



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-01730
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esquire, Department Counsel
For Applicant: *Pro se*

02/01/2019

Decision

HOGAN, Erin C., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations sometime in July or August 2018 (The SOR in the file is undated). The action was taken 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) effective within the DOD on June 8, 2017.

On August 20, 2018, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on October 11, 2018. On October 15, 2018, Applicant received the FORM. Applicant had 30 days to submit a response to the FORM. She timely submitted a response which is admitted as Item 12. Department Counsel had no objection to the documents Applicant submitted in response to the FORM. (Item 13) On November 16, 2018, the FORM was forwarded to the Hearing Office and assigned to me on January 25, 2019. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 42-year-old employee of a DOD contractor seeking a security clearance. She has worked for her current employer since January 2015. Her highest level of education is a bachelor's degree. She is married. (Item 3)

On June 4, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing. (Item 3) A subsequent background investigation revealed Applicant had the following issues raised under the financial considerations concern: a federal tax lien entered against Applicant in December 2011, in the approximate amount of \$51,434 (SOR ¶ 1.a: Item 5); a \$23,325 federal tax lien entered against Applicant in March 2012 (SOR ¶ 1.b: Item 6; Item 7; Item 8 at 3), a \$6,975 state tax lien entered against Applicant in March 2016 (SOR ¶ 1.c: Item 4); a \$12,526 garnishment order entered against Applicant in January 2017 for a delinquent student loan (SOR ¶ 1.d: Item 11); a \$385 medical account placed for collection in August 2017 (SOR ¶ 1.e: Item 8 at 7; Item 11 at 3). In her answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.c -1.d, and denies the allegations in SOR ¶¶ 1.a, 1.b and 1.e. With regard to the tax debts alleged in SOR ¶¶ 1.a and 1.b, Applicant admits she owes the federal tax debts. She disputes the total amount owed. (Item 2)

In her response to the SOR, Applicant addressed each allegation as follows:

SOR ¶¶ 1.a and 1.b, federal tax liens in the respective amounts of \$51,434 and \$23,325: Applicant denies the amounts of the federal tax lien. She states that the current amount owed to the federal government is \$41,845. She claims the debt was incurred because of unsatisfactory service from a former tax representative for tax years 2006 to 2010. She is current on all tax filings and owes no federal taxes for tax years after 2010. In August 2018, she retained a tax law firm to submit an Offer in Compromise on her behalf. The tax debt will be paid in full if the Offer in Compromise is approved. She did not provide proof of the current balance of her federal income tax such as an Internal Revenue Service (IRS) transcript. (Item 2 at 1, 3)

SOR ¶ 1.c: state tax lien in the amount of \$6,975: Applicant admits this debt. She is currently paying in a monthly installment agreement. She pays \$147.73 each month. It is not clear when the installment agreement began. The balance as of July 30, 2018, was \$6,499. Applicant did not provide additional proof of payments towards the monthly installment agreement. (Item 2 at 1, 4)

SOR ¶ 1.d: \$12,526 garnishment entered in January 2017: Applicant denies this debt because she disputes the \$12,526 balance. She claims her wages were garnished in the amount of \$7,315. She claims she entered a successful loan payment program agreement in January 2018. She provided a statement from the Department of Education, dated September 12, 2017, indicating she successfully completed a student loan rehabilitation program. Her loan is now being processed for a new repayment program. She did not provide additional evidence about the repayment program and

proof that she is making timely monthly payments towards the program. It is unclear whether the garnishment order was satisfied. (Item 2 at 2, 5)

SOR ¶ 1.e: \$385 medical debt placed for collection: Applicant disputed this debt with a credit reporting agency, denying that it was her debt. The debt was successfully removed from her credit report. (Item 2 at 1, 6)

In her response to FORM, dated November 1, 2018, Applicant states that she currently owes the IRS approximately \$38,068. (SOR ¶¶ 1.a and 1.b). She provided a typed statement summarizing what she owes for tax years 2007, 2008, 2009, and 2011. It summarizes her federal tax debts as:

2007 – Balance \$7,811 – Substitute return filed by the IRS – Ten year Statute of Limitations (SOL) expires on February 11, 2021.

2008 – Balance \$11,170 – Taxpayer filed return – SOL expires September 29, 2022.

2009 – Balance \$12,099 – Taxpayer filed return – SOL expires September 29, 2022.

2010 – Balance \$7,559 - Taxpayer filed return – SOL expires September 29, 2022.

2011 – Returns not file, but no requirement to file.

Total \$38,068 (Actually the total is approximately \$38,639)

The author of the statement is unclear. There is no indication when Applicant filed the tax returns for 2008, 2009, and 2010. She did not file a tax return for 2007. Applicant did not provide the actual transcripts from the IRS, which provide detailed information about each tax year. Her attorney intends to submit an Offer in Compromise for \$2,400. If the Offer in Compromise is accepted, Applicant will pay it in full. (Response to FORM)

Regarding the \$6,975 state tax debt alleged in SOR ¶ 1.c, Applicant claims her employer failed to deduct sufficient state taxes resulting in a tax debt that she could not afford to pay in one lump sum. She entered into a repayment agreement with the state in 2018. She claims she has met the terms of the repayment agreement. Applicant did not provide receipts or an updated payment history from the state department of revenue verifying that she is making payments or that she satisfied the debt.

Applicant states that she is now in a payment agreement regarding the student loan debt (SOR ¶ 1.d) and that balance will be paid off by 2020. She did not provide a copy of the payment agreement or proof that payments were being made on a timely basis.

Applicant has held a security clearance for over 20 years without any issues. She states she is living within her means and remains current on all financial obligations. She believes she should be eligible to maintain her security clearance.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 over-arching 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).

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. 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;
- (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.

All of the above disqualifying conditions apply because Applicant owes approximately \$6,975 as a result of state tax lien filed against her in March 2016. She also owes significant federal tax debts for tax years 2007 to 2010, which resulted in tax liens being filed against her in 2011 for \$51,434 and 2012 for \$23,325. Her wages were garnished in January 2017 for a \$12,526 delinquent student loan debt. Credit reports also showed a \$385 medical collection account.

The security concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised 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 financial counseling service, and there are clear indications the problem is being resolved or is under control; and

(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 disputes 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.

AG ¶ 20(a) does not apply because Applicant's financial issues are ongoing. She is in the process of entering into repayment plans for her federal tax debts (SOR ¶¶ 1.a – 1.b) and student loan (SOR ¶ 1.d). She is in a repayment program for her state tax debt. (SOR ¶ 1.c) It is too soon to conclude that Applicant has demonstrated a track record of making timely payments towards her delinquent debts.

AG ¶ 20(b) does not apply because there were no conditions beyond Applicant's control which adversely affected her finances.

AG ¶ 20(d) partially applies because Applicant successfully completed a rehabilitation plan regarding her student loan and is attempting to resolve her federal and state tax debts. However, she ignored her obligations to pay her tax debts for years, which gives this mitigating condition less weight. Applicant did not provide documentation regarding her repayment plan for her student loan or proof that she is timely making payments towards her student loan. It is too early to conclude that Applicant has established a sufficient track record of paying her federal and state tax debts.

AG ¶ 20(e) applies with respect the medical debt alleged in SOR ¶ 1.e. Applicant formally disputed the debt and it was removed from her credit report.

AG ¶ 20(g) partially applies because Applicant appears to be repaying her state tax debt. She is in the process of submitted on Offer in Compromise to the IRS. She ignored her federal tax debts for years. She did not hire an attorney to submit an Offer in Compromise until August 2018, shortly after the SOR was issued. Her federal tax debt remains unresolved. For this reason, this mitigating condition is given less weight.

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 Applicant's employment history as a DoD contractor for over 20 years. I considered that she is married. While Applicant is in the process of submitting an Offer in Compromise regarding the IRS debt, it is premature to conclude Applicant's federal tax debts will be resolved. A person entrusted with access to classified information, is expected to follow the duties expected of every U.S. citizen, which includes timely paying federal income taxes. Applicant incurred federal tax debts for tax years 2007 – 2010. She did not attempt to resolve her federal tax debts until August 2018, shortly after the SOR was issued. It is too soon to conclude that Applicant will

resolve her federal and state income tax debts and her student loan. At this time, the security concerns raised 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge