (GX 2) The income tax returns were always filed in both names. He neglected to file the federal income tax returns and did not bother to tell Applicant. He stated that he would file them, but he did not. At the time, she was having fertility treatments and trying to have a baby.

As soon as she learned about the failure to file the federal tax return, she addressed the issue. She disclosed on her 2015 SCA that she tried to send the income tax returns with turbo tax, but the returns were rejected. (GX 1, Tr. 51) She spoke to the IRS numerous times and they confirmed that she had tried to send them online. (Tr. 13) The IRS advised her to send the returns in with a paper copy. Applicant acknowledged that since she had not been the one to prepare the taxes, she was a bit confused. (Tr. 49) Her husband finally spoke to the IRS in 2016. She stated that the marital separation in 2015 caused other financial issues. She and her husband tried to reunite but they were not successful. She had a baby in 2015 and her husband deserted her, and she was left to care for the child who was sickly. She now receives day care money and he is paying the tax payments. (Tr. 39) She has filed for divorce. (Tr. 61)

As to SOR ¶ 1.a, failure to file and pay the Federal income tax returns for tax year 2012, as required, Applicant did not know that was the case. Her husband always handled the tax returns (married filing jointly). Applicant described the convoluted process with the IRS when she began to address the issue in 2013, the IRS told her to

wait six to eight weeks and re-file. (Tr.14) At the time she was having fertility treatments and did not get the issue resolved. She documented each step and testified credibly that she was finally told by the IRS that someone had stole her identity and a \$14,000 refund was sent to Georgia. (AX D) After years of going back and forth, the IRS finally understood the problem that Applicant was having filing the tax returns and the returns being rejected. (AX E) In 2016, all federal income tax returns were filed and an installment agreement was initiated. (AX C, E, F, G, H) The payments are \$400 monthly.

As to SOR ¶ 1.b, Applicant stated the same reason as above for the failure to file and pay state income tax returns for 2012 and 2013, as required. Until the federal income tax returns were filed, the state could not be processed. (Tr. 27) Any refund money for the years in question were sent to the IRS. The state tax returns have been filed. (AX I-K)

As to SOR ¶ 1.c, a past-due auto account, collection account for \$727, she has paid the account and it is current. (AX L) The delinquency was the result of her husband leaving Applicant and the baby in 2015. She was left with one income and a child who had many special health needs. (Tr. 30) The loan was for her husband's truck. It is now current. (Tr. 78; GX 4)

As to SOR ¶ 1.d, a 2010 home foreclosure, Applicant and her husband purchased a home in 2008, when they were both in the military. They used the VA home loan for the purchase. In 2009, Applicant's husband could not find employment after he left the military. He finally found employment but his pay was about \$1,000 less a month than his previous income. Applicant left the military in 2010, and did not find employment immediately. During this time they both commuted long distances for work and with higher gas prices, they started to encounter financial problems. The house required major repairs and expenses in general were high. After a severe storm, a tree fell on the roof of the house and more repairs were necessary. Applicant contacted the bank to obtain a loan modification. (AX) She had difficulty again paying the mortgage and contacted the bank and was told to stop making mortgage payments so that they could lower the payments or do a short sale. Applicant stated that she waited for them to call back and found out that the house was going to foreclosure. (Tr. 32) She received a letter from the bank that she did not owe any money after the foreclosure. (AX M, N) Applicant provided a letter that no deficiency is due.

Applicant's current salary is \$88,000 a year. She also receives a benefit from the military in the monthly amount of \$1,234. She now lives with her aunt and uncle and pays \$400 in rent. She has discretionary income at the end of the month. She is current with her bills. She has no tax issues. She obtained financial counseling and works with a budget. She has medical bills for her child. She has paid two credit cards in full. (GX)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 national security eligibility 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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."⁵ "The clearly consistent standard indicates that security clearance

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay.

The Government produced credible evidence to establish the delinquent debts and the non-filing of Federal and state income tax returns. Consequently, the evidence is sufficient to raise disqualifying conditions. ¶¶ 19(a), 19(b) and 19 (f).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant and her husband were in the military and her husband handled the finances. He neglected to file federal income tax returns for 2012 and 2013, but did not alert his wife. She learned about the issue in 2014 and worked diligently with the IRS to resolve the issue. In the interim, there was identity fraud and a refund of \$14,000 was sent to someone in Virginia. Applicant was on fertility treatments and trying to have a baby. She documented her efforts with the IRS and was credible in her testimony. In 2015, when she had the baby, who has health problems, her husband left her. She was still working with the IRS on resolving her tax issues. She could not file the state tax returns until the federal taxes were resolved. The federal and state returns have been filed and an installment agreement was initiated. She tried to pay for her husband's truck and that is now current. As to the home foreclosure in 2010, Applicant and her husband experienced problems after her husband left the military. They tried for a loan modification and a short sale. They learned the house went to foreclosure. There is no deficiency that is owed. She has encountered many challenges to provide for her child since her husband left her. However, she acted responsibly in resolving her financial issues and has a job. I have no doubts about her judgment or reliability. MC AG ¶¶ 20 (a), (b), (c), (d), and (g) apply. She has met her burden to alleviate the security concerns under the financial considerations guideline.

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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶2(d).

(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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 32 years old. She served in the U.S. Marine Corps receiving an honorable discharge. She has held a security clearance for many years. She married and had a child in 2015. Her husband left her with the child in 2015. He had handled all the finances, but he neglected to file federal and state income tax returns in 2012 and 2013. Applicant learned about this situation in 2014 and dealt with it immediately. She has worked with the IRS, had identity theft, pregnancy issues and acted responsibly. The tax returns are filed and an installment agreement is in place. Applicant was credible and sincere with her testimony at the hearing. She has sought financial help and works with a budget. She lives with her aunt and uncle. Her tax issues are resolved. She is filing for divorce. She presented sufficient evidence to mitigate security concerns under the financial considerations guideline.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude that Applicant has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

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: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge