



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



In the matter of:)	
)	
)	ISCR Case No. 19-00054
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Brittany White, Esquire, Department Counsel

For Applicant:
Pro se

September 19, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 14, 2016. (Item 3.) On March 26, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations) and E (Personal Conduct). (Item 1.) The action was taken under 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 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

In an undated written response, Applicant answered the SOR (Answer). (Item 2.) She attached one document and requested her case be decided on the written record in lieu of a hearing. In her Answer Applicant admitted with explanations eight of the nine SOR allegations and denied one allegation. The SOR does not include an allegation under the heading 1.d. On March 17, 2022, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), including documents marked as Items 1 to 17, was provided to Applicant, who received the file on May 5, 2022.

Applicant was given 30 days from receipt of the FORM to raise objections and submit material in refutation, extenuation, or mitigation. Applicant did not reply to the FORM nor did she submit any additional documentation. Department Counsel's Items 1 through 17 are admitted into evidence. The case was assigned to me on August 4, 2022. Based upon a review of the pleadings and the Government's evidence, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 54 years old, has never married, and has two adult children. She received her high school diploma in 1985 and a certificate from a law enforcement training center in 1998. She attended college classes from 2002 to 2008, but was not awarded an undergraduate degree. Since 2016 she has been employed as a litigation analyst. According to her e-QIP and the report summarizing her background interview, she has been unemployed only for two brief periods since 2009; *i.e.*, July to November 2014 and October 2016 to January 2017. She has twice been granted eligibility for a security clearance at the top secret level, first in 1998 and then in 2012. She seeks to obtain eligibility again in connection with her current employment. (Item 3 at 12-25, 28, 30-31, 37-39; Item 2 at 2; Item 17 at 2.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph of the SOR that Applicant is ineligible for a clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR alleged that she has voluntarily filed for Chapter 7 bankruptcy relief three times, specifically in 1991 (1.a), 2010 (1.b), and 2018 (1.f). Her debts were discharged in each case. The SOR also alleged that she filed for Chapter 13 bankruptcy relief two times, in January 2015 (1.c) and August 2015 (1.e). In both cases the Chapter 13 bankruptcy petitions were dismissed. The SOR alleged two tax debts owed to her state of residence (State 1). For tax year (TY) 2010, she is alleged to owe approximately \$8,497 (1.g), and for TY 2012, she is alleged to owe approximately \$7,696 (1.h). SOR 1.h also alleged that State 1 has imposed a tax lien on Applicant for the delinquent taxes due for TY 2012. The SOR further alleged that Applicant owes the U.S. Government about \$14,022 in unpaid

taxes for TYs 2011 and 2013 (1.i). In her Answer Applicant admitted with explanations each of these eight allegations. (Answer at 1.)

The SOR listed a ninth allegation stating that Applicant is indebted to State 1 for a judgment entered against her in July 2015 in the amount of \$14,770 for unemployment benefits that she fraudulently received. (1.j) In her Answer, she denied that she committed fraud in receiving unemployment benefits and claimed that she never received notice of a hearing on State 1's request for a judgment. (Item 2 at 1.)

The details of the nine SOR allegations are as follows:

1.a. 1991 Chapter 7 Bankruptcy Petition and Discharge. Applicant filed this bankruptcy petition in July 1991 and her debts were discharged in December 1991. In her Answer, Applicant explained that she suffered an on-the-job injury in 1989 and was unable to work. In 1990 she became a single parent and experienced financial difficulties. She filed for bankruptcy "to get a fresh start." (Item 2 at 1; Item 4.)

1.b. 2010 Chapter 7 Bankruptcy Petition and Discharge. This petition was filed in January 2010. Applicant's debts of \$731,611.57 were discharged in May 2010. She was employed as a security guard at that time. She also owned a part-time seasonal business, which she started in 2003. In her Answer, she wrote that a bad economy forced her to file this bankruptcy petition to "salvage what I could of a life for myself and my children." She further explained that at that time she had a large mortgage, four work vehicles, two personal vehicles, a warehouse, and two young children. (Item 2 at 1; Item 3 at 40; Item 5.)

1.c January 2015 Chapter 13 Bankruptcy Petition. Applicant wrote in her answer that she filed this petition "to stave off creditors because [she] had yet to fully recover from the economic crash of 2009/2010." She was also solely responsible for a child in college. She claimed that she filed this petition due to "bad advice" of an attorney. In July 2015, the petition was dismissed upon Applicant's request that her Chapter 13 plan not be approved. (Item 2 at 1; Item 3 at 40; Item 6.)

1.d. The SOR contains no allegation under this heading.

1.e. August 2015 Chapter 13 Bankruptcy Petition. In August 2015, the same attorney filed a second Chapter 13 petition on behalf of Applicant. In September 2015, Applicant filed an Amended plan under Chapter 13. Applicant submitted four amended plans, and in July 2016 the bankruptcy court entered an order denying confirmation of Applicant's plan due to her failure to fulfill a condition for confirmation. The case was dismissed in October 2016. In her Answer, Applicant wrote that both Chapter 13 petitions were filed as part of "a plan to buy me time until I was eligible to file a Chap 7 [debt discharge petition] again." (Item 2 at 1; Item 7.)

1.f. 2018 Chapter 7 Bankruptcy Petition and 2018 Discharge. Applicant filed a *pro se* Chapter 7 petition in November 2018. She successfully discharged \$138,058 of debts in March 2019 with no distribution of any assets. The record reflects that Appellant was employed by one Government contractor as a Personnel Security Manager starting in January 2017 until June 2018 and by a second Government contractor with the same title in June 2018. The most recent information in the record is from June 2018, when a Triggered Enhanced Subject Interview of Applicant was conducted by investigators of the Office of Personnel Management. In her November 2018 bankruptcy petition, she did not list any employer, but provided information about her personal business, which had a name similar to the business she claimed in her e-QIP she sold in December 2014. Her petition reflects monthly income of \$1,391. (Item 3 at 18-19; Item 8; Item 9 at 2, 8; Item 17 at 2.)

1.g State 1 Unpaid Taxes Due in the Amount of \$8,497 for TY 2010. Applicant asserts in the Answer that she has resolved this tax debt with installment payments. She provided a letter from State 1, dated March 14, 2022, that confirms she has no outstanding tax obligations to State 1. This debt is resolved. (Item 3 at 42; Item 15; Item 16.)

1.h. State 1 Tax Lien Entered against Applicant in the Amount of 7,696 for TY 2012. See 1.g, above. This debt is resolved. (Item 3 at Item 15; Item 16; Item 17 at 7.)

1.i. Federal Unpaid Taxes Due in the Amount of \$14,022 for TYs 2011 and 2013. Applicant admitted this debt in her Answer, but claimed that the debt has been resolved. She was only able to provide limited records to substantiate her claim due to the unavailability of records from the IRS for TY 2011 and earlier. She provided a tax account transcript for TY 2013 that shows that the IRS wrote off her debt of \$10,630 in April 2019. The TY 2013 tax debt is resolved, but was not paid. There is no record evidence to support her claim of resolution of the TY 2011 tax debt. (Item 14 at 4-5; Item 15 at 1.)

1.j. July 9, 2015 State 1's Judgment in the Approximate Amount of \$14,770 for Fraudulently Receiving Unemployment Benefits. This debt is not resolved. This judgment was entered against Applicant by the Bankruptcy court as part of her Chapter 13 proceeding. State 1 filed an adversary proceeding against Applicant. In its Complaint to Determine Dischargeability of a Debt, State 1 alleged that Applicant fraudulent represented that she was eligible and remained eligible to receive unemployment benefits. The requirement for eligibility was that Applicant be unemployed while receiving benefits. State 1 alleged that while Applicant was receiving unemployment benefits, she was actually employed during the period November 2011 through July 2012. In her Answer Applicant claimed that "she had no idea what this debt was about." She also claims that she never committed any fraud and was in the process of investigating the matter further. I note that Applicant was represented by counsel in her bankruptcy proceeding and the summary of filings in that proceeding reflect that State 1's complaint initiating the adversary proceeding was filed on May 4, 2015. This judgment is not resolved. (Item 6 at 3; Item 11; Item 12.)

Applicant submitted no additional documentation or information concerning her debts or current income. Also, she provided no information detailing her plans for resolving her past-due indebtedness or demonstrating other indicia of trustworthiness.

Paragraph 2 (Guideline E, Personal Conduct)

2.a. The Government cross-alleged in this paragraph the SOR allegation set forth in 1.j, above.

Applicant denied committing any fraud by collecting unemployment benefits from State 1 during the period involved, November 2011 to July 2012. The record evidence supports the claim of State 1 that Applicant was employed during those months. Her claims for unemployment benefits during that period were not valid due to her employment. Applicant wrote in her Answer that that she made an inquiry of State 1 regarding this issue and was waiting to hear back. She provided no additional or follow-up information or documentation. (Item 2 at 1.)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;

- (c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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 has admitted to a long history of multiple bankruptcy discharges dating back to 1991 and 2010 and as recently as 2018. She has also admitted to delinquent tax payments and has an outstanding tax obligation. The record evidence also establishes that she fraudulently collected unemployment benefits while she was employed and ineligible for benefits. All of the above potentially disqualifying conditions apply.

Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by the above financial considerations. The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

(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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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 taken 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.

AG ¶ 20(a) has not been established. Applicant's financial behavior is recent, frequent, and occurred over many years and a variety of circumstances, rendering them likely to recur and casts doubt on her reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is only partially established. Applicant claims that she experienced financial hardship during and as a result of the economic recession of 2009, which caused her to file for the discharge of her debts in 2010 through bankruptcy. She provided no convincing evidence that once she was free of her debts in 2010 that she experienced any circumstances beyond her control that caused her financial hardship over the subsequent years when she failed to pay her state and Federal taxes as required, fraudulently obtained unemployment benefits in State 1, and had her subsequent debts discharged again in 2018. Applicant failed to act responsibly for a number of years after 2010 and still at this time is indebted to State 1 on a judgment for over \$14,000 for fraudulently obtained unemployment benefits.

AG ¶ 20(d) has not been established. Applicant provided evidence that she has resolved her state tax debts, but has not paid her Federal tax debts. Her 2013 tax debt of \$10,630 was written off by the IRS and she provided no evidence of a resolution of her 2011 tax debt. In addition, she has provided no evidence of payments to State 1 to resolve the state's judgment against her or actions taken to otherwise resolve that debt.

AG ¶ 20(e) has not been established. She disputes the State's claim that she fraudulently obtained unemployment benefits, but she has provided no documentation to show that she has a reasonable basis to dispute this debt and has in fact followed up with State 1 to challenge the judgment.

AG ¶ 20(g) has only been partially established. As noted, she has paid her tax delinquent debt to State 1, but has not provided any evidence of payments of her Federal tax debts.

Paragraph 2 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise security concerns and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack

of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The Government's evidence establishes its allegation that State 1 has obtained a judgment against Applicant for obtaining unemployment benefits under false pretenses. The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from the circumstances surrounding State 1's judgment against Applicant. Those potentially mitigating conditions are the following:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(f) the information was unsubstantiated or from a source of questionable reliability.

The record evidence does not support application of either condition. Applicant has not provided any evidence to support her dispute that the judgment was erroneously entered. It was entered in connection with her January 2015 Chapter 7 bankruptcy by a U.S. Bankruptcy Judge in a proceeding in which she was represented by counsel. Applicant's claim that she knows nothing about the judgment is not credible. The information in this allegation is substantiated and from a reliable source. Moreover, the offense underlying the judgment is not minor and casts doubt on Applicant's reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not mitigated the security concerns raised by her extensive history of unpaid debts and personal misconduct. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
No subparagraph 1.d	
Subparagraphs 1.e and 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge