



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



In the matter of:)	
)	
[Names Redacted])	ISCR Case No. 17-04293
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
 For Applicant: *Pro se*
 01/02/2019

Decision

HOGAN, Erin C., Administrative Judge:

On January 8, 2018, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On February 5, 2018, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 9, 2018. The case was assigned to another administrative judge on July 20, 2018. A notice of hearing was issued on August 24, 2018, scheduling the hearing on October 10, 2018. The case was transferred to me on October 9, 2018. The hearing was held as scheduled. During the hearing, the Government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 – 8. Applicant testified. The record was held open to allow Applicant to submit additional documents. She timely submitted a nine-page document which was admitted as Applicant Exhibit (AE) A. The transcript (Tr.) was received on October 19, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 50-year-old employee of a DoD contractor seeking to maintain a security clearance. She has worked for her current employer since March 2017. She has a 24-year history of working for various defense contractors. The highest level of education Applicant has achieved is high school. She is married, but recently separated. She has a 16-year-old son with her current husband and a 27-year-old daughter from a previous relationship. (Tr. 21-22; Gov 1)

On November 28, 2016, Applicant submitted a security clearance application as part of a periodic reinvestigation. (Gov 1) A subsequent security clearance background investigation revealed Applicant filed for Chapter 13 bankruptcy in January 2016. The bankruptcy was dismissed in November 2017 (SOR ¶ 1.a: Gov 2 at 3,5-6; Gov 3; Gov 4; Gov 6 at 2; Gov 7 at 3). The SOR alleged delinquent debts, to include: a \$693 debt (SOR ¶ 1.b: Gov 4 at 49); a delinquent state tax debt in the amount of \$793 (SOR ¶ 1.c: Gov 4 at 49); a delinquent mortgage in the amount of \$32,694 (SOR ¶ 1.d: Gov 4 at 25-26, 49; Gov 6 at 2; Gov 7 at 4); two debts owed to the Internal Revenue Service (IRS) in the amounts of \$8,339 and \$7,184 (SOR ¶¶ 1.e and 1.f: Gov 4 at 49); and a delinquent automobile loan that was delinquent in the amount of \$596. (SOR ¶ 1.g: Gov 4 at 25-26, 49; Gov 8 at 6).

Applicant initially encountered financial problems while her daughter was attending college from August 2009 to May 2015. She and her husband were unable to get financing for her daughter's education because they had a bad credit rating. They made arrangements with a private party to pay \$2,000 monthly during the six months that her daughter attended college. They made the payments, but got behind on their mortgage at least \$600 monthly over the five-year-period that her daughter attended college. The mortgagor contacted Applicant in 2013 and informed her that partial payments could not be accepted until Applicant paid all of the arrearage. They recommended a loan modification. The loan modification was approved, but one payment was missed after the modification was approved, and the modification was withdrawn. They applied for a second modification, but were denied. The mortgage was sold to the current lender. Applicant and her husband submitted a third request for a modification which was denied. (Tr at 29-32; Gov 8 at 4)

When the third request for a mortgage modification was denied, Applicant filed for Chapter 13 bankruptcy on January 6, 2016, in an attempt to save her home. Her husband declined to be a party to the bankruptcy. Applicant and her husband's net monthly income at the time of the bankruptcy filing was \$8,834.39. Their total monthly expenses were \$6,812. Approximately \$2,022 was left over after expenses each month. Applicant agreed to a payment plan of \$2,200 monthly payments for months 1-4; \$800 monthly for months 5 – 33; and \$1,568 monthly for months 34 – 60. Applicant initially made payments. On November 15, 2017, the U.S. Bankruptcy Court dismissed Applicant's Chapter 13 bankruptcy for failure to make payments. (Tr. 25-29; Gov 3; Gov 4)

Applicant paid towards the Chapter 13 plan for several months. Several events occurred that affected her ability to make her payments. In March 2017, her employer lost the contract and it was awarded to another contractor. She accepted a job with the new contractor, but her annual pay was decreased by \$12,000. The cost of her health benefits increased and she worked a month without pay while the contracts were transitioning. Her new employer did not provide corporate credit cards or travel advances. When she is on official travel, she is expected to pay for all expenses from her personal funds, with the exception of airfare, and then file for reimbursements. She was advised when she filed for reimbursement, she would be paid within a week. It took the company a month to reimburse her for her travel expenses. (Tr. At 16-17, 24; Answer to SOR)

Applicant testified that her husband was not good with his finances. He would not contribute to the household expenses. He spent his money "willy nilly." They had a joint account where both were expected to deposit money in order to pay for the household expenses. Her husband would often not contribute or would withdraw the funds for his personal use. (Tr. 26, 32, 37, 53-55, 65-66)

Applicant enrolled her son in a private high school with an annual tuition of \$16,000 while she was making payments towards her Chapter 13 plan. She admits that she could not afford the tuition payments and payments towards the Chapter 13 plan. She and her husband did not qualify for financial aid. The tuition payments were \$1,600 a month. She paid \$800 and her husband paid \$800. Applicant enrolled her son in private school for better opportunities. The school was pursuing her son because of his athletic abilities. He does better academically and is doing well. (Tr. 38-41, 63)

Applicant also stated that various unexpected expenses such as car repairs, house repairs, and mold removal after their basement was flooded during Hurricane Isabel contributed to their inability to pay expenses. (Tr. 28; Response to SOR)

The status of the remaining SOR debts:

SOR ¶ 1.b: \$693 debt owed to a business/collection agency: Applicant is not sure what this debt is for. In her response to the SOR, Applicant believed this debt might be related to her Chapter 13 bankruptcy because she did some research and the creditor is identified as a leading source of bankruptcy account management products and services. She believes it is a valid debt and is attempting to locate a good point of contact with the company. During the hearing, Applicant testified that she admits the debt, but does not know what it is for. She thinks it might be for not turning in cable television equipment, but she is not sure. She claims that she has not attempted to resolve the debt after her bankruptcy was dismissed. She is not sure how she can locate the debt. (Tr. 41-42; Response to SOR)

SOR ¶ 1.c: \$793 state income tax debt: Applicant testified that her husband agreed to pay the state tax debt. After the hearing, she provided a copy of an installment bill from the state comptroller, dated July 2, 2018. The balance was

\$1,112.80. Her husband agreed to pay \$51.33 on a monthly basis. There is no documentation that he is making regular payments toward this debt. (Tr. 44-46, 67; AE A at 2)

SOR ¶ 1.d: \$32,694 delinquent mortgage debt: Applicant filed for bankruptcy in an attempt to save her home from foreclosure. After the bankruptcy was dismissed, her home went to foreclosure in July 2018. She is not sure if they owe anything after the foreclosure. She initially prepared a plan for her and her husband to follow, but her husband did not follow the plan. They agreed to let the home go to foreclosure and separated. They are planning to divorce. (Tr. 46-47; Response to SOR)

SOR ¶¶ 1.e and 1.f: \$8,339 and \$7,184 federal tax debts: Applicant's Chapter 13 bankruptcy paperwork lists two tax debts owed to the IRS for \$10,079 and \$7,184. It is not clear what tax years the debts were incurred. (Gov 4) Applicant is not sure how the tax debt was incurred. She asserts that she claims no exemptions, but believes her husband claimed more exemptions than he should have claimed. She attempted to arrange a payment plan with the IRS before filing for bankruptcy, but it was not successful. During the hearing, she was not sure how much she owed towards the federal tax debt. She estimated it was about \$15,000. She set up a payment plan with the IRS in August 2018. She pays \$300 monthly to the IRS. (Tr. 47-52, 58-59)

The record was held open to allow Applicant to provide information about the current status of her federal and state tax debts. She provided a statement about installment agreement activity from July 17, 2017, to July 16, 2018. The statement listed a tax debt for the 2013 tax year with beginning balance of \$3,916; and a tax debt for the 2014 tax year with a beginning balance of \$1,543. The statement showed an ending balance of 0 even though no payments were made. Applicant did not provide a complete history of her federal income tax returns so it is not clear whether the tax debts listed for 2013 and 2014 are the same tax debts alleged in the SOR. Applicant did not provide proof of the installment agreement she entered into with the IRS in August 2018. She testified that she paid \$300 a month to the IRS, but provided no documentation verifying payments. The record evidence is inconclusive regarding the status of Applicant's federal tax debts. (AE A)

SOR ¶ 1.d: \$596 delinquent debt owed on a car loan: Applicant purchased a used car. She encountered financial problems and was unable to make payments on the car. The car was expensive to maintain and she spent over \$2,000 in repairs. She voluntarily turned the car into the dealer in June 2018. She is not sure whether she owes any money as a result of turning in the car. (Tr. 55-56; Response to SOR)

Applicant earned \$97,000 annually before the contract changed to her current employer. Her annual income was reduced to \$85,000. She currently earns around \$87,000 annually. Her husband's annual income is approximately \$70,000. Applicant has approximately \$30,000 in a 401(k) account. She has about \$50 in savings. She and her husband are separated, but there is no formal separation agreement. She intends to file for divorce at some point in the future. (Tr. 52, 59, 62-27)

Applicant provided several Certificates of Appreciation noting her outstanding performance on several projects she worked on as a contractor over the past eight years. This indicates she is a highly valued contractor employee. (AE A at 3-8)

Applicant states that she has worked as a government contractor for over 24 years. She would never put the security of the nation in jeopardy. (Tr. 71)

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 AG list potentially disqualifying conditions and mitigating conditions, which are useful 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(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 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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 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 information.

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).

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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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; 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, which she tried to resolve by filing for bankruptcy under Chapter 13. The plan was dismissed for failure to make timely payments towards the plan. She and her husband owe the IRS approximately \$17,264 as well as \$793 in delinquent state income taxes. The SOR also alleged three delinquent accounts, which included a mortgage, and a car loan, with a total approximate balance of \$33,983. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

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).

With regard to Applicant's federal tax debts, the emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. The \$693 debt alleged in SOR ¶ 1.b is unresolved. Although a payment plan is in place, the balance on the state tax debt (SOR ¶ 1.b) has increased from \$793 to \$1,112. When she surrendered her car to the dealership, it is likely that Applicant will owe a deficiency balance after the car is sold at auction. (SOR ¶ 1.g). It is unclear whether Applicant will owe anything as a result of her home foreclosure. Finally, the status of Applicant's federal tax debt is uncertain. Although Applicant provided a statement indicating that there is a zero balance on the taxes owed for tax years 2013 and 2014, she did not provide an explanation as to how the tax debt was paid even though no payments were received. Applicant did not provide a full transcript from the IRS, so she still might owe taxes for other tax years, such as 2015 or 2016. The only evidence in the record is the federal tax debts listed on her Chapter 13 bankruptcy paperwork, but no tax years were listed. Applicant was not certain of what years the tax debts were incurred. I cannot conclude that tax debt has been resolved.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by her employment transition from one contractor to another. She experienced a \$9,000 annual income reduction as well. She recently separated from her husband whom she blames for most of the financial issues. These circumstances were beyond Applicant's control and adversely affected her ability to pay her bills. However, this mitigating condition is given less weight because Applicant has not demonstrated she acted responsibly under the circumstances while most of the delinquent debt was incurred. While it is admirable that Applicant wants the best for her children, she opted to pay for her daughter's college education over a four-year period rather than paying her mortgage, which resulted in a significant mortgage delinquency. In 2016, she filed

for bankruptcy under Chapter 13 in an attempt to save her home. During this same timeframe, she enrolled her son in a private school with annual tuition costs of \$16,000. While Applicant says her husband spent money that should be used for household expenses elsewhere, they also incurred a monthly tuition payment of \$1,600, which prevented her from making payments towards the Chapter 13 bankruptcy plan which ultimately led to the dismissal of the bankruptcy. Applicant and her husband appeared to have the income to manage their expenses, they made poor decisions when managing their finances. For this reason AG ¶ 20(b) is given less weight.

AG ¶ 20(c) does not apply. Applicant did not take a formal financial counseling course. It is not clear that she has a plan in place to avoid future financial issues.

AG ¶ 20(d) does not apply because Applicant has not demonstrated a good-faith effort towards resolving her delinquent debts. She filed Chapter 13 bankruptcy, but her case was dismissed for failure to make payments in November 2017. She has not taken steps to resolve her delinquent debts since that time. While Applicant has reduced her expenses by moving into a one bedroom apartment, she has not shown that she is making a good-faith effort to resolve her federal tax debts.

AG ¶ 20(g) does not apply. The record is inconclusive that all of Applicant's federal and state tax debts are being resolved.

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 considered Applicant's favorable employment history as a federal contractor. I considered Applicant's reduction in income after a new contractor won the bid on the project that she works on. I considered that

Applicant recently separated from her husband and moved into a one-bedroom apartment. However, Applicant has several debts that have been neglected for years. Granted, she wants to provide her children with the best education, but she chose to pay for their tuition even though she was unable to pay her daily expenses. Her daughter's college tuition payments resulted in a serious mortgage debt and ultimately a home foreclosure. She enrolled her son in a private school while she was undergoing a Chapter 13 bankruptcy plan. The monthly tuition resulted in Applicant defaulting on the Chapter 13 payment plan. She has not attempted to resolve her debts after the Chapter 13 was terminated for failure to make payments. As a security clearance holder, she should have taken a proactive approach towards resolving her state and federal income tax debts. She did not follow through with her attempts to enter into payment plans with the IRS. She did not provide sufficient evidence to indicate that her federal tax debts are being resolved. Security concerns under financial considerations are not mitigated.

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.g	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge