



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

In the matter of:)	
)	
)	ISCR Case No.20-01102
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2021

Decision

Mason, Paul J., Administrative Judge:

Applicant’s documented measures to file her federal and state tax returns in December 2020 provides some mitigation. However, she knew that she should have filed those tax returns in December 2018, when she submitted her security clearance application. She did not supply credible documentary evidence to support her repeated claims of filing the tax returns earlier during the two-year period. She provided no documented action of resolving the car debt until after she received a settlement offer in March 2021, or about six years after debt became delinquent. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on December 10, 2018. She provided an interview (PSI, Item 7) to an investigator from the Office of Personnel Management (OPM) on April 1, 2019. On

August 14, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the guideline for financial considerations. This case is adjudicated in accordance with Executive Order 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 1992), as amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017.

Applicant's answer to the SOR is undated. In view of her statement at the bottom of the first page of her answer, which indicates that she provided documentary evidence showing that she filed all tax returns, it logically follows that she submitted her SOR response after December 2020, the date posted on the US Post Office receipt located in her response to the FORM. See April 2021 Response to FORM at 11.

The Government sent a copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, to Applicant on February 12, 2021. Applicant received the FORM on March 5, 2021. The FORM recommended she file objections, submit additional information or provide explanations within 30 days of receiving the FORM. On April 2, 2021, Applicant submitted a 24-page response to the FORM, which DOHA received on April 14, 2021, and is now in evidence. I was assigned the case on May 17, 2021.

Rulings on Evidence

Under the Evidence section of the FORM (page 2), the Government advised Applicant that she could make corrections to the April 1, 2019 personal security interview (PSI) to improve the exhibit's clarity and accuracy. Alternatively, Applicant was advised that if she objected to the entire PSI on the ground that it was unauthenticated by a government witness, it would not be entered into evidence. Applicant did not object, and the exhibit is admitted into evidence. See, E3.1.20. of DOD Directive 5200.6, page 52.

Findings of Fact

The SOR alleges three delinquent debts. Applicant admitted that she did not file federal and state tax returns for 2016, 2017, and 2018 (SOR ¶¶ 1.a, and 1.b). She filed the tax returns in December 2020. (Response to FORM at 11) By asserting the statute of limitations, she claimed that she was no longer responsible for the delinquent auto debt (SOR ¶ 1.c) that was in a collection status in August 2020, the month the SOR was published.

Applicant is 54 years old and has been divorced since 1991. She has a 32-year-old son. She has owned her home since 2002. Her 32-year-old son currently lives in the dwelling. She lives in an apartment. She recently helped her parents purchase their home located in a safer area of the town where they reside. This is Applicant's first application for a security clearance. (Item 3 at 7-9; Response to FORM at 5)

From April 2016 to June 2017, Applicant was a designer working for a contractor at her current employer's headquarters. In June 2017, she joined her current employer's staff as a designer. (Item 7 at 1) In her previous employment, she worked in a job shop at a trade school, as a document control clerk, and she also worked as a parts assembler. Her employment record indicates that since March 2009, she was unemployed four times for varying lengths of time, not exceeding 15 months. No additional information was provided for the major surgery that she mentioned she had in 2014. (Item 3 at 11-23)

SOR ¶¶ 1.a, 1.b. – In her December 2018 security clearance application, Applicant disclosed that she had not filed her federal and state tax returns for 2016 and 2017. Before those two years, she had always filed her own taxes. However, she stated that in 2016, she was living in one state and working in another state. She was uncertain about what she should do to file her federal and state taxes. Then she let time slip away. She attributed her failure to file the 2017 federal and state tax returns to carelessness and neglect. She intended to file the returns after she filed the security clearance application in December 2018. She noted that she never received financial counseling. (Item 3 at 38-39, 41; Item 7 at 2)

In her April 2019 PSI, Applicant cited the “living in one state and working in another state explanation” as the only reason she did not file the 2016 and 2017 federal and state tax returns. She revealed that she was getting help from a friend to file her returns. In her responses to interrogatories filed on January 27, 2020, Applicant indicated again that she had not filed her federal and state tax returns. She noted that she was in the process of completing the returns. Applicant filed the missing tax returns in December 2020. (Item 4 at 1-8; Item 7 at 2-3; Response to FORM at 1, 11-24)

SOR ¶ 1.c – This is an installment finance loan account for a car that was opened in August 2010. The \$5,166 account became delinquent and charged off in October 2015. In Applicant's April 2019 PSI, she indicated that she was in the process of making payment arrangements with the creditor to settle the SOR ¶ 1.c debt for the car that was repossessed. Although she was offered an opportunity during and after the PSI to provide additional information about the car and other debts, Applicant did not provide any information. (Item 7 at 2-3; Response to FORM at 1)

On October 16, 2020, Applicant requested an application for a student loan repayment plan (unlisted delinquent debt). On March 15, 2020, the government service provider congratulated Applicant for successfully completing her first year (2019) in the forgiveness program. (Response to FORM at 4-9)

On December 4, 2020, Applicant provided documentation showing she paid \$32.20 for filing tax returns to the Federal Government, the state where she resides (State #1), and the state where she works (State #2). The returns were filed for the years listed in the SOR and tax years 2019 and 2020. She did not know that not filing her tax returns was a crime. (Item 5 at 4, 8; Response to FORM at 1-2, 11-15)

For state tax year 2020, Applicant owes State #2 \$383, but received an extension to pay the tax until May 17, 2021. For the same tax year, Applicant owes no tax, nor a refund from State #1. Applicant has a Federal tax refund of \$1,736 due her for tax year 2020. On April 2, 2021, Applicant paid State #2 \$1,337 for tax years 2017, 2018, and 2019. On December 31, 2020, State #2 informed Applicant that her refund request for tax year 2016 was denied because the request was outside the three-year limitation period and the period for an extension in which to file a return had expired. (Response to FORM at 16-22)

On February 5, 2021, State #1 informed Applicant that she owes \$2,015 for tax year 2019. The state also informed her that she owes \$3,397 for tax year 2017. (Response to FORM at 23-24)

Policies

The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. The adjudicative process is a careful weighing of a number of variables referred to as the "whole-person" concept, viewing a person by the totality of his or her acts, omissions, motivations and various other variables. Each case must be evaluated on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. In all adjudications, the protection of the national security is the paramount consideration. Therefore, any doubt concerning personnel being considered for access to classified information is resolved in favor of national security.

Analysis

Financial Considerations

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.

The disqualifying conditions under AG ¶ 19 are:

- (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.

In Applicant's December 2018 e-QIP, her April 2019 PSI, her January 2020 answers to interrogatories, and her answer to the August 2020 SOR, Applicant admitted she did not file her federal and state tax returns for tax years 2016, 2017, and 2018 (SOR ¶¶ 1.a and 1.b). Her failure to file federal and state tax returns meet the elements of disqualifying condition AG ¶ 19(f). The existence of the repossessed car debt (SOR ¶ 1.c), which has been delinquent since 2015, falls within the disqualifying conditions AG ¶¶ 19(a), 19(b), and 19(c).

The five conditions under AG ¶ 20 that could mitigate security concerns 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 has exercised some good judgment by finally filing her tax returns. AG ¶ 20(g) applies in part because she filed all her federal and state tax returns for tax years 2016, 2017, and 2018. And, she has paid a significant amount of back taxes. However, she did not file the returns until December 2020, about two years after she first stated her intention to file the tax returns.

When Applicant submitted her e-QIP in December 2018, she claimed that she did not file for tax year 2016 because she was confused about how to file returns while living in State #1 and working in State #2. Also, she let time lapse. Her explanation for not filing for tax year 2017 was carelessness and neglect. Apparently, she was no longer confused about how to file, but just did not file because of procrastination. However, she presented no documentation to prove what she actually did towards filing the tax returns in December 2018.

In her April 2019 PSI, Applicant acknowledged that she had not filed her tax returns, but was receiving assistance in filing the returns. She also stated that she was actively trying to arrange payments with the SOR ¶ 1(c) creditor. For a second time, she provided no documented proof of exactly what she did towards processing her tax returns and paying of the car debt. In January 2020, Applicant again conceded that the tax returns had not been filed. She again stated that she was in the process of filing the returns. In her answers to the August 2020 SOR, she admitted that the tax returns were not filed by August 2020, the date of the SOR, but were filed in December 2020.

Even though the failure to file a federal tax return is a federal offense under Title 26 U.S.C § 7203, I am not considering Applicant's failure to file a federal crime. Rather, DOHA Appeal Board precedent has held that an applicant's repeated failure to satisfy her legal obligation to file federal and state tax returns does not demonstrate the good judgment and reliability required by persons seeking access to classified information. See, e.g., ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015)

The timing of an applicant's actions in resolving his or her financial indebtedness is meaningful in assessing her case in mitigation under AG ¶ 20(g). When an applicant waits until after being placed on notice that she is at risk of losing her security clearance, she may lack the judgment to follow rules and regulations consistently or when there is no urgent threat to her own objectives. Applicant's failure to file her federal and state returns until after submitting her e-QIP, her PSI, and her answers to interrogatories, diminishes the weight her filing would otherwise deserve.

Applicant's four periods of unemployment since March 2009, and her unexplained surgery in 2014 were conditions beyond her control entitling her to some mitigation under the first prong of AG ¶ 20(b). However, the mitigation she receives is substantially weakened by her continuous employment since April 2016 and her failure to act on the tax returns for two years. Applicant receives minimal mitigation under AG ¶ 20(d) for the same reasons explained under AG ¶ 20(c).

The reasons supplied by Applicant for not filing her federal and state tax returns in a timely fashion are unconvincing. Under the circumstances, her evidence does not establish sufficient mitigation under the guideline for financial considerations.

Documentary evidence of financial counseling can provide probative insight into how an applicant handles her finances. An applicant's use of a budget to monitor her income and expenses can be persuasive evidence of action of her determination to live within her means. On the other hand, contributing to the purchase of her parents' home, having to pay rent for her own apartment, and probably sharing expenses for the upkeep of the home she has owned since 2002, does not infer that she is living within her means. Though Applicant's response to the FORM tends to show she is gaining control of her tax and other debt issues, only limited mitigation is available under AG ¶ 20(c) for Applicant because she has not had financial counseling.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an appellant's eligibility for a security clearance by considering the totality of the appellant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 of the financial considerations guideline. I have also considered the facts and circumstances in the context of the nine factors or the whole-person concept.

Applicant is 54 years old and divorced. She has a 32-year old son. Since April 2016 to the present, she has worked for her employer as a sub-contractor or directly on the employer's staff. Though she provided no character evidence, it is fair to infer that her job performance with her current employer has probably been satisfactory since she was placed on her current employer's staff in 2017.

Based on a lack of mitigating evidence in critical areas of this case, I find against Applicant under the financial guideline. She knew in December 2018, and

probably before that time, that she had not filed the tax returns at issue. While she may not have known that not filing returns was a crime, she had always filed her returns before 2016. Her confusion over living in one state and working in a coterminous state could have easily been resolved by asking her facility security officer (FSO) or the large number of individuals living in the region and facing the same circumstances of residing in one state and living in another state. Applicant's carelessness and negligence explanations are pretexts for procrastination.

Applicant's failure to act on her tax problems and the car debt until after submission of her security application, after her PSI, after her responses to interrogatories, and after she received the SOR, raise continuing security concerns about her judgment and reliability. Judging by the totality of all the evidence, Applicant's evidence does not mitigate the security concerns that remain under the guideline for financial considerations.

Formal Findings

Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	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 interests of the United States to grant Applicant eligibility for access to a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge