



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-02947

Appearances

For Government: Brittany White, Department Counsel

For Applicant: *Pro se*

09/10/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On April 30, 2019, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 Security Executive Agent, Directive 4, National Adjudicative Guidelines (SEAD 4), effective June 8, 2017.

Applicant responded to the SOR on June 3, 2019, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on July 5, 2019, and interposed no objections to the materials in the FORM. She timely supplemented the record with written explanations of her debts and attached documents supporting her satisfaction of her late filing of her federal tax returns for tax years 2014 and 2017, and state tax returns for tax years 2014 and 2017. She also provided documentation of payments of her delinquent taxes owed the IRS and payostate taxing authority, and Department of Education (DoE), as well as her successful dispute of the debt covered by SOR ¶ 1.e. Applicant's post-FORM submissions were admitted without objection as Item 8. The case was assigned to me on August 23, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file her federal income tax returns for tax years 2012 through 2017; (b) failed to file her state income taxes for tax years 2013 through 2017; (c) is indebted to her state of residence for delinquent taxes in the amount of \$32,000; (d) is indebted to the DoE for student loan debts placed for collection in the approximate amount of \$34,634; and (e) is indebted to a consumer creditor for an account charged off in the approximate amount of \$231. (Item 1) Allegedly, her federal and state tax filing lapses and delinquent state tax, student loan, and consumer debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted the allegations with explanations. She claimed she shifted to part-time work in 2014 due to her mother's battle with pancreatic cancer. She further claimed that she returned to full-time employment in December 2014 following her mother's passing in August 2014. She claimed that on the same day upon her return to work, she was injured in an elevator accident and suffered a concussion, bulging and ruptured discs in her cervical spine, a wrist tear, bilateral rotator cuff tears, and a meniscus tear in her left knee. She claimed that her injuries prompted her to seek workman's compensation (referred to as worker's compensation in her state) relief that resulted in a settlement that did not begin until April 2015. Applicant claimed she returned to work in February 2018 and was laid off in February 2019, along with 52 other colleagues.

Applicant further claimed in her response that all of her unfiled federal and state tax returns were filed in May 2019, and she will make arrangements with both taxing authorities to pay off her tax delinquencies. She claimed she allowed a garnishment from the DoE to ensure her payments on her delinquent student loan debts would be properly credited. And, she claimed that upon resolution of her worker's compensation case in April 2017, she reached out to the SOR ¶ 1.e creditor to pay it off but was told by the creditor's collection agent that he could not locate the debt. Because she was unable to pay off the debt, she disputed the debt and had it removed from her credit report.

Findings of Fact

Applicant is a 49-year old software test engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by

Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 1990 and divorced in February 1999. (Item 3) She has one adult child (age 28) from this marriage. Applicant earned a high school diploma in 1988 and reported no post-high school college classes. (Item 3) Applicant did not complete any military service.

Since February 2018, Applicant has worked for her current defense contractor. (Item 4) She reported multiple periods of unemployment between May 2017 and February 2018, between September 2014 and December 2014, between August 2013 and October 2013, and between August 2012 and April 2013. (Items 3-4) Applicant was self-employed between December 2014 and April 2017 and between May 2013 and July 2013. (Item 3) She reported being granted a security clearance in May 2009. (Items 3-4)

Applicant's finances

Applicant failed to file her federal income tax returns for tax years 2012-2017, as required by federal law, and failed to file her state income tax returns for tax years 2013, 2013-2017, as required by state law. (Items 3-4) For these years, she accumulated delinquent state taxes totaling \$32,000. (Item 5) Earlier, she failed to pay her state taxes for tax years 2005-2007 and 2009-2011, as required by state law. Records document that she entered into a temporary payment agreement with her state of residence in March 2018 to resolve her balance owing for these covered tax years in the stated amount of \$55,561. (Item 5) Payment terms called for making monthly payments of \$350.. (Items 7-8)

Court records confirm that in July 2019 Applicant satisfied and secured the releases of state liens of judgments entered in May 2008 for \$9,177; in March 2011 for \$1,440; in November 2011 for \$12,778; in December 2013 for \$5,583; in September 2016 for \$1,965; and in September 2017 for \$18,432. (Item 8) Compliance with the monthly payment terms of her payment agreement is documented by payment receipts in July 2019 totaling \$60,277. (Items 7-8)

Besides her reported delinquent tax delinquencies, Applicant incurred delinquent student loan debts totaling \$34,634. (Items 6-7) Her credit reports also list a delinquent consumer debt of \$231 with SOR creditor ¶ 1.e that Applicant disputes.

Applicant attributes most of her financial struggles to extenuating circumstances associated with periods of unemployment and underemployment in 2014 while caring for her terminally ill mother, and recovering from a serious work-related elevator accident. (Items 2 and 8)

Applicant documented that once she settled her worker's compensation case, she filed her delinquent federal and state tax returns for tax years 2014 and 2017. However, she has not provided any documented evidence of filing her (a) federal tax returns for tax years 2012-2013 and 2015-2016 and (b) state tax returns for tax years 2013 and 2015-2016. (Items 2 and 8) Her claims that she did not earn enough income in 2012 and 2013, and from her self-employment and worker's compensation in 2015-2016 to require her filing federal and state income tax returns for those years are neither substantiated nor corroborated.

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Federal taxes owed by Applicant for tax years are also documented by the following: a July 2019 receipt of a \$1,050 check payment covering federal taxes owed for tax year 2017 and a July 2019 receipt of a \$24,360 check payment covering federal taxes owed for tax year 2014. (Item 8) Whether Applicant owes back federal taxes for tax years 2012-2013 and 2015-2016 is unclear.

Applicant documented, too, her paying off her student loan arrears with DoE with a lump sum payment of \$27,146 in July 2019. (Item 8) And, after resolving her worker's compensation case in April 2017, she reached out to SOR creditor 1.e to resolve this debt. When the creditor could not locate the account after several attempts, she disputed the claim with the three major credit reporting agencies. (Items 2 and 8) As a result of her filed disputes, SOR creditor 1.e agreed to remove the debt from the reporting agencies' credit files. (Items 2, 8, and 11)

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over (a) Applicant’s admitted failures to file federal tax returns for tax years 2012-2017, as required by federal law, and failures to file state tax returns for tax years 2013-2017, as required by state law; (b) accrual of over \$32,000 in delinquent state taxes; (c) accumulation of a delinquent student loan debt with the DoE in the amount of \$34,634, and (d) a small consumer debt in the amount of \$231. Applicant’s history of financial difficulties warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19(c), “a history of not meeting financial obligations”; and 19(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’s admitted tax-filing lapses and delinquent debt negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted debts is fully documented and creates some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing failures and debt delinquencies.

Historically, the timing of addressing and resolving tax filing issues and debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

The Appeal Board's longstanding emphasis on timely tax filing and making timely tax payments to satisfy security concerns is both instructive and binding on administrative judges. See, e.g., ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing favorable grant of a 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 regulation expected of someone entrusted with the nation's secrets.").

To be sure, Applicant's cited circumstances (caring for her mother and being victimized by a serious elevator accident that resulted in workers' compensation claims and ensuing payments) contributed heavily to her financial setbacks associated with her periods of unemployment and ensuing inability to pay her taxes and other bills. To her credit, she has made concerted efforts to address her owed federal and state income taxes for the years in issue, and pay off her delinquent DoD student loan. In recognition of her repayment efforts, she may take partial advantage of MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

Further, Applicant's successful disputing of the consumer debt covered by SOR ¶ 1.e is mitigating and enables her to apply MC ¶ 20(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." This debt, accordingly, is favorably resolved

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of timely tax filing and debt reduction through voluntary payment of debts, and implicitly where applicable the timely resolution of delinquent debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, she failed to file her federal and state tax returns and pay off the taxes owing for the years in issue until after the investigation process had initiated and an SOR was issued. And, the federal and state tax returns she did document filings for in May 2019 cover only two of the delinquent years in issue (2014 and 2017).

Based on a thorough consideration of all of the evidence presented, Applicant is imputed to have been aware of her legal requirements to timely file her federal and state tax returns and pay the taxes owing for those years. With the evidence she established with her answer and with her response to the FORM, she did not persuasively demonstrate her inability to timely file her tax returns and pay the taxes due for the tax

years in issue. While she may not have fully understood or appreciated the importance of these requirements at the time, her failure to take more timely steps to file or seek professional advice where she was unsure of her federal and state filing requirements precludes her from mitigating security concerns associated with the Government's tax-filing and payment concerns.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. While she has shown renewed commitments to addressing and resolving her debts, her progress to date in resolving the Government's security concerns over her handling of her finances reflect insufficient progress to date in addressing her federal and state tax filing and payment responsibilities to merit enough positive credit to mitigate financial concerns.

Although, Applicant appears to have satisfied the terms and conditions of her installment agreement with her state taxing authority and successfully resolved her student loan deficiency, fulfillment of her payment terms with her state of residence and DoE, respectively, were not completed until after the issuance of the SOR. Under these circumstances, only the resolution of her student loan deficiency and successful dispute of her listed consumer debt can be mitigated.

Taking into account Applicant's (a) late and incomplete filings of her back federal and state income tax returns and satisfaction of her state income taxes owed for the years in issue, (b) discharging her DoD student loan delinquency, and (c) successfully disputing her listed consumer debt, Applicant's actions to date in addressing her federal and state filling of her tax returns and owed debts for the years in issue reflect insufficient evidence of restored financial responsibility and judgment to overcome reasonable doubts about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Overall, while Applicant's actions to date are encouraging, they are enough to mitigate the Government's security concerns.

Conclusions are warranted that Applicant's finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraph 1.a-1.c:
Subparagraphs 1.d 1.e:

Against Applicant
For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge