



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



In the matter of:)
)
) ISCR Case No. 20-01104
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 6, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 25, 2021, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 30, 2021 and then reassigned to me on December 14, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on December 16, 2021, scheduling the hearing for January 20, 2022. I canceled the hearing on January 20, 2022, due to inclement weather and Applicant's illness. DOHA issued a

second NOH, rescheduling the hearing for February 24, 2022. On February 23, 2022, I canceled the hearing, due to Applicant's illness. DOHA issued a third NOH on March 9, 2022, rescheduling the hearing for March 31, 2022. I convened the hearing as rescheduled.

At the hearing, Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant testified. At Applicant's request, I kept the record open until May 13, 2022, to allow Applicant to submit documentation. At Applicant's request and without objection, I extended the deadline for Applicant to submit additional documentation to June 8, 2022. By that date, Applicant submitted documentation which I collectively marked as AE A and admitted without objection. DOHA received the hearing transcript (Tr.) on April 13, 2022. (Tr. at 20; GE 1-5; AE A)

Findings of Fact

Applicant admitted all of the SOR allegations. She is 63 years old. She married in 1981, divorced in 1991, remarried in 1992, divorced in 2000, remarried in 2003, and divorced in 2006. She has an adult daughter and three adult grandchildren. She graduated from high school in 1977 and attended college but did not earn a degree. She has owned her home since 1999. (Answer; Tr. at 7, 21-23; GE 1, 2)

Applicant has worked for various DOD contractors since approximately 2000. She was unemployed in 2013. After a layoff, she was again unemployed from December 2014 to January 2015. She then worked part time, as a designer for an event center, from May 2015 to February 2016, when she was again laid off. She was unemployed from November 2015 to April 2016. Since 2016 and as of the date of the hearing, she worked as an information specialist for her employer, a DOD contractor. She has also worked part time, as a cashier at an arts and crafts store, since 2007. She was first granted a security clearance in approximately September 2011. (Tr. at 7-9, 23-24, 26-27, 29, 53-54; GE 1, 2)

The SOR alleged that Applicant failed to file her federal and state income tax returns for at least tax years (TY) 2014 through 2018 (SOR ¶¶ 1.a, 1.b). The SOR also alleged that Applicant had three delinquent consumer accounts totaling \$42,609 (SOR ¶¶ 1.c, 1.d, 1.e). The SOR allegations are established by Applicant's admissions in her Answer, March 2018 security clearance application (SCA), 2018 and 2019 background interviews, 2020 response to interrogatories, and credit bureau reports from 2018, 2019, and 2021. SOR debts ¶¶ 1.c through 1.e are reported on the 2018 and 2019 credit bureau reports, and SOR debt ¶ 1.d is reported on the 2021 credit bureau report. SOR debts ¶¶ 1.c through 1.e are not reported on her most recent credit bureau report from May 2022. (Answer; GE 1-5; AE A)

Applicant attributed her inability to timely file her federal and state income tax returns for TY 2013 to 2016 to two roof leaks in her home, in 2013 and 2016, which damaged documentation she needed to file her relevant income tax returns. She was overwhelmed with having to pay approximately \$600 in 2014 and \$1,000 in 2016 to repair her roof, as well as with reconstructing the documentation she needed to file her relevant

income tax returns. She did not seek help with reconstructing her tax documentation, and she did not think to attempt to do so online; rather, she corresponded with her creditors by telephone and mail. She consequently did not provide her tax preparer with the required documentation so that her tax preparer could timely file her income tax returns for TY 2013 to 2018. She acknowledged during her October 16, 2018 background interview that her inability to pay her tax advisor also affected her ability to file her income tax returns since 2013. She testified that she also did not timely file her federal and state income tax returns for TY 2019 and 2020, because she was waiting for her tax preparer to first file her income tax returns for TY 2013 to 2018. (Answer; Tr. at 26, 34-53, 60-62; GE 1, 2)

Applicant testified that she has worked with a tax advisor since approximately 2009. She testified that her tax preparer filed her federal and state income tax returns for TY 2013 to 2018 in June 2021, and her federal and state income tax returns for TY 2019 and 2020 in August 2021. She did not provide corroborating documentation. She testified that she was unsure how much she owed in federal taxes; she believed she owed \$2,000 in state taxes; and her tax preparer was assisting her with negotiating payment plans with both the IRS and the state tax authority to resolve any outstanding taxes. She testified that as of the date of the hearing, all of her federal and state income tax returns had been filed. She also testified that she expected to pay taxes on money she withdrew from her individual retirement account (IRA) in 2016 when she was unemployed, and in 2022 to repair her roof. (Tr. at 42-53, 61-62, 65; GE 2; AE A)

Applicant attributed her delinquent consumer debts to the above-mentioned periods of unemployment; four unexpected car repairs from around 2014 to 2018 that cost between \$200 and \$800; \$1,800 in medical expenses related to a dental condition between 2014 and 2018, and an immune system disorder diagnosed in around 2016; replacement of her HVAC system in 2020, for which she was on a \$300 monthly payment plan as of the date of the hearing; and providing needed financial assistance to both her mother and her daughter. (Answer; Tr. at 26, 34-44, 53-54, 59, 65-66; GE 1, 2)

Applicant testified that she attempted to work with her creditors from approximately 2015 to 2018 to resolve her delinquent consumer debts, but she made little progress because she could only make nominal monthly payments while interest continued to accrue. On the advice of her bank, she consulted with Accelerated Financial Services (AFS) in January 2014 in an attempt to resolve her delinquent debts. In October 2018, she entered her three consumer debts in SOR ¶¶ 1.c, 1.d, and 1.e, into a debt consolidation plan with AFS. She also included in her debt consolidation plan four debts that are not alleged in the SOR. She testified that she paid approximately \$1,500 monthly into her debt consolidation plan for one year, and then \$50 monthly since. Documentation from AFS reflects that Applicant has made timely payments into her plan. (Tr. at 29-34, 54-60, 63; GE 1, 2; AE A)

SOR ¶ 1.c is for a \$13,402 charged-off account. Applicant testified that although this debt was no longer reported on her most recent credit bureau report, she intended to resolve it through her debt consolidation plan with AFS. (Tr. at 54-56; GE 5; AE A)

SOR ¶ 1.d is for a \$17,101 charged-off credit card. As previously discussed, Applicant included this debt in her debt consolidation plan with AFS. An IRS Form 1099-C reflects that the creditor cancelled this credit card debt in December 2019. (GE 5; AE A)

SOR ¶ 1.e is for a \$12,106 charged-off credit card. As previously discussed, Applicant included this debt in her debt consolidation plan with AFS. An IRS Form 1099-C reflects that the creditor cancelled this credit card debt in December 2017. (Tr. at 58; GE 5; AE A)

As of the date of the hearing, Applicant's net monthly income was approximately \$4,500. She also earned \$12.25 hourly from her part-time employment, where she worked 12 hours weekly as of the date of the hearing. She testified that her monthly net remainder, after expenses, was \$100. She was seeking additional part-time employment in an effort to resolve her debts, to include her outstanding taxes. She had \$7,000 in her IRA that she had been contributing to since 2016. She testified that she did not use credit cards. She testified that she was current on her mortgage, for which she paid \$1,400 monthly. She also testified that she developed a budget for her income and expenses, and she understood the importance of timely filing her future federal and state income tax returns. She has not received credit counseling. She traveled to Jamaica for tourism in June 2009 and June 2011, and she also traveled to Mexico for tourism in June 2011. (Tr. at 22-29, 53, 62-67; GE 1; AE A)

Policies

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(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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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 . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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 as required.

Applicant was unable to pay her debts. She also failed to timely file her federal and state income tax returns for TY 2014 through 2018. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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.

It is well established that failure to comply with tax laws suggests that an applicant has difficulty with abiding by government rules and regulations. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). It is also well established that the mere filing of past-due returns or resolution of delinquent tax debts does not compel a favorable security-clearance adjudication. ISCR Case No. 17-01907 (App. Bd. Mar. 7, 2018). The timing of corrective action is an important factor in determining whether security concerns raised by tax delinquencies are mitigated. Applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Conditions beyond Applicant's control contributed to her financial problems. The first prong of AG ¶ 20(b) only partially applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. Applicant provided documentation reflecting that SOR debts ¶¶ 1.d and 1.e were canceled in 2019 and 2017, respectively. She intends to continue to pay into her debt consolidation plan to resolve SOR debt ¶ 1.c. I find that ¶ 20(d) applies to SOR ¶¶ 1.c through 1.e.

Applicant has worked with a tax advisor since 2009. She failed to provide documentation to corroborate her claims that she filed her federal and state income tax returns for TY 2014 through 2018, or reached a payment arrangement with the IRS or the state tax authority to resolve any outstanding taxes associated with those and other tax years for which she failed to timely file her income tax returns. I also find that such

behavior did not happen so long ago, was not infrequent, and did not occur under such circumstances that are unlikely to recur. It continues to cast doubt on her current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d) and 20(g) are not established as to SOR ¶¶ 1.a and 1.b.

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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the financial considerations security concerns.

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 - b:	Against Applicant
Subparagraphs 1.c - 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 national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge