



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



In the matter of:)
)
) ISCR Case No. 17-04249
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On December 28, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on February 15, 2018, and requested a hearing before an administrative judge.

The case was assigned to me on August 3, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 13, 2018, scheduling the hearing for October 2, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection.

Findings of Fact

Applicant is a 55-year-old president and owner of a limited liability company (LLC). She had employees at one time, but at present, she is the only employee. She has operated the LLC since 2003. She earned a bachelor's degree in 1984 and a master's degree in 1997. She has been divorced for many years. She has two adult children.¹

Applicant's business was successful for several years. Her company was awarded what was for them a sizable contract in about 2007. About six months into the contract, the prime contractor stopped paying Applicant's company. Applicant used her own funds to pay her employees and other expenses. Her company's financial distress continued for years. She did not pay all of her employees' payroll taxes; she did not pay her personal federal and local taxes; and personal debts became delinquent.²

Applicant did not file her federal and local income tax returns for 2010, 2011, and 2012 when they were due. She indicated that the company that maintained the LLC's financial data would not turn it over to the LLC until it was paid. She stated that she terminated her contact with the company in about 2012, but the company continued to withhold her financial information until it was paid. She stated that in 2015 a friend paid the company so that Applicant could retrieve the data. The 2010 through 2012 tax returns were filed in 2015, but her 2016 income tax returns have yet to be filed.³

The IRS filed tax liens against Applicant in 2008 (\$31,937), 2010 (\$35,942 and \$9,123), 2012 (\$26,264), and 2017 (\$17,613). She owes her local government about \$42,000 in back taxes. Applicant stated that she has worked with the IRS and the local government and made some payments when she had the available funds, but she has been unable to completely pay her taxes.⁴

In December 2017, the IRS determined that Applicant's taxes were not collectable at that time, and temporarily closed the collection case against her. The IRS informed her that she still owed the taxes, and they could reopen the case if her financial situation improves. Interest and penalties would continue to be added to her account. The IRS indicated that she owed taxes for tax years 2006 through 2010, 2013, and 2014. Applicant testified that she owed about \$6,000 to \$7,000 to the IRS for tax

¹ Tr. at 18, 27-29, 32, 38; GE 1, 2.

² Tr. at 24, 29, 34-40; Applicant's response to SOR; GE 1, 2.

³ Tr. at 19-25, 51-56; Applicant's response to SOR; GE 1, 2. The SOR did not allege the unfiled 2016 tax returns. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

⁴ Tr. at 19, 24-27, 56-57, 70-73, 87, 90; Applicant's response to SOR; GE 1-4.

year 2017. She estimated her total debt to the IRS to be more than \$190,000. She stated that she intends to pay her taxes when she has the income to do so.⁵

Applicant employed a credit-counseling company to assist her in resolving her delinquent debts. She settled the \$16,575 deficiency owed on an auto loan for \$8,202. She paid \$1,599 to reduce the balance from \$18,175 to \$16,575, and she agreed to make \$276 monthly payments from November 2017 through October 2019. She credibly testified that she paid all the monthly settlement payments, with the exception of the last payment. She also paid other debts that were not alleged in the SOR.⁶

Applicant called a witness who attested to her professional competence, trustworthiness, and honesty. The witness also noted that Applicant volunteers in her community.⁷

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(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."

⁵ Tr. at 24-25, 59-60, 73, 88; Applicant's response to SOR; GE 1, 2; AE A.

⁶ Tr. at 57-58; Applicant's response to SOR; GE 1-4; AE B.

⁷ Tr. at 77-80.

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

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and

(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 has a history of financial problems, including tax returns not filed on time, unpaid taxes, and a delinquent auto loan. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; 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 has been paying the settlement on the deficiency owed on the auto loan (SOR ¶ 1.c). That debt is mitigated. She owes the IRS more than \$190,000 and her local government more than \$40,000 in taxes. She did not file her federal and local income tax returns for 2010, 2011, and 2012. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

The company that maintained the financial data for Applicant's LLC would not turn it over to the LLC until it was paid. She terminated the contract with the company in about 2012, and the company was paid in 2015. The company turned over the data, and the 2010, 2011, and 2012 tax returns were filed in 2015. AG ¶ 20(g) is applicable to those returns. However, Applicant has not filed her 2016 tax returns, and did not pay all the taxes owed for 2017. Her tax liability is well over \$200,000 and growing. Applicant stated that she intends to pay her taxes when she has the income to do so. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's tax problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. I believe Applicant is sincere, and she may reach a point where her finances are sufficiently in order to warrant a security clearance, but she is far from that point at this time. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 relevant 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. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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-1.b: | Against Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraphs 1.d-1.h: | Against Applicant |

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge