



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



In the matter of:)	
)	
)	ISCR Case No. 22-00261
)	
)	
Applicant for Security Clearance)	

Appearances

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

10/26/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 11, 2022, the Department of Defense (DOD). issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On May 27, 2022, Applicant answered the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on June 30, 2022. The evidence included in the FORM is identified as Items 3-10 (Items 1-2 include pleadings and

transmittal information). Applicant received the FORM on July 19, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On August 13, 2022, she submitted a two-page response to the FORM, which I have marked as Applicant exhibit (AE) A. Items 3-10 are admitted into evidence, as is AE A. The case was assigned to me on October 3, 2022.

Findings of Fact

Applicant admitted some of the SOR allegations (§§ 1.b-1.e) and denied others (§§ 1.a, 1.f-1.m). Her admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 54 years old. She has worked for her current employer, a defense contractor, since May 2018, as a program and quality manager. She is a high school graduate and has taken some college courses. She married in 2016, but has been in a common-law marriage since 2000. She has one adult child and two adult stepchildren. She is unsure if she previously held a security clearance. (Item 3).

The SOR alleged Applicant owed delinquent federal taxes for the following tax years and in the following amounts: 2019-\$3,326; 2018-\$5,626; 2017-\$13,392; 2016-\$13,326; and 2015-\$6,929. (§§ 1.a-1.e). Applicant's submission of IRS tax transcripts as part of her October 2020 and April 2022 responses to interrogatories established her federal income tax delinquencies for tax years 2015-2019. In her answer to the SOR, she admitted owing delinquent taxes for tax years 2015-2018. She made the same admissions in her response to the FORM. She explained the reason for her tax liability was because she failed to have enough money withheld every pay period from her paycheck. She claimed in her SOR answer that she paid the federal tax debt for 2019 and that she had set up a payment plan, or was working with a tax service to pay the federal taxes owed for 2015-2018. In her FORM response, she also claimed her 2019 federal tax was paid and that she was now working directly with the IRS on a payment plan to pay her remaining tax debts for 2015-2018. She failed to produce any documentation corroborating payment for her 2019 federal tax debt or her payment plans for her 2015-2018 federal tax debts. Her federal tax debts have not been resolved. (Items 2, 4 (pp. 12-18), 6 (pp. 8-15); AE A)

The SOR also alleged Applicant owed eight delinquent debts totaling approximately \$5,548. (§§ 1.f-1.m) Applicant denied owing these debts in her SOR answer. She renewed her denials in her FORM response. She avers that she had no knowledge of the debts, that the debt was paid, or that she has disputed the debt. When she provided additional information to her background investigator in a letter dated February 4, 2020, she admitted many of the debts that she has recently denied. She admitted SOR §§ 1.f, 1.g, 1.i, and 1.m. All the debts are listed in Applicant's most recent credit report from December 2021. She presented no documentary evidence showing payment of any of these debts or of her successfully disputing any debts. These debts are unresolved. (Items 2, 5 (p. 15), 7; AE A)

The Government presented evidence of Applicant's 2011 Chapter 7 bankruptcy, which resulted in the discharge of her debts. The bankruptcy was not alleged in the SOR so I will not use that evidence for disqualification purposes, but I may consider it as it relates to the applicability of any mitigating conditions, and in my assessment of the whole-person factors. (Item 10)

Applicant completed an income and expense worksheet in October 2020. It showed her net monthly income of \$4,300—her total monthly expenses of \$2,200—and monthly debts payments of \$1,821, resulting in her disposable monthly income of \$279. No federal tax payments were included in this budget. She stated in her SOR answer that she had received financial counseling through her bank and a credit relief company. (Items 2, 4 (p. 11))

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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concerns for financial considerations:

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 guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 owes delinquent federal taxes for tax years 2015-2019. She also has delinquent consumer debts that remain unpaid or unresolved. All the above disqualifying conditions are raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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's debts are recent and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Her decision not to have enough money withheld from her monthly paychecks, which caused a shortfall for her federal income tax obligation, was not a condition beyond her control. Additionally, the evidence does not support that she has taken responsible actions to address her debts or pay the delinquent taxes she owes. She failed to document any efforts she made to pay her delinquent debts. AG ¶ 20(b) does apply. While Applicant stated she received some financial counseling, the evidence is insufficient to establish that her financial matters are under control. She has not shown a good-faith effort to address her debts or pay her past-due federal taxes. She failed to document any legitimate dispute of the listed debts. AG ¶ 20(c) partially applies, but AG ¶¶ 20(d), 20(e), and 20(g) do not apply.

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 the 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 guideline 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 also considered her lack of progress in resolving her debts, and her failure to document any payments towards her delinquent federal tax debt from 2015-2019. Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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.m:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge