



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



In the matter of:)
)
-----) ISCR Case: 17-03809
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esquire, Department Counsel
For Applicant: Ryan Nerney, Esquire

June 11, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Applicant did not file her Federal or state tax returns for tax years 2010 through 2016 in a timely manner. She did not submit sufficient evidence to show that all the returns have now been filed. She also owes considerable back taxes, and past-due medical bills. Resulting security concerns were not mitigated. Based upon a review of the pleadings, exhibits, and testimony, national security eligibility for access to classified information is denied.

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 21, 2015. (Government Exhibit 1.) On January 17, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR, with an attachment, on February 22, 2018, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on March 27, 2018. The case was assigned to me on April 5, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2018, scheduling the hearing for July 13, 2018. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits A through J, which were also admitted without objection. The record remained open at Applicant's request for the receipt of additional documentation. Applicant submitted Applicant Exhibits K through P in a timely manner. Department Counsel objected to the admission of Applicant Exhibits K, N, O, and P. That objection is overruled and the additional exhibits are all admitted. DOHA received the transcript of the hearing (Tr.) on July 23, 2018.

Findings of Fact

Applicant is 55 years old. She was widowed in 2012 and remarried in 2017. She is a high school graduate and has worked for her current employer since 2011. (Government Exhibit 1 at Sections 13A and 17; Applicant Exhibit C.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has failed to meet her financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted SOR allegations 1.a, 1.b, 1.f, and 1.i. She denied SOR allegations 1.c through 1.e, 1.g, 1.h, and 1.j through 1.w.

With regard to all of her financial issues Applicant maintained that her late husband took care of the finances until his death. After his passing in 2012 Applicant stated that it took her over two years to begin resolving her financial issues. However, Applicant was often vague as to her knowledge of her past, or current, financial situation. (Tr. 42-43, 62-65, 77-82.)

The SOR alleges in subparagraphs 1.a and 1.b that Applicant failed to timely file her Federal and state tax returns for at least tax years 2010 through 2015. The SOR was amended at the hearing to add tax year 2016 in both allegations, in conformity with the evidence and in accordance with the Directive, Additional Procedural Guidance, paragraph E3.1.17. (Tr. 99-101.)

In Section 26 of Applicant's e-QIP (Government Exhibit 1) she admitted that she had not filed Federal or state taxes for tax years 2010 through 2014. Asked for the reason she stated, "late husband was the bookkeeper." She further stated that she was in the process of finding out what she owed, that she was obtaining tax help, and that back taxes were being paid through garnishment.

1.a. Applicant admitted that she had not filed her Federal tax returns in a timely manner from 2010 to at least 2015.

Documentation provided by Applicant from the IRS showed that she had not filed her 2010 through 2014 Federal tax returns as of November 2017. Applicant testified that she had prepared some of these returns by hand, however she also testified that she did not know if these returns had ever been filed. She also stated that one or more of her back tax returns may have been filed by a tax preparer she had hired. (Government Exhibit 3 at 13-19; Tr. 30, 63-64, 88-89.)

Documentation provided by Applicant from the IRS showed that her 2015 Federal tax return was filed August 15, 2016. Additional documentation provided by Applicant from her accountant showed that her 2016 Federal tax return was to be filed after March 31, 2018. I find that both returns were filed late. (Government Exhibit 3 at 12; Applicant Exhibits K and M; Tr. 83-84.)

1.b. Applicant admitted that she had not filed her state tax returns for at least tax years 2010 through 2015. Applicant stated at the hearing that she believed these returns had been filed. However, other than the 2016 state tax return, she submitted no evidence supporting her statement. (Government Exhibit 3 at 21; Applicant Exhibits K and M; Tr. 35-36, 88-89.)

Applicant also testified that she had paid state back taxes through garnishment and did not owe any money to the state. (Applicant Exhibit F; Tr. 36-38, 64-69.)

1.c. Applicant denied in her March 2018 Answer that she owed the Federal Government \$11,108.44 for 2010 back taxes, stating had not received any notice from IRS.

Documentation supplied by Applicant from the IRS showed that she received notice of this debt in November 2017. (Government Exhibit 3 at 18-19.)

Applicant testified that she believed all of her Federal back taxes had been paid through assignment of her tax refund. However, documentation from the IRS provided by Applicant after the hearing showed that she continued to owe \$12,998.59 for that tax year. This debt is not resolved. (Applicant Exhibit P; Tr. 33-35, 84-85.)

1.d. Applicant denied in her Answer that she owed the Federal Government \$10,488.53 for 2011 back taxes, stating had not received any notice from IRS.

Documentation supplied by Applicant from the IRS showed that she received notice of this debt in November 2017. (Government Exhibit 3 at 16-17.)

Applicant testified that she believed all of her Federal back taxes had been paid through assignment of her tax refund. However, documentation from the IRS provided by Applicant after the hearing showed that she continued to owe \$12,996.69 for that tax year. This debt is not resolved. (Applicant Exhibit P; Tr. 33-35, 84-85.)

1.e. Applicant denied in her Answer that she owed the Federal Government \$40.89 for 2015 back taxes, stating had not received any notice from IRS.

Documentation supplied by Applicant from the IRS showed that she received notice of this debt in November 2017. (Government Exhibit 3 at 12.)

Applicant testified that she believed all of her Federal back taxes had been paid through assignment of her tax refund. Documentation from the IRS provided by Applicant after the hearing showed that she had no debt for that tax year. This debt is resolved. (Applicant Exhibit P; Tr. 33-35, 84-85.)¹

1.f. Applicant admitted that she owed a medical creditor \$457 for a past-due debt. Applicant had not paid this debt as of the date of the hearing. Applicant testified that she hoped to pay this debt by the end of July 2018. She supplied no evidence that showed this debt had been paid or disputed after the hearing. It is not resolved. (Tr. 40-45, 73-77.)

1.g. Applicant denied that she owed a medical creditor \$38 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.h. Applicant denied that she owed a medical creditor \$37 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.i. Applicant admitted that she owed a medical creditor \$531 for a past-due debt. Applicant had not paid this debt as of the date of the hearing. Applicant testified that she hoped to pay this debt by the end of July 2018. She supplied no evidence that showed this debt had been paid or disputed after the hearing. It is not resolved. (Tr. 40-45, 73-77.)

¹ Applicant Exhibit P also showed that Applicant owed \$4,412.03 in 2009 back taxes. The existence of this debt cannot be considered in Applicant's case-in-chief. It can, however, be considered in determining mitigation.

1.j. Applicant denied that she owed a medical creditor \$561 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.k. Applicant denied that she owed a medical creditor \$499 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.l. Applicant denied that she owed a medical creditor \$432 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.m. Applicant denied that she owed a medical creditor \$33 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. Applicant Exhibits N and O are copies of dispute or resolution letters Applicant sent to this creditor. However, the amounts in the letters do not match this debt, so there is no way to know if either letter concerns this specific debt. She supplied no other evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.n. Applicant denied that she owed a medical creditor \$32 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. Applicant Exhibits N and O are copies of dispute or resolution letters Applicant sent to this creditor. However, the amounts in the letters do not match this debt, so there is no way to know if either letter concerns this specific debt. She supplied no other evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.o. Applicant denied that she owed a medical creditor \$2,514 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.p. Applicant denied that she owed a medical creditor \$2,343 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence

showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.q. Applicant denied that she owed a medical creditor \$1,720 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.r. Applicant denied that she owed a medical creditor \$456 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.s. Applicant denied that she owed a medical creditor \$423 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. Applicant Exhibits N and O are copies of dispute or resolution letters Applicant sent to this creditor. However, the amounts in the letters do not match this debt, so there is no way to know if either letter concerns this specific debt. She supplied no other evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.t. Applicant denied that she owed a medical creditor \$323 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. Applicant Exhibits N and O are copies of dispute or resolution letters Applicant sent to this creditor. However, the amounts in the letters do not match this debt, so there is no way to know if either letter concerns this specific debt. She supplied no other evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.u. Applicant denied that she owed a medical creditor \$125 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.v. Applicant denied that she owed a medical creditor \$99 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

1.w. Applicant denied that she owed a medical creditor \$77 for a past-due debt. Applicant testified that she believed she had successfully disputed this debt, since it no longer showed up on her credit report. However, Applicant did not submit any evidence showing that her dispute had been accepted. She supplied no evidence that the debt had been paid or disputed. It is not resolved. (Applicant Exhibit A; Tr. 40-45, 73-77.)

Mitigation

Applicant has had a successful career over the years. She has received recognition for her work performance. (Applicant Exhibits B and E.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes several conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of 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 income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state tax returns, as required, for at least five years. She filed her returns late for tax years 2015 and 2016. She has a substantial Federal tax debt that is not yet resolved. In addition, there are substantial past-due

medical debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's substantial financial issues, including unpaid taxes, failure to timely file tax returns, and unpaid medical bills:

(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, or 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 unpaid Federal back taxes are still due and owing. She presented insufficient evidence to show that the medical debts have been successfully disputed, or paid. Applicant did not supply documentation to show that she has filed all of her past-due tax returns. Nor did she submit any evidence to show that she has entered into a payment arrangement with the IRS or any state taxing authority, and is in compliance with such arrangements if she had filed tax returns and owed taxes. AG ¶ 20(a), (c), (d), and (g) do not apply. As stated, allegation 1.e is found for Applicant.

The death of Applicant's husband in 2012 undoubtedly caused some of Applicant's financial issues. However, during the hearing she showed little understanding of her financial situation, was unclear as to the actions she had taken, and was vague about the

actions she would take in the future. The documentation she presented showed that her tax debts were not being resolved voluntarily, when they were resolved at all. Applicant did not present sufficient evidence to show that she acted responsibly after her husband's passing. AG ¶ 20(b) does not apply.

Applicant stated that she had disputed many of the medical debts online through the company that supplied her credit report. She did not have documentary evidence to support this statement. She did supply two letters disputing debts set forth in her latest credit report. She did not, however, marry those letters up with any of the debts on the SOR. Under the circumstances of this case, AG 20(e) does not apply.

Applicant did not mitigate her tax and other financial issues. Guideline F is found against Applicant.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant did not provide sufficient evidence to show that the back taxes and medical debts were being resolved, or that she had filed all of her tax returns. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

| | |
|--------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraphs 1.f through 1.w: | Against Applicant |

Conclusion

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

Wilford H. Ross
Administrative Judge