



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



In the matter of:)
)
) ISCR Case No. 17-04106
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

01/04/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial security concerns about her unfiled tax returns, unpaid past-due federal taxes, and other delinquent debts. Personal conduct security concerns are not established. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 6, 2016. On April 11, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order (Exec. Or.) 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 National Security Adjudicative Guidelines (AG) effective within the DOD as of June 8, 2017.

Applicant answered the SOR on May 9, 2018, and elected to have her case decided on the written record, in lieu of a hearing. On June 19, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on June 28, 2018. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 7 are admitted into evidence without objection. The case was assigned to me on October 16, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.h, and 1.i. She denied SOR ¶¶ 1.d, 1.f, 1.g, 1.j, and 2.a. She provided some explanations and a narrative statement, but she provided no documents with her Answer. Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. She graduated from high school in 2004. Since then, she has worked as a sheet metal worker for a defense contractor at a naval shipyard. She has never married. She has a 17-year-old son. She has never held a clearance before. (Item 3) On her May 2016 SCA, Applicant disclosed a past-due debt relating to an automobile, and said she was making payments. She did not disclose that she had any other financial issues. (Item 3)

Under Guideline F, the Government first alleged that Applicant failed to timely file her state and federal tax returns for tax years 2014, 2015, and 2016. (SOR ¶¶ 1.a, 1.b) The Government also alleged that she owed about \$6,600 in unpaid federal taxes (SOR ¶ 1.c), an undefined amount in past-due state income taxes (SOR ¶ 1.d), and about \$28,240 in other delinquent debts, all to private creditors. (SOR ¶¶ 1.e – 1.j)

Applicant discussed her delinquent debts in her September 2017 background interview. She also acknowledged that she did not file her state and federal income tax returns on time for tax years 2014, 2015, and 2016, information she did not disclose on her SCA. She acknowledged in her background interview that she decided not to file her tax returns because she could not pay what she owed. She intended to save money and file her returns when she could afford to do so. (Item 3 at 22; Item 4 at 9)

Applicant authenticated the summary of her background interview in an interrogatory response she submitted to the Defense Office of Hearings and Appeals in March 2018. She also reported that she had filed her state and federal income tax returns for tax years 2014, 2015, and 2016, when she filed her 2017 taxes. She did not provide documentation to corroborate her assertion. She acknowledged that she owed about \$6,600 in past-due federal income taxes. (Item 4 at 2)

In SOR ¶ 1.d, the Government alleges that Applicant owes an "undetermined amount" in past-due state income taxes. Applicant denied the allegation in her Answer.

In her Interrogatory Response, Applicant answered “No” to the question, “Do you currently owe back State taxes?” and there is no other indication in the record that she owes any past-due state taxes. (Items 1, 3, 4)

The remaining SOR allegations concern debts to private creditors. Applicant admitted some and denied others. She provided no supporting documentation with her Answer.

SOR ¶ 1.e is a \$15,227 charged-off debt. Credit reports from July 2016, November 2016, and June 2018 reflect that it relates to an automobile account. Applicant was initially current on the account but later fell behind on payments, and it is now charged off. (Items 5, 6, 7) Applicant admitted the debt in her Answer without further comment. She provided no updated information on the debt’s current status.

Applicant denied SOR ¶ 1.f, a charged-off debt for \$188, and said she did not recognize it. The account is listed on Applicant’s credit reports, but they also indicate that she is disputing the debt. (Items 5, 6)

SOR ¶ 1.g is a \$146 debt to an unspecified medical creditor. Applicant denies the debt, saying she does not recognize it and cannot pay it. The debt is listed on Applicant’s November 2017 credit report, as alleged, but it is not listed on the others. No account number is provided, and the medical creditor is not named. (Item 6)

SOR ¶ 1.h alleges a debt that has been charged off and remains delinquent. No amount is alleged as being delinquent. The debt is to a jewelry store. Applicant admitted the debt without further details. The debt is listed on the November 2017 and June 2018 credit reports as having been charged off and sold to another creditor. The past-due amount is listed as \$0. (Items 3, 5, 6)

SOR ¶ 1.i is a \$12,126 judgment issued against Applicant in November 2010. The debt relates to an automobile. (Item 7 at 2) The debt is not listed on later credit reports. Applicant admitted the debt and asserted that she has been making monthly payments on it. This may be the account listed on her SCA. Applicant provided no corroborating documentation of any payments made.

SOR ¶ 1.j is a \$553 debt to a collection agency. It is listed on Applicant’s July 2016 credit report as having become delinquent a month earlier. (Item 7 at 4) Applicant denied the debt in her Answer, stating that she did not recognize it. She provided no documentation about the debt’s current status.

Under Guideline E, SOR ¶ 2.a alleges that Applicant deliberately failed to disclose her state and federal income tax returns for tax years 2014, 2015, and 2016 when she submitted her SCA in May 2016. The relevant question asked, “In the last seven (7) years, have you failed to file or pay Federal, state or other taxes when required by law or ordinance?” (Item 3) Applicant answered “No” to this question on her May 2016 SCA.

Since the 2016 tax year was ongoing at that point, Applicant's 2016 state and federal income tax returns were not due until spring 2017.

Applicant denied SOR ¶ 2.a, stating that her omission was not intentional and was an "honest mistake," since she misread the question. She also noted that she disclosed her unfiled tax returns during her background interview (which the summary of the interview confirms). (Items 2, 4)

Applicant concluded her Answer by stating that she had financial issues at an early age but that the best decision she made is to build a career at the shipyard. She has never been questioned or investigated at work. She takes her job and its responsibilities seriously and takes great pride in the important work she does there. (Item 3)

Policies

It is well established that no one has a right to a security clearance.¹ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."²

The adjudicative 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(a), 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 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. 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

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

² 484 U.S. at 531.

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.

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. . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.³

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

- (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.

SOR ¶ 1.d alleges an unspecified state tax debt. No delinquency is either alleged or proven, since Applicant denied it, and no state tax debt is established in the record.

³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

SOR ¶ 1.f is not established because Applicant denied it, and credit reports note that she has disputed it. SOR ¶ 1.g, an unspecified medical debt, is not established because Applicant denied it, and it is not specifically identified enough to allow her a chance to either pay or dispute it. SOR ¶ 1.h is a charged-off retail debt that Applicant admits. However, no delinquent amount is either alleged or proven, so it is not established as an ongoing delinquency. These debts are all found for Applicant. The debts alleged at SOR ¶¶ 1.c, 1.e, 1.i, and 1.j are established. AG ¶¶ 19(a) and 19(c) apply to them.

Applicant acknowledged that she failed to timely file her state and federal income tax returns on time for tax years 2014, 2015, and 2016, as alleged in SOR ¶¶ 1.a and 1.b. She also has about \$6,600 in unresolved past-due federal income tax debt, as alleged in SOR ¶ 1.c. AG ¶ 19(g) applies to those allegations.

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.,* ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, *neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person 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. Aug. 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).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added). *See* ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

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, 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 has two large unpaid debts related to automobiles (SOR ¶¶ 1.e, 1.i). She claimed to be making monthly payments on one of the debts but did not provide corroborating documentation. She also has about \$6,600 in past-due federal income tax debt (SOR ¶ 1.c) and another debt (SOR ¶ 1.j) that is established by the record. These debts are all ongoing and continue to cast doubt on her current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

Applicant has been gainfully employed at the shipyard for many years. She did not establish that her debts occurred due to conditions beyond her control. She did not indicate that she has participated in any credit counseling. She did not establish that she has undertaken good-faith efforts to pay or otherwise resolve her debts in any meaningful way. AG ¶¶ 20(b), 20(c) and 20(d) do not apply. Applicant denied SOR ¶ 1.j, but it is listed on her credit report. She did not provide evidence of her efforts to dispute the debt. AG ¶ 20(e) does not apply.

AG ¶ 20(g) does not apply to mitigate the income tax allegations. Applicant failed to timely file three years of state and federal income tax returns. She made a decision not to file her returns because she could not afford to pay what she owed. She asserted that she belatedly filed the required returns when she filed her 2017 returns, but she provided no documentary proof that she did so. Even if she had, the fact that an Applicant belatedly files income tax returns is not sufficient to mitigate the resulting security concern. Moreover, Applicant owes about \$6,600 in past-due federal income taxes. She gave no indication that she has undertaken any efforts to resolve that debt, or that she is in position to do so. AG ¶ 20(g) does not apply. Applicant did not provide sufficient evidence to mitigate financial security concerns.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant's May 2016 SCA contained a question calling for disclosure of the fact that she had failed to file her state and federal income tax returns for tax years 2014 and 2015. As noted above, the 2016 tax year was ongoing in May 2016, and Applicant's tax returns for that year were not due until 2017. Thus, as to the 2016 tax year, there was nothing to disclose.

Applicant did have a duty to disclose on her May 2016 SCA that she had failed to file her 2014 and 2015 state and Federal income tax returns as required. She did not do so. However, she denied the allegation that her omission was deliberate. She stated in her answer that her omission was not intentional and was an "honest mistake," since she misread the question. As the Government has the burden to establish controverted allegations, I cannot conclude that AG ¶ 16(a) applies to SOR ¶ 2.a. Further, Applicant disclosed to the interviewing agent that she had failed to file her income tax returns. She therefore made a good-faith effort to reveal the information before being confronted. SOR ¶ 2(a) is resolved for 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 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(a), 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. Because Applicant requested a determination on the written record without a hearing, I had no opportunity to evaluate her credibility based on demeanor.⁴

Applicant has been gainfully employed with a defense contractor at a naval shipyard for about 14 years. She has a number of large delinquent debts that remain unresolved. Applicant did not provide any documentation to establish any reasonable effort, or reasonable plan, to resolve the debts. Applicant also failed to timely file three years of state and federal income tax returns, and has unresolved federal tax debt. She claimed to have filed the returns at issue, but this, too, is undocumented. She has yet to establish a track record of financial stability and compliance with tax filing and payment requirements. While Guideline E personal conduct security concerns are not established, Applicant's finances and taxes remain a security concern. She has failed to meet 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 financial 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

⁴ ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul 23, 2003).

Conclusion

In light of all of the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge