



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



In the matter of:)
)
) ISCR Case No. 19-00057
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*
02/24/2020

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by her delinquent debts, unpaid tax liens, and unfiled tax returns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted security clearance applications (SCA) on November 16, 2016, and December 23, 2010. On January 24, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on March 12, 2019, and requested a hearing before an administrative judge (Answer). The Government was ready to proceed on April 3, 2019, and the case was assigned to me on October 1, 2019. On October 22, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 19, 2019. I convened the hearing as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 9, all of which were admitted. Applicant objected to GE 1, because she claimed that she did not accurately complete the financial questions. She objected to GE 2, because she did not believe that the referenced state tax liens were her debts. GE 3 through GE 9 were admitted without objection. Applicant Exhibits (AE) A through E were admitted without objection, and Applicant testified. I held the record open until December 3, 2019, to allow

Applicant to submit additional documentation. She submitted AE F and G, which are admitted without objection. I also received the complete transcript (Tr.) on December 3, 2019, and the record closed.

Findings of Fact

Applicant, 54, is divorced, and has no children. She graduated from high school in 1983 and attended one semester of college. She was previously married from 2004 until 2012. She worked for defense contractors and held a security clearance from 2002 to 2010. As of the hearing, Applicant was unemployed but had a pending start date in December 2019 with a non-federal contractor. (GE 1; Tr. 10-13)

The SOR alleged that Applicant has 24 delinquent debts, including 3 state tax liens, totaling approximately \$28,631. Additionally, she failed to file her 2013 and 2014 state and federal income tax returns, as required by law. In her response to the SOR, she admitted all of the allegations, except SOR ¶¶ 1.e, 1.i, 1.l, 1.k, 1.u, and 1.v. All of the debts alleged in the SOR were reported in Applicant's March 2017 and November 2018 credit bureau reports (CBR). (Answer; GE 4; GE 5)

Applicant attributed her financial delinquencies to several events and circumstances, including a 2006 car accident, her 2012 divorce, various periods of unemployment, her care of family members, and her own medical issues. In August 2013, Applicant was hospitalized due to various medical issues. At that time, she was employed and had health insurance. After she left the hospital, her employer gave her a urinalysis, which she failed, and she was fired. Since she moved to State A in 2014, she has helped care for her mother, who has dementia. Additionally, in the past five years, Applicant was homeless twice, when family members kicked her out of their homes. Though she appeared at her hearing *pro se*, Applicant initially hired an attorney to represent her during the adjudication of her security clearance. She paid him over \$1,300, which caused her to fall behind on additional financial obligations, including her car payment, which was repossessed in May 2019. (GE 1; GE 6; GE 7; GE 8; GE 9; Tr. 30-43, 45, 48-49, 57)

Applicant submitted a July 2019 letter indicating her personal information may have been compromised; however, she provided no direct information that any of the alleged debts were invalid and were placed for collection during the period of the security breach. (AE D)

Applicant's tax issues started in 1989. She filed her state and federal income tax returns, but was unable to pay her tax obligations. She filed for Chapter 7 bankruptcy protection in 1993, and her debts, other than her taxes, were discharged in 1994. In 2002, Applicant learned that the Internal Revenue Service (IRS) had filed a \$29,000 lien against her. Two years later, she entered into a monthly installment agreement with the IRS, which she paid until 2010, when she was placed in a non-collectible status. The last time Applicant filed her state and federal tax returns was in 2012. In 2014, she moved to State B, which does not have income taxes, and she stopped communicating with the IRS. Applicant continues to owe State A \$6,304 for the two tax liens filed against her in 2008 and the one lien filed in 2013. Applicant initially testified that she owes the IRS

approximately \$18,000 for tax years 2002 to present; however, later in the hearing, she claimed that she has overpaid her federal income taxes and is due a refund of approximately \$10,000. (GE 1 at 41-43; GE 2; GE 3; GE 4; GE 5; GE 6 at 5; GE 9; Tr. 40-41, 50-58, 65-66)

A week before the hearing, Applicant hired a tax-service company to investigate the status of her 1990 through 2018 state and federal income taxes. As of the date of the hearing, Applicant had not paid the \$495 to retain the tax-service company, nor did she provide proof of payment in her post-hearing documentation. She testified that State A put her in a hardship-deferral for her three state tax liens, but she did not provide documentation to support this claim, nor did she provide specifics as to when the deferral was granted. Additionally, after the hearing Applicant asserted that State A was investigating the three liens, and she had agreed to set up a payment plan to begin in December 2019. She provided no documentation to support this claim. (AE A; AE F; AE G; Tr. 57-61)

In 2017, Applicant hired a credit-repair company to dispute and remove negative items from her credit reports. The company did not make payments to her various creditors. Applicant worked with the company until a month before the hearing, because she could no longer pay the \$119 monthly fee. She testified that some of her debts were resolved by the repair program, but because she was no longer paying the company, she did not have access to information regarding which debts had been resolved through dispute. At the hearing, she could not identify which SOR allegations were removed from her CBR. (Tr. 45-48, 69-71)

In her post-hearing documentation, Applicant claimed that SOR ¶¶ 1.h, 1.i, 1.j, and 1.l through 1.y were all resolved through dispute or no longer appeared on her credit report. However, she did not provide a copy of an updated CBR to substantiate her claims. Additionally, the May 2019 documentation from the credit-repair company listed fourteen debts that were deleted from her credit file, but only SOR ¶¶ 1.e, 1.q, 1.r, and 1.s were identifiable. The documentation also indicated that Applicant had eight new negative items in her credit file, of which SOR ¶¶ 1.f and 1.g were identifiable. The credit-repair company documentation did not indicate the basis for which the negative items were removed from Applicant's credit file. (AE F; AE G)

In March 2011, Applicant was awarded primary custody of her niece, who has cerebral palsy, due to her sister's need for substance-abuse treatment. The guardianship arrangement lasted for one year. She testified that some of her niece's medical bills were placed for collection in her name, including SOR ¶ 1.e. Applicant called the creditor a year before the hearing, but was advised by her credit-repair program to not contact the creditor again as the company was trying to resolve this debt. According to her post-hearing documentation, this debt was disputed and removed from her credit report. (AE F; Tr. 45-46)

Based upon the information reported in her CBRs, SOR ¶¶ 1.h and 1.i appear to be duplicates of each other. In her post-hearing documentation, Applicant claimed for the

first time that SOR ¶1.f. is a duplicate of SOR ¶ 1.g. However, the debts have different account numbers and different balances. (GE 4; GE 5; AE F)

Applicant has not made payments toward any of the debts alleged in the SOR. As of the date of the hearing, she was not following a written budget due to her unemployment. However, she has followed one in the past. (Tr. 67)

Applicant's 2010 SCA and credit bureau report (CBR) reflect numerous delinquent debts. She had vehicles repossessed in October 2011, October 2014, and May 2019. Additionally, she has four high-interest personal loans that have become delinquent in the past year. She owes additional money for back rent at a former apartment. The repossessions and delinquent personal loans are not alleged in the SOR. (GE 5; GE 6 at 2, 6; AE B; AE C; Tr. 25-26, 72-74, 79-81)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 concern under Guideline F (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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts, tax liens, and unfiled tax returns establish three disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;
- (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 not filed her state and federal income tax returns for tax years 2013 and 2014. She has failed to resolve three tax liens totaling \$6,304. Her federal income taxes have been an issue since at least 2002, when the IRS filed a \$29,000 lien against her. She testified that she made payments for several years, but discontinued all communication with the IRS in 2012.

Applicant's failure to timely file her federal income tax returns for tax years 2015 through 2018 was not alleged in the SOR, and these tax years were not considered in determining if the disqualifying conditions were applicable. However, her ongoing failure to file her returns and pay her taxes, within her lengthy history of tax problems, raise additional questions regarding her judgment, reliability, and trustworthiness. Finally, there is no record evidence that Applicant has made arrangements with the IRS or State A to file or pay her past-due taxes.

Applicant hired a credit-repair company in 2017 to dispute and resolve the negative items reported in her credit reports. This company did not make payment arrangements with the creditors. Applicant's documentation does not clearly establish the grounds and

legitimacy for her disputes. Based upon her consistent account that SOR ¶ 1.e was her niece's medical debt, I have accepted that this debt was resolved through dispute. Additionally, the documentary evidence indicates SOR ¶ 1.i is a duplicate of SOR ¶ 1.h. As such, it is resolved for Applicant. However, the remainder of the disputed debts remain unresolved and unmitigated.

Applicant's financial issues continue to be an ongoing concern. During the course of the hearing, she admitted to several significant additional delinquent debts that were not alleged in the SOR. These debts demonstrate that the behavior was recent, frequent, and recurring.

Finally, although Applicant has experienced many life events that negatively affected her finances, she failed to demonstrate that she has acted responsibly to address her delinquent debts. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) was not established.

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.

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 have incorporated my comments under Guideline F in my whole-person analysis.

I conclude Applicant has not met her burden of proof and persuasion. She did not mitigate the financial considerations security concerns or establish her eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.y:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge