



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



In the matter of:)
)
) ISCR Case No. 17-01234
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On May 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.

Applicant answered the SOR on June 2, 2017, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on September 8,

2017. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6.¹ Applicant provided a response to the FORM. She did not object to the Government's evidence, and the documents are admitted. She submitted documents and they are marked as Applicant's Exhibits (AE) A through F. They were admitted into evidence without objection. The case was assigned to me on December 20, 2017.

Findings of Fact

Applicant admitted the SOR allegation in ¶ 1.a. She did not provide an answer to SOR ¶ 1.b. I will consider her unresponsiveness to SOR ¶ 1.b as a denial. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. She has attended college, but not earned a degree. She has never been married and has no children. She has worked for present employer, a federal contractor, since June 2010. In the past she has worked for different federal contractors, and has had short periods of unemployment.²

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in March 2016. She disclosed in the e-QIP that a tax professional she hired filed her state income tax returns for tax years 2009, 2010, and 2011 incorrectly, and she was subsequently audited in 2015. She indicated she was participating in a repayment plan with the state comptroller. She estimated the total amount of state tax owed was \$14,000.³ The state entered two tax liens against her in 2015 (SOR ¶¶ 1.a - \$15,170 and 1.b- \$729).

Applicant said in her answer to the SOR that her tax professional made mistakes on her state income tax returns for tax years 2010, 2011, 2012, and 2013. The state comptroller was sending her correspondence, but Applicant had moved and did not receive notice of her tax debt until September 2015 when tax liens were entered. She stated she immediately requested a payment plan from the state. She also advised her facility security officer. Applicant provided a letter from the state comptroller accepting a payment plan that was established on September 1, 2015, which was to begin monthly installments of \$228 beginning in October 2015. Applicant provided a letter from May 2017, from the state comptroller indicating it had received payments toward the debt and the total amount owed for tax years 2010 through 2015 was \$14,668. Applicant provided no explanation for why 2014 and 2015 were included in the plan.⁴

¹ Item 1 is the SOR.

² Item 3.

³ Item 3.

⁴ Item 2.

Applicant stated in her answer that her 2012 through 2015 state tax returns “are currently under amendment to date to correct the errors and settle my actual balances with the state of [name] after the amendments are processed.”⁵ She was advised this could take up to 60 days. Applicant provided copies of letters from the state comptroller from May 2017 acknowledging it had received her requests.⁶

Applicant did not abide by the October 2015 agreement to pay \$228 monthly. She made five payments from October 2015 to February 2015. She did not provide an explanation for why she stopped making payments. She stated in her answer that in May 2016, she requested the state comptroller to deduct \$100 monthly payments from her paycheck. She indicated she had not missed a payment.⁷

In Applicant’s FORM response, she provided documentation that the tax lien in SOR ¶ 1.b for tax year 2014 was released in August 2017.⁸ She provided a letter from the state comptroller that listed her monthly payments. It appears that in 2012 Applicant began making sporadic payments toward her 2009 state tax debt. She made eight payments in 2012 totaling \$785. In 2013, she made two payments toward her 2009 state tax debt totaling \$211. No payments were reflected for 2014. In 2015, she made three payments toward her 2009 tax debt, totaling \$688. In May 2016, Applicant began making payments of \$100 a month, which were applied to her 2009 taxes. She has made consistent payments through August 2017. Also included in her payment history were refunds for tax years 2011, 2015, and 2016 that were applied to tax year 2009. In April 2017, her payments were applied to her 2010 tax year debt. In August 2017, she had a payment applied to tax year 2014. Applicant offered no explanation for sporadic payments made in 2012, 2013, and 2015 toward her 2009 tax debt when she previously indicated that she was unaware she had a tax problem until she was notified in September 2015..⁹

Applicant provided a document from the comptroller from September 2017, indicating the current balance owed for tax years 2010 through 2013 is \$9,091.¹⁰

Policies

⁵ Item 2.

⁶ Item 2; AE C.

⁷ AE C.

⁸ AE F.

⁹ AE B, C. It is unknown if Applicant had a previous payment plan for unpaid taxes with the comptroller for tax year 2009. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying conditions. It may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

¹⁰ AE D.

When evaluating an applicant's suitability for a security clearance, the 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, which are 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, these guidelines are applied 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to 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 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." 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 relating to the guideline for financial considerations is set out 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. 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 overextended is at 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 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 tax returns or failure to pay annual Federal, state, or local tax as required.

Applicant had two unresolved 2015 tax liens for delinquent state taxes. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(f) 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 began addressing her tax liens before she received the SOR. She has been on a consistent payment plan since the middle of 2016. She acknowledged that there was a problem with her tax filings for several years, and she is attempting to resolve the issue with the state comptroller. It appears she understands the seriousness of resolving her tax problems, remaining financially responsible, and its impact on maintaining a security clearance. The evidence supports that future tax problems are unlikely to recur, and her tax issues do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Applicant stated that her tax professional made mistakes on her state tax returns that she was unaware of until September 2015 when tax liens were entered. She acknowledged that she moved and did not receive correspondence from the comptroller until 2015. I find these circumstances were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Although I have questions about Applicant's sporadic tax payments made in 2012, 2013, and 2015 toward her 2009 tax debt, I find AG ¶ 20(b) applies because since May 2016 she has been making consistent payments to resolve her tax liens. Applicant has acted responsibly.

There is no evidence that Applicant received or is receiving financial counseling. There is evidence that she is resolving her tax liens. AG ¶ 20(c) partially applies. Applicant initiated a payment plan with her state's comptroller to resolve her tax liens. She has satisfied the tax lien in SOR ¶ 1.b. She is resolving through a payment plan the tax lien in SOR ¶ 1.a. AG ¶¶ 20(d) and 20(g) 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 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.

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

Applicant is 34 years old. She is resolving the remaining tax lien alleged in SOR ¶ 1.a. She began resolving her tax problems before she received the SOR. Applicant's adherence to the payment plan reflects that she understands the seriousness of complying with tax requirements and financial obligations and the potential impact it may have on maintaining security clearance eligibility. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge