



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



In the matter of:)
)
) ISCR Case No. 17-03032
)
Applicant for Security Clearance)

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On June 10, 2016, Applicant completed an electronic Questionnaire for Investigation Processing (e-QIP). On December 7, 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 June 8, 2017.

Applicant answered the SOR on December 20, 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), and Applicant received it on February 22, 2018. The Government's evidence is identified as Items 1 through 9. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She provided a timely response and submitted documents marked as Applicant Exhibits (AE) A through F. There were no objections to any documents and they are all admitted into evidence. The case was assigned to me on June 11, 2018.

Findings of Fact

Applicant denied the allegations in the SOR ¶¶ 1.a and 1.b and admitted the allegations in ¶¶ 1.c and 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She is a high school graduate. She has never married and has an eight-year-old child. She has been steadily employed since 2004 and has worked for her current employer, a federal contractor, since May 2016.¹

The SOR alleges Applicant had two medical debts (¶ 1.a-\$99 and ¶ 1.b-\$295). She stated she was unaware of the debt in SOR ¶ 1.a because it was listed under her daughter's name incorrectly. She has paid it. She successfully disputed the debt in SOR ¶ 1.b because it was paid by her insurer directly to the creditor. It has been removed from her credit report. It is resolved.²

Applicant disclosed in her June 2016 e-QIP that she failed to file her 2010 federal income tax return. During her December 2016 interview with a government investigator, she corrected her mistake and stated it was her 2009 federal income tax return that she failed to file. She did not disclose the other tax years that she failed to file her federal income tax returns. She told the investigator that she had completed her 2009 federal income tax return on TurboTax and assumed she filed the return. She said she received notification from the IRS in January or February 2016. She had not responded to the IRS because she was not financially capable of paying the tax owed. She said she would pay what she owed when she filed her federal income taxes in January or February 2017. She was contacted on January 10, 2017, by the government investigator. She told the investigator that she could not provide any documents regarding her federal income taxes. Government interrogatories were sent to Applicant in April 2017 requesting she submit her 2009 federal income tax returns. She responded in June 2017 that she was working with tax professionals to resolve her tax issues. She later decided to resolve the tax issues herself.³

¹ Item 3.

² Item 2.

³ Items, 3, 4, 7, and 8. I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider it when applying mitigating conditions and in a whole-person analysis.

Applicant admitted she failed to file her federal income tax returns for tax years 2009, 2012, 2014, 2015, and 2016 as alleged in the SOR ¶ 1.c.⁴ In her answer to the SOR she stated:

I admit that I previously neglected to stay on top of filing my taxes and I have no excuse. As of today, I have filed my taxes for the following years- 2012 and 2014 thru (sic) 2016. I still need to file the 2009 taxes, but I am trying to locate the information I need to file them and I am hoping to have it in hand and be able to get the remaining year filed before the holidays.⁵

She further stated in her answer to the SOR:

I know there will be penalties and interest added on the top of these once the IRS processes them. My plan is to set up a payment arrangement once they have processed them.⁶

In her answer to the SOR, Applicant provided copies of IRS tax forms for 2012, 2014, 2015 and 2016. None of the forms are signed. Applicant listed on the form "SELF-PREPARED." She also provided a copy of a certified mail receipt addressed to the IRS dated December 20, 2017.⁷

In response to the FORM, Applicant provided a letter stating:

Prior to this final packet, I had sent my tax years owed (2012, 2014, 2015, and 2016) to the IRS. They have completed reviewing those tax years and have posted the final year of those four as of 3/5/2018. I attempted to make payment arrangements, but I have to wait for them to finalize and post the 2009 taxes as well before arrangements can be made.⁸

Applicant also provided copies of IRS tax transcripts. They show that the IRS received her 2012, 2014, 2015, and 2016 federal income tax returns on December 26, 2017. There is no documentary evidence Applicant has filed her 2009 federal income tax return.⁹

⁴ Item 2.

⁵ Item 2.

⁶ Item 2.

⁷ Item 2.

⁸ AE A.

⁹ AE C, D, E, and F.

Applicant was arrested in March 2000 for a fraudulent check. Court documents reflect “guilty bench trial.” Applicant admitted the SOR allegation because she checked court records, which verify the charge. In her answer, she stated she had no recollection of the charge or the event. Court records show she was convicted and made restitution of \$145.¹⁰

Policies

When evaluating an applicant’s suitability for national security eligibility, 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.

¹⁰ Items 2, 9.

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:

- (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;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and
- (g) 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 failed to timely file her 2009, 2012, 2014, 2015, and 2016 federal income tax returns. She was arrested and convicted of check fraud in 2000. She had two medical

debts that were delinquent. 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;

(c) the individual has received or is receiving financial 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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's check fraud conviction appears to have been a one-time occurrence that happened more than 18 years ago. It resulted in her paying restitution, which was a minimal amount. This behavior is mitigated by time and is unlikely to recur. AG ¶ 20(a) applies to this allegation.

Applicant was unaware of one medical debt alleged, which she paid. She disputed the other, stating it was paid by her insurance company, and it is no longer reflected on her credit report. These two debts are resolved. AG ¶¶ 20(d) and 20(e) apply to these debts.

Applicant admitted she neglected to timely file her federal income tax returns for 2009, 2012, 2014, 2015, and 2016. She failed to provide an explanation for her conduct.

She was on notice when she completed her June 2016 e-QIP, which questioned if she timely filed her tax returns, that failure to file tax returns and pay taxes is a security concern. It was not until December 2017 that she filed some of the delinquent returns. She has not provided documented proof that her 2009 federal income tax return has been filed. Her tax issues are unresolved and the evidence does not support that the behavior is unlikely to recur. AG ¶ 20(a) does not apply to her tax issues. There is insufficient evidence that her ability to file was beyond her control. AG ¶ 20(b) does not apply. There is some evidence that she is attempting to resolve her tax issues. AG ¶ 20(g) has some application.

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 42 years old. She has been employed steadily since 2004. She failed to timely file her federal income tax returns for 2009, 2012, 2014, 2015, and 2016. She filed her 2012, 2014, 2015, and 2016 federal income tax returns in late December 2017, subsequent to receiving the SOR. Insufficient documentary proof was provided to show her 2009 federal income tax returns are filed. She also admitted she owes federal taxes, which likely include penalties and interest.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary

compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).¹¹

Applicant has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge

¹¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).