



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



In the matter of:

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ISCR Case No. 17-00939

Applicant for Security Clearance

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel

For Applicant: *Pro se*

08/28/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern generated by her delinquent debts and tax returns. Clearance is denied.

Statement of the Case

On May 9, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, alleging several delinquent debts and explaining why they generate security concerns under Guideline F, financial considerations. The DOD CAF took the action 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* (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 30, 2017, requesting a hearing. She neither admitted nor denied the debts alleged, but contended that they had all been satisfied or deleted from her credit report. I will construe her responses as denials. The case was

assigned to me on April 13, 2018. On June 1, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for June 21, 2018. The hearing was held as scheduled. I received six Government exhibits (GE 1 – GE 6) and considered Applicant's testimony. Also, Department Counsel amended the SOR at hearing, adding subparagraphs 1.n and 1.o. (Tr. 30) Applicant did not object and admitted the supplementary allegations.

At the close of the hearing, I left the record open until July 12, 2018, to allow Applicant the opportunity to submit documentation. She submitted nothing. The transcript (Tr.) was received on June 29, 2018.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing 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 AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

Findings of Fact

Applicant is a 58-year-old woman with four adult children. She was married previously from 1985 to 1995. (GE 1 at 15) The marriage ended in divorce. She is a high school graduate who has earned some college credits. For the past 13 years, she has worked for various defense contractors as a technician analyst. (Tr. 13; GE 1 at 11)

In 2005, Applicant began falling behind on her income tax return filings. This occurred because of miscommunication with her ex-husband that resulted in both of them claiming their children as deductions during the same years. The IRS contacted her in 2008, informing her that, in addition to being behind on her income tax filings, she owed a delinquency. (Tr. 16) Applicant then began working with the IRS to develop a payment plan. By 2010, the delinquency totaled \$30,392, as alleged in subparagraph 1.a. (Tr. 20) That year, the IRS filed a lien against Applicant's property for the delinquent amount. (Tr. 21) Applicant contends that the filing delay occurred because her ex-husband died in 2008, complicating her ability to obtain his income tax records. (Tr. 17) Applicant testified that she satisfied the lien through 18 monthly payments. (Tr. 15) She provided no evidence supporting this contention.

Applicant has not filed any federal or state income tax returns since 2012, as alleged in subparagraphs 1.n and 1.o. (Tr. 23) She is working with an uncertified accountant to prepare these returns. (Tr. 24)

The remainder of the SOR delinquencies are medical bills. Applicant has periodically had trouble keeping up with her medical expenses, as some of her employers had insurance plans that did not cover her medical expenses. (Tr. 26) Subparagraph 1.b is a judgment for \$4,375. Applicant contends that she has paid it, but the supporting

documentary evidence is unclear. (Answer at 4) The remaining medical debts, as alleged in subparagraphs 1.c through 1.m, are co-pays totaling \$123. Applicant paid these debts. (Answer at 6; Tr. 26)

Applicant earns \$56,200 annually. (Tr. 27) She has approximately \$2,000 deposited in a savings account. (Tr. 29)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge’s overall 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 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 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.” See *also* EO

12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

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.

Applicant satisfied the medical bills alleged in subparagraphs 1.c through 1.m. I resolve these allegations in her favor. Applicant also contends that she satisfied the medical judgment alleged in subparagraph 1.b; however, the supporting documentation is unclear. This judgment, together with Applicant's delinquent income taxes and unfiled income tax returns trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts;" AG ¶ 19(c), "a history of not meeting financial obligations;" and AG ¶ 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax, as required."

Applicant's problems with her income tax returns stemmed from miscommunication with her ex-husband, who, unbeknownst to her, claimed their minor children for deduction purposes on his tax returns during the same years that she claimed them. Her ability to resolve the tax controversy was complicated by her ex-husband's death in 2008. Her medical bills stemmed from health problems that occurred when she worked for an employer with inferior health-care coverage. Under these circumstances, the first prong of AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control . . . " applies.

¹ The factors under AG ¶ 2(d) are as follows:

(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.

Applicant produced no evidence supporting her contention that she has satisfied the tax delinquency or the medical judgment. Moreover, she has yet to file federal or state income tax returns for 2013 through 2017. Neither the second prong of AG ¶ 20(b), nor any of the remaining mitigating conditions apply.

Whole-Person Concept

Incurring delinquent income taxes and failing to file income tax returns poses a security risk that is more serious than incurring commercial delinquencies, as it indicates that Applicant may “have a problem abiding by well-established rules and regulations.” (ISCR Case No. 15-01031 (June 15, 2016) at 4). Moreover, given that Applicant has not filed any income tax returns in more than five years, her financial problems are not under control. Given the nature and seriousness of Applicant’s financial problems and the lack of any plan to resolve them, I conclude Applicant has not mitigated the security concerns.

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 and 1.b:	Against Applicant
Subparagraphs 1.c – 1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge