



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01675
)
Applicant for Security Clearance)
)

Appearances

For Government: Patricia Lynch-Epps, Esq., Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/04/2020

Decision

MASON, Paul J., Administrative Judge:

Since late 2019, Applicant has demonstrated that she wants to resolve her federal and state tax issues. However, this encouraging action must be weighed against her past conduct in repeatedly failing to maintain the payment schedules of several federal tax agency installment plans since 2011. Similarly, her current evidence in mitigation is uncorroborated at critical points. In sum, Applicant has not overcome the lingering security concerns arising from the guideline for financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On August 10, 2017, then again on December 13, 2017, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) to two different employers for positions requiring a security clearance. On April 13, April 20, April 25, and May 7, 2018, she provided interviews (PSIs, face-to-face, telephone, or facsimile) to an investigator from the Office of Personnel Management (OPM). After reviewing the results of a security background investigation, the Department of Defense (DOD) could

not make the affirmative findings required to grant a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated August 30, 2019, detailing security concerns under financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 in the DOD on June 8, 2017.

Applicant provided her notarized answer on October 12, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 11, 2020, for a hearing on February 28, 2020. The hearing was held as scheduled. The Government's seven exhibits (GE) 1-7 and Applicant's three exhibits (AE) A-C were entered into evidence without objection. Applicant's three post-hearing submissions were entered into evidence as AE D (state tax records), AE E (documentation showing efforts to obtain federal tax transcripts), and AE F (Applicant's emails explaining the contents of AE D, E, and other information that she was notified about from her tax firm), without objection. The discovery letter dated December 17, 2019, has been marked as H1. DOHA received the hearing transcript (Tr.) on March 9, 2020. The record in this case closed on May 22, 2020.

Findings of Fact

SOR ¶ 1.a of the SOR alleges that Applicant failed to file federal income tax returns for tax years 2015, 2016, and 2017. SOR ¶¶ 1.b through 1.g allege that Applicant is indebted to the Federal Government for delinquent taxes for tax years 2008, 2009, 2010, 2011, 2014, and 2015, in the amounts specified. SOR ¶ 1.h alleges that she is indebted to the Federal Government for a tax lien of \$94,689, filed against her in 2011. SOR ¶ 1.i alleges that she failed to file state tax returns for tax years 2015, 2016, and 2017.

Applicant admitted all allegations except for SOR ¶ 1.g (delinquent taxes for tax year 2015). She admitted she owes federal taxes for the year, but denied that she owes the amount alleged. She planned to pay the past-due amount for tax year 2015 within three to six months. (Applicant's October 2019 Answer to the SOR, additional information at 2)

Applicant is 62 years old. She has been married since 1985. Her three adult-aged children, 44, 43, and 41, live independently. She accumulated several criminal justice credits from 1976 to 1979. She completed an associate's degree in 1980 and a bachelor's degree in 1998. (GE 1 at 11, 30, 34; Tr. 8)

In 1979, Applicant began her professional career as a human resource analyst. After working in several positions, including a defense analyst position where she held a security clearance for 11 years, she decided to become a consultant (age 46) in 2004 or 2005. Except for one month in 2009 and four months between October 2010 and

February 2011, Applicant has been regularly employed since 1979 and currently works as a consultant for a software company. She seeks a security clearance. (Tr. 9-16, 55-56)

When Applicant switched to consulting in 2004 or 2005, she had trouble adjusting to filing quarterly as a consultant rather than once a year as a W-2 employee. She worked extensive hours and believed she could manage her tax obligations without an accountant. She testified that she was primarily focused on earnings, but did not have sufficient knowledge on how to report the earnings and pay her taxes correctly. (Tr. 96-97, 118-120)

Throughout the course of Applicant's professional career, she or a family member have had cancer. She first had the disease in 1994 and had surgery. She also had cancer surgery in 1996 and 2013. Her brother had cancer in 2002 and passed. Applicant's mother passed away in 2013 after several bouts with cancer. Applicant's sister had the disease on two occasions. In 2019, her sister passed. Over the years, Applicant took care of her sister and mother, and likely bore at least some of the costs for their burial expenses. (Tr. 50, 95-96)

SOR ¶ 1.a – Applicant did not timely file federal tax returns for tax years 2015, 2016, and 2017. The Internal Revenue Service (IRS) prepared a substitute 2015 tax return in April 2017, and a substitute 2016 tax return on June 11, 2018. No tax return was prepared or filed for tax year 2017 by February 18, 2019, the date the 2017 transcript was obtained by the Government. The filing status for the three returns was married filing separate. (GE 5 at 17-20; Tr. 35)

Applicant's documentation reflects that she filed her 2015 federal tax return on August 12, 2019; her 2016 federal tax return on August 19, 2019; and her 2017 federal tax return on December 9, 2019. An accountant assisted Applicant to file an extension for federal tax year 2017. The filing status for the three tax returns was married filing jointly. (GE 5 at 7; AE B 9-14)

SOR ¶ 1.b – For tax year 2008, Applicant owes \$57,638 to the Federal Government in delinquent taxes, as of December 31, 2018. A substitute return was prepared by the IRS on August 30, 2010. Applicant admitted the allegation and indicated she was making \$1,800 in monthly payments. She could not explain why the delinquent tax amount was so much, but thought that she was caring for a family member during the year. She rhetorically wondered how she was able to buy her homes over the years if she owed so much in delinquent taxes. The documentation shows that Applicant initially made fairly regular payments in 2011 on the tax debt under an IRS installment agreement that was removed later in 2011 after she missed several payments. As a result, the IRS imposed periodic penalties and interest. A lien was placed on Applicant's assets due to the amount of tax owed. She realized her inconsistent payment pattern caused the penalties and interest to be levied. (Tr. 63-65, 97-100, 114, 118-120; GE 5 at 2-3) See also SOR ¶ 1.h.

Applicant's documentary evidence indicates that between November 2018 and February 2020, she made 11 payments to the IRS for tax year 2008; three dated payments for tax year 2008 were designated as "cancelled," a term that probably means the payments were not accepted for some reason. Though she made four monthly payments of \$1,800 during the period, most of the payments were \$750 or less. These payments were made by electronic funds transfer of payments (EFT) because there was no official IRS payment plan. When asked in May 2018 why there was no IRS payment plan, Applicant surmised the IRS was satisfied in the manner she was making her payments. The total of Applicant's 11 payments from November 2018 to February 2020 through ETF was \$10,950. (Applicant's earlier payments from 2011 through the end of October 2018 have already been subtracted from the delinquent tax amount displayed on the 2008 account transcript.) Subtracting \$10,950 from \$57,638 (delinquent taxes) leaves a delinquent tax balance of \$46,688 that Applicant owes for tax year 2008. (GE 6 at 9; Tr. 37-38, 74; AE B at 4-5)

SOR ¶ 1.c - For tax year 2009, Applicant owes \$35,886 to the Federal Government in delinquent taxes, as of February 18, 2019. Applicant's documentation reflects that she made at least twelve payments by ETF (\$6,500) between November 2018 and February 2020 on the delinquent balance, reducing the amount to \$29,366 in delinquent taxes for tax year 2009. (GE 5 at 5-6; Tr. 40-41; AE B at 4-5; AE C)

SOR ¶ 1.d - For tax year 2010, Applicant owes \$2,376 to the Federal Government in delinquent taxes, as of February 18, 2019. Applicant filed her 2010 federal return on August 27, 2014. Her documentation indicates that at least part of the delinquent tax was removed in March 2016 with the release of a \$1,047 tax lien for tax year 2010. After making approximately 16 regular to occasional payments to the IRS between 2014 and 2018, on September 23, 2019, Applicant paid \$2,400 to eliminate the remaining delinquent taxes due for tax year 2010. (GE 5 at 7-8; Tr. 42, 80-83; AE B at 3, 22-24) This allegation is resolved in Applicant's favor.

SOR ¶ 1.e - For tax year 2011, Applicant owes \$5,626 to the Federal Government in delinquent taxes, as of February 18, 2019. A substitute tax return was prepared by the IRS on September 30, 2013. The IRS indicated by letter to Applicant on December 6, 2019, they were taking no further action concerning Applicant's 2011 tax return because they agreed that Applicant and her husband filed a joint tax return. Even though the updated account transcript which Applicant submitted into evidence for tax year 2011 (as of December 30, 2019) displays that she and her husband filed as married filing separately, the 2011 transcript nevertheless ends with a zero balance. (GE 5 at 9-10; AE B at 1, 20-21; Tr. 84) This allegation is resolved in Applicant's favor.

On February 19, 2019, Applicant provided proof of making three payments in December 2018 to pay off \$1,942 in delinquent federal taxes owed for tax year 2013 (unalleged). A tax lien of \$1,820 for tax year 2013 was also released in March 2016, the same date as the 2011 tax lien was released. (GE 7 at 1-6, 11)

SOR ¶ 1.f – For tax year 2014, Applicant owes \$21,537 to the Federal Government in delinquent taxes, as of March 11, 2019. A substitute tax return was prepared by the IRS on September 25, 2017. Applicant filed an amended tax return and made a \$3,000 payment in September 2019. An IRS installment agreement was removed in December 2019. Applicant made a \$500 payment in January 2020. Applicant still owes \$19,134 in delinquent taxes for tax year 2014. (GE 5 at 15-16; Tr. 86-88; AE B at 17-19)

SOR ¶ 1.g – For tax year 2015, Applicant owes \$15,376 to the Federal Government in delinquent taxes, as of March 11, 2019. Her filing status was married filing separately. A subsequent tax return was prepared by the IRS on April 17, 2017. Applicant's documentation shows that she filed a tax return on August 12, 2019, and owes \$6,880 in delinquent taxes. The filing status of her return was married filing jointly. (GE 5 at 17-18; Tr. 89-92; AE B at 4-5, 13-14)

SOR ¶ 1.h – A federal tax lien of \$94,689 was levied against Applicant in August 2011. This lien applies to the delinquent tax balance for tax years 2008 and 2009. Applicant testified that she intended to have a \$1,500 to \$1,800 IRS monthly payment plan in place to address the delinquent taxes for 2008 and 2009. No additional evidence was presented on the status of the lien or her 2008 and 2009 proposed IRS payment plan. (GE 3 at 5; GE 6 at 7; Tr. 44-45)

SOR ¶ 1.i – Applicant failed to file state tax returns for 2015, 2016, and 2017. In her October 2019 response to the SOR, she indicated the state returns were filed, but she did not have the documentation in her possession at the February 2020 hearing. She indicated that she owed the state tax agency \$9,000 in delinquent taxes for 2014, but the amount was being reevaluated. She indicated she was paying the state tax agency \$400 a month under a payment plan. (Evidence regarding her claim of delinquent state taxes and the presence of a payment plan will be addressed in the whole-person concept below.) Following the hearing, those returns were entered into evidence. The state returns for 2014 and 2015 display Applicant's income with adjustments. The state returns for 2016, 2017, and 2018 display only exemptions. Applicant surmised that the difference in information inside the returns was due to a format change in the tax application she used to prepare the returns. Also, she was a part-time resident of one state when she moved to another in 2014. (Tr. 45-46, 94-95; AE D; AE F at 4)

Applicant testified that she has had financial counseling throughout her professional career. The format for the counseling was that she would talk about her finances and taxes with a counselor. The counseling she had in 2015 was directed more toward managing her finances and less on tax issues. (Tr. 51,102)

On March 3, 2020, by facsimile, Applicant requested account transcripts for 2008 and 2009 from the IRS. (AE D; AE E; AE F at 3, 8)

In a post-hearing email dated March 19, 2020 (AE F at 5), Applicant stated that her tax firm was helping her resolve the tax issues, but it would take time. The firm discovered that her 2014 through 2018 federal and state tax returns were not processed properly and are being amended. According to her undocumented claim, she only owes \$2,626 in delinquent federal taxes for tax year 2014. Her unsupported claims that she may not owe \$6,481 in state taxes for tax year 2014, and that she is paying the state tax agency either \$400 or \$321 a month, will be addressed in the whole-person section of this decision.

In an email appearing at AE F at 2-3 (March 31, 2020), Applicant reviewed the post-hearing evidence she had submitted and other documentation she intended to submit. Though she mentioned that she intended to submit monthly budget information, the record contains no evidence of a budget. She also indicated in the March 31, 2020 email that on March 3, 2020, an IRS official informed her by telephone that the delinquent federal taxes for tax year 2008 are \$51,288 (SOR ¶ 1.b), and for tax year 2009 are \$32,796 (SOR ¶ 1.b). Finally, without supporting documentation, Applicant stated that she was paying IRS \$1,500 a month on her delinquent federal taxes for tax years 2008 and 2009, and her tax firm was helping her file her 2019 federal tax return on time. (AE F at 2-3) No additional post-hearing documentation was presented by Applicant by May 22, 2020, the date when the record closed.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are not inflexible rules of law, should be applied with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

The security concerns of the guideline for financial considerations are set forth 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.

An applicant who seeks a security clearance with the Government must demonstrate that she has good judgment and is trustworthy. A yardstick of her judgment and trustworthiness is how she manages her personal financial affairs. An applicant who has a history of not filing her tax returns and paying her taxes demonstrates financial irresponsibility. If she shows that she has trouble complying with the legal requirements of filing her tax returns and paying her taxes, there is a risk that she may exhibit the same kind of irresponsible attitude when it comes to following security rules and regulations for safeguarding sensitive and classified information.

AG ¶19 describes conditions that could raise a security concerns and may be disqualifying 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.

Applicant admittedly failed to timely file her federal and state tax returns for 2015, 2016, and 2017. She acknowledged that she owes delinquent federal taxes totaling \$138,439, for tax years 2008, 2009, 2010, 2011, 2014, and 2015. She admitted that a federal tax lien amounting to \$94,689 was entered against her in 2011 for tax years 2008 and 2009. Applicant's 12-year history of not complying with her legal tax obligations establishes AG ¶¶ 19(a), 19(c), and 19(f).

The pertinent mitigating conditions under AG ¶ 20 include:

- (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.

Applicant provided documentation showing that she paid her delinquent federal taxes for 2010 (SOR ¶ 1.d) and for 2011 (SOR 1.e) She has mitigated those allegations. Since the tax lien was filed in 2011 for federal taxes she owes for tax year 2008 and 2009, which she admitted, I find in her favor under SOR ¶ 1.h. She also paid off federal taxes she owed for tax year 2013. (unalleged) Though she has made periodic payments inside and outside of IRS payment plans on the delinquent balance for federal tax years 2008 (SOR ¶ 1.b), 2009 (SOR ¶ 1.c), 2014 (SOR ¶ 1.f), and 2015 (SOR ¶ 1.g), she still owes \$102,068 in delinquent taxes for those years. Applicant has provided insufficient evidence to show that the tax issues will not persist in the future. AG ¶ 20(a) applies in part.

Applicant and members of her family had serious medical problems since 1994. Her unforeseen medical problems, the unanticipated and commendable care she provided to her sister and her mother, and at least part of the burial expense associated with their deaths, were clearly events beyond Applicant's control. However, apart from the emotional toll on her, it is difficult to establish the extent to which these family medical events interfered with her failure to timely file her federal and state tax returns and pay her federal and state taxes. The second prong of AG ¶ 20(b), acting responsibly under the circumstances, is only partially applicable because Applicant has not presented a meaningful track record of debt reduction through regular payment of her delinquent taxes, given her prior erratic history in filing federal and state tax returns and failing to comply with IRS payment plans over the years.

Applicant testified that her tax issues arose even before 2008, however, she did not hire a tax consultant until late 2019 or 2020 because she did not trust the service and she believed she could resolve the tax issues by making payments. Regarding her lengthy delay in obtaining assistance, she receives no mitigation under either prong of AG ¶ 20(b) because her decision was totally within her control, leading to mounting tax problems beginning in tax year 2008. Significantly, her decision to finally hire the tax service did not occur until after she received the SOR in late 2019.

While Applicant claimed that she has had financial counseling throughout her career, she only mentioned the 2015 counseling that recommended she pay her taxes. Furthermore, despite her intentions to supply a financial budget among her post-hearing exhibits, no budget was received. Even though there are still insufficient indicators that her tax issues are being resolved, she merits partial consideration under AG ¶ 20(c) for hiring the tax firm and becoming more proactive in the resolution of her tax difficulties.

Under AG ¶ 20(d), an applicant must demonstrate a good-faith effort to handle her financial obligations. Under AG ¶ 20(g), an applicant must show that she has made arrangements with the federal and state tax authorities that she is in compliance with those arrangements. Applicant receives limited mitigation under both conditions because there is negligible evidence from her showing voluntary compliance with federal and state tax laws in filing returns and paying her taxes since 2008. Though Applicant eventually filed the missing federal and state tax returns, the late filing of those returns reduces the mitigation available under AG ¶ 20(g). Applicant still owes delinquent federal taxes for 2008, 2009, 2014, and 2015.

Whole-Person Concept

I have examined the evidence under the specific guideline (financial considerations) in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the disqualifying and mitigating conditions of the specific condition together with all the surrounding circumstances of this case. I have considered the serious medical issues that Applicant and her family faced over the years. In 2004 or 2005, Applicant decided to become a consultant without investigating the tax ramifications of reporting income, filing returns and paying taxes for a consultant. The tax problems escalated in 2008 and liens were ultimately filed for nonpayment of taxes for 2008 and subsequent years. Instead of obtaining help for her ballooning tax problems, she let the situation fester because she did not trust tax services. After hiring a tax firm in late 2019, they indicated her federal and state tax returns for 2014 through 2018 were processed improperly, and that they were working toward a resolution of Applicant's tax issues. However, she presented no documentary evidence to support her claims regarding the tax information her tax firm uncovered about the current status of her federal and state taxes, and the status and duration of the payment plan she was participating in with the state tax agency. Considering the evidence as a whole, specifically Applicant's history of filing late tax returns and her inconsistent payment plan history in previous IRS payment plans and through EFT, Applicant has not mitigated the security concerns arising from the guideline for financial considerations.

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, 1.f, 1.g, 1.i:	Against Applicant
Subparagraphs 1.d, 1.e, 1.h:	For 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 interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for classified information is denied.

Paul J. Mason
Administrative Judge