



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



In the matter of:)
)
) ISCR Case No. 17-00626
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*
11/07/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has not mitigated the security concerns raised by her failure to resolve her tax issues and her unresolved delinquent debts. Clearance is denied.

Statement of the Case

On March 17, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guidelines¹ Applicant timely answered the SOR and requested an administrative determination.

On May 26, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant eight exhibits for admission into the record. The exhibits accompanying the FORM are admitted into the record. Applicant did not respond to the FORM. On October 20, 2017, I was assigned the case for decision.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant is 59 years old. She has been divorced twice and has two adult sons. She has been self-employed as a personnel security specialist from December 15 to the present. She was employed with a temporary agency from February 2014 to December 15, 2015. She has been unemployed for periods of time in 2013 and 2014. She worked short-term jobs from 2010 to 2013. She graduated from high school in 1975. Applicant completed her security clearance application in December 2015, disclosing delinquent debts from 2009, and failure to file her federal income tax returns from 2010 to 2014. (Item 4) She also reported that she had her wages garnished in mid 2015.

Applicant admitted the SOR allegations in her 2016 investigative interview. She stated that she did not have the income due to unemployment or low-paying jobs. (Item 8) In her answer, she admitted all SOR allegations, but provided no details. She also stated that she had not filed her federal income tax returns. (SOR 1.i and 1.j) After admitting ten allegations in the SOR, she did not provide any documentation as to payment plans or resolution of any of the delinquent debts. (Item 1) The total amount of the debts listed in the SOR is \$13,263 (SOR 1.a-h). (Item 2) Applicant did not provide a plan for future resolution of the debts, although she intends to pay her debts. (Item 2) In her answer to the SOR, she stated that all federal income tax returns were filed, but again provided no documentation for the assertion. (Item 6) It is not clear from the record as to the current financial status because she did not submit any information.

Applicant did not provide any documentation that she has satisfied the allegations. Applicant did not send any information with her Answer to the SOR. She chose to have a decision rendered on the written record, but did not provide any information to allow mitigation. She has not met her burden of proof in this case.

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(a), 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 national security eligibility will be resolved in favor of the 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.

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

Financial Considerations

Applicant's finances remain a source of concern. Failure to meet one's 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.² Applicant's

² AG ¶ (18).

admissions and the credit reports establish the Government's *prima facie* case that Applicant has a history of not meeting her financial obligations and that she did not file her federal income tax returns from 2011 to 2015. Her reason for the delinquent debts is unemployment, but that does not relieve her of her obligation to file her tax returns. She presented no documentation with her answer to the SOR, and even after receiving a notice concerning documentation from Department Counsel regarding specific information, she did not provide relevant information. She stated that she will pay her debts and that her tax returns have been filed, but there is no information in the record. Applicant's financial problems are ongoing and were partially caused by events beyond her control (unemployment). Although Applicant has expressed a desire to repay her creditors, the alleged accounts remain unresolved and Applicant did not present a plan for resolving them.³

After a review of the record and a consideration of the whole-person factors at AG ¶ 2(d), I conclude that Applicant's financial problems render her unsuitable for access to classified information at this time. It is Applicant's burden to provide information to show what action she has taken towards paying, settling, or otherwise resolving any of her debts, in order to show that the debts are no longer a security concern. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to reapply for national security eligibility in the future. Rather, it is recognition of the fact that financial issues have historically been a motivating factor behind acts of espionage. The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, she may present persuasive evidence of financial rehabilitation and reform in the future.

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, Financial Considerations:	AGAINST APPLICANT
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Subparagraphs 1.a-1.j:	Against Applicant
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³ AG 19

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge