



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



In the matter of:)	
)	
)	ISCR Case No. 14-03957
)	
Applicant for Security Clearance)	

Appearances

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

05/19/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On September 26, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

In an undated answer, Applicant elected to have her case decided on the written record. On February 18, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on February 23, 2015, and it was received on March 10, 2015. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. Department Counsel had no objections, and the documents were admitted into the record. The case was assigned to me on April 27, 2015.

Findings of Fact

Applicant admitted the allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. She earned an associate's degree in 2007. She served on active duty in the military from 1983 to 1986 and was honorably discharged. She reenlisted in the military in 1995, served until 2000, and was honorably discharged. She was married from 1984 to 1989. She remarried in 1997 and divorced in 2001. She has a grown son. She has worked for a federal contractor since 2001. It appears she has held a security clearance since approximately 1984.¹

Applicant admitted she failed to timely file her 2011 and 2012 federal and state income tax returns. In her September 2013 security clearance application (SCA), she indicated her failure was due to "neglect." In her answer to the SOR, she stated that she does not have a history of owing taxes and in the past had received a refund. Her failure to timely file was due to "pure procrastination and negligence," and with "no ill intent."² She stated she has always lived within her means, paid her debts, and met all of her financial obligations. She indicated she would not make this mistake again.

Applicant filed her 2011 and 2012 federal and state tax returns in December 2013. She did not owe federal income taxes for 2011 and 2012 and received refunds. She owed \$32 for state income taxes for 2012. It was paid along with a penalty.

Applicant provided copies of credit reports to show she does not have any delinquent debts. She stated she lives within her means. She provided copies of performance appraisals. She is described as an extremely hard worker. She has a positive attitude and demonstrates respect for others and integrity in her daily actions. She received a performance rating of "exceeds commitments."³

Policies

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

¹ Item 3.

² Item 2.

³ Answer to FORM.

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 access to classified information will be resolved in favor of 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. Under Directive ¶ E3.1.15, 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 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).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant admitted she failed to timely file her 2011 and 2012 federal and state income tax returns. I find the above disqualifying condition has been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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; and

(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.

Applicant's explanation for her failure to timely file her federal and state income tax returns for 2011 and 2011 was because she was negligent and procrastinated. These characteristics are inconsistent with holding a security clearance. However, it appears Applicant's conduct was an aberration from her usual conduct. Believing one will receive a refund does not satisfy the legal requirement to file your income tax returns. Applicant has taken responsibility for her actions, filed her delinquent tax returns, and paid the small amount she owed for state taxes. She admitted her mistake and based on her past reputation and conduct, such behavior is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgement. AG ¶¶ 20(a) and 20(c) 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(a):

- (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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 50 years old. She served in the military and has worked for a federal contractor since 2001. She is a highly-regarded employee. She admitted she made a mistake by not filing her tax returns on time, even though she believed she would receive a refund. She lives within her means and has an exemplary work record. She has met her burden of persuasion. 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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge