



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 17-01807

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by her tax-related issues. Clearance is denied.

Statement of the Case

On June 17, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Specifically, the SOR alleged that Applicant failed to file her federal income tax returns for tax years 2011 through 2015 as required and was indebted to the federal government for delinquent taxes for 2010 and 2011. Other allegations included collection accounts and two judgments.

On July 6, 2017, Applicant answered the SOR (Answer), admitting that she had failed to file her federal tax returns for the years in question in a timely manner and that she is indebted to the federal government for delinquent taxes. (SOR 1.a-c) She denied SOR 1.d., and the Government conceded that allegation. The Government withdrew SOR 1.h. She also provided documentation showing that she filed the late income tax returns in 2015 and 2017. She requested a determination on the administrative (written) record.

On July 31, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). On August 3, 2017, the Defense Office of Hearings and Appeals received Applicant's FORM Response. On November 21, 2017, I was assigned Applicant's case. I received confirmation of Applicant's continued sponsorship for a security clearance.

Findings of Fact

Applicant, 53, earned a bachelor's degree in 1989. She obtained a graduate degree in 1993 and attended law school from 1998 to 1999, but did not pursue a degree. She was first granted a security clearance in 1992, and has been employed as a federal contractor since at least 2013. She began working for her current employer in approximately December 2015.

Applicant, in response to the SOR 1.b and 1.c, volunteered that she did not timely file her 2016 federal income tax return.¹ Applicant filed her 2011, 2012 and 2013 federal income tax returns in February and April 2015. (Items 2, 3, and 4) She filed her 2014, 2015, and 2016 federal income tax returns in June 2017. Applicant's reasons for late filing include 2010 unemployment, an employer's failure to withhold taxes, the lack of necessary forms from an employer, receipt of incorrect tax forms from an employer, and inability to afford to hire a tax preparer. (Item 3) There is no documentary evidence in the record showing Applicant contemporaneously contacted the IRS each year to seek assistance, or that she filed a request for an extension.

Applicant admits being indebted to the IRS for unpaid 2010 taxes (\$2,494). She provided documentation that the 2010 tax was paid in 2016, through the retention of proceeds from her 2016 refund. (Response to FORM). She also provided a 2017 installment agreement with the IRS for her 2011 delinquent federal taxes (\$14,644), showing that she pays \$500 monthly. She submitted some payment details with an online payment agreement for 2014 as well. The balance was \$11,778 for both years. (Response to FORM) SOR 1.b and 1.c It is not entirely clear from the record but it appears that Applicant still owes some money for her 2012 and 2013 tax years. (Response to FORM)

Applicant admits that she is responsible for the 2009 judgment in 1.e in the amount of \$802, as well as the 2012 judgment in 1.f in the amount of \$3,973. These judgments are not satisfied (Items 7 and 8). The original debts were sold and she recently began working with Debt Relief program to settle the judgments, as well as several other debts. She provided documentation that she is making a monthly payment of \$270 since August 2017. (Response to FORM)

As to 1.g and 1.i, student loans, Applicant presented documentary evidence that she is responsible for and is current as of July 2017. (Items 2-6) The Government conceded that the student loans are current.²

A collection account alleged in 1.j for \$835 is unresolved, as Applicant was not aware of the bill. She spoke to the company and they could find no account. This debt has not been resolved. Applicant admitted to the debt in 1.k, for parking tickets (\$1,325.99). She settled the tickets for \$1,072. (Items 2 and 5)

Applicant emphasized that she became self-employed in 2010 and her home was foreclosed in 2012. She claimed she had little to no income for tax years 2010-2012. She agrees her tax returns were late but she has filed them. She stated that her salary has increased to \$130,000 and she can pay her bills. According to the Debt Relief program she will receive financial counseling. She notes that her total outstanding debt is about \$24,548.

During her 2016 investigative interview, Applicant explained that she defaulted on a loan, had bills or debts turned over to a collection agency, had been more than 120 days late on a debt, and had been delinquent on her student loans, which are now consolidated and current. She stated that she was not aware of any judgments. (Item 4) Applicant has been aware of these debts since her June 2016 interview, but only recently settled some, such as the debt in 1.k.

While Applicant has partially or fully resolved some of the issues alleged in the SOR, she has not provided evidence sufficient to fully mitigate the current security concern her conduct raises under Guideline F. The government acknowledged her current student loans, and withdrew an allegation as it was paid. However, under the totality of the facts, Applicant's failure to timely file returns for six tax years, to include 2016, and to pay taxes and penalties due is of particular concern. She filed her 2014-2016 returns after issuance of the SOR in July 2017, thereby directly calling into question her motive to file. She did not timely contact the IRS or file an extension. She paid her 2010 tax bill in 2016 through the IRS retention of part of her 2016 tax refund. This unilateral action is essentially an involuntary garnishment and is not evidence of good faith repayment. She has started a payment agreement with the IRS, but submitted documentation of only one payment for each tax year in question.

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

¹ Item 2. Since Applicant admits in her Answer and Response that she filed her 2016 federal return late, she apparently did not apply for an automatic four-month extension to file the return. Also, non-alleged matters, such as this, were only considered for the limited purpose of assessing mitigation and conducting a whole-person analysis.

1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. See e.g. ISCR Case No. 15-05565 (Aug. 2, 2017) (Board reversed favorable decision where Department Counsel failed to present evidence to substantiate allegations, which applicant had denied). Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

Analysis

Guideline F, Financial Considerations

Applicant's failure to timely file her federal income tax returns and pay her debts raise the financial considerations security concern, which is explained at AG ¶ 18:

Failure to . . . 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. . . .

In assessing Applicant's case, I considered all pertinent disqualifying and mitigating conditions, including the following:

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(f): failure to file . . . annual Federal, state, or local income tax returns . . . or failure to pay as required;

AG ¶ 20(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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

An applicant who fails to timely file or pay his or her taxes, a basic and fundamental financial obligation of all citizens, bears a heavy burden in mitigating the

financial considerations security concern.³ An administrative judge should closely examine the circumstances giving rise to an applicant's tax-related issues and his or her response to it. Furthermore, an applicant's claim of financial reform must be weighed against the overriding concerns about the individual's lack of judgment and history of not abiding by rules and regulations in failing to timely file or pay their taxes.⁴

Here, Applicant presented documentary proof that she did not timely file her federal returns for six years or pay taxes and penalties. She did not file some until after the issuance of the SOR. She did not explore an extension for the tax years in question. This decreases the mitigating value that can be attached to such remedial action. Moreover, Applicant did not submit evidence from which I can find that her late tax filings were an aberrational event or that it is unlikely to reoccur. To the contrary, Applicant's failure to timely file her 2016 federal income tax return after submitting a security clearance application, wherein she claimed to be working on resolving past tax issues, evidences a disregard for her legal tax-filing obligation. In short, Applicant's past failure to timely file her federal income tax returns continues to raise questions about her present judgment, reliability, and trustworthiness.

Furthermore, although Applicant's tax returns may have been complicated, such does not excuse her repeated failure to timely file her tax returns. She also had delinquent debts and judgments, which she had not addressed. These actions preclude a finding that she has the good judgment and reliability needed to continue access to classified material. She took corrective action after it became evident that the salary she was commanding as a contractor for the federal government – a job dependent on maintaining a security clearance – was placed in jeopardy due to her failure to file her tax returns. Applicant's ability to so quickly remedy the issue undercuts her claims that the reason for the delay was the tax returns purported complicated nature, and points to a potentially far more significant underlying issue for the late filing of the returns.⁵

Under the circumstances presented by this case, I find that Applicant failed to establish any of the above-listed mitigating conditions with the exception of 20(g) in part. I also find that she failed to meet her heavy burden of proof and persuasion to continue her eligibility for a security clearance. The security concerns raised by her past failure to timely file her federal income tax returns remain. ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015) ("The filing of tax returns is both a financial and a legal obligation. Applicant's admitted failure to have done so for many years is sufficient to raise a concern that she may be unwilling to follow other rules and regulations, such as those

³ See *generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues).

⁴ ISCR Case No. 14-05794 (App. Bd. July 7, 2016); ISCR Case No. 14-00221 (App. Bd. June 29, 2016); ISCR Case No. 15-01031 (App. Bd. June 15, 2016); ISCR Case No. 12-09545 (App. Bd. Dec. 21, 2015).

⁵ ISCR Case No. 10-05909 (App. Bd. Sep. 27, 2012) (judge properly considered the manner in which and the timing of when applicant took action to resolve financial issues in concluding that the impending security clearance process was the major motivating factor).

that govern the handling of classified information.”)⁶ Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility for continued access to classified information.⁷

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 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraphs 1.g,1.i:	For Applicant
Subparagraph 1.h:	Withdrawn
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant

⁶ See also ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant’s resolution of alleged financial issue (filed overdue tax returns) was insufficient to mitigate security concerns, because no extenuating circumstances to explain late tax filing and lack of evidence of financial reform).

⁷ In reaching this conclusion, I considered the whole-person factors in AG ¶ 2(d), including that Applicant has held a security clearance for many years and self-reported the information at issue, as well as other potentially adverse information. (Item 3 at 12, 15, 41-43.)

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to continue Applicant's access to classified information. Applicant's request for a security clearance is denied.

Noreen A. Lynch
Administrative Judge