



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



In the matter of:)
)
) ISCR Case No. 21-01283
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to demonstrate financial responsibility. She failed to timely file federal income tax returns for tax years 2012 - 2021 and state tax returns for tax years 2018 and 2019. She owes her state about \$14,000 for taxes and had liens filed against her in 2007, 2015, and 2016. The evidence is insufficient to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant submitted her first security clearance application (SCA) on October 2, 2020, and an investigator from the Office of Personnel Management (OPM) interviewed her on December 9, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on July 21, 2021. Applicant answered the SOR on July 22, 2021, submitted a one-page document, and requested a hearing before an administrative judge.

The case was assigned to me on March 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing (NOH) on April 18, 2022, scheduling the hearing for May 18, 2022.

Prior to the hearing, the Government submitted Exhibits (GE) 1 through 5, which I admitted into the record without objection. GE 5 is the Government's discovery letter, dated September 13, 2021, which was marked and admitted into the record, but it is not substantive evidence.

Applicant testified, as reflected in the transcript received on May 27, 2022. Post-hearing, Applicant submitted emails dated May 18 and June 3 2022, with documents, which I collectively marked as Applicant Exhibit (AE) A, and admitted into the record without objections.

Procedural Issue

At the end of the hearing, I amended SOR ¶ 1.a by deleting the years 2018 and 2019, and substituting the years 2012 and 2020, respectively. The amendment brought the SOR allegation in conformity with the evidence presented. (Tr. 28-30; 43-44)

Findings of Fact

In her answer to the SOR, Applicant admitted all the SOR factual allegations (¶¶ 1.a through 1.s). However, at hearing, she disputed all the delinquent medical accounts alleged in SOR ¶¶ 1.g through 1.s. Her documentation established that she was injured at work, filed for workmen's compensation, and received disability payments. She claimed all medical expenses were supposed to be paid under her disability claim. Based on her testimony and evidence, I found for Applicant under SOR ¶¶ 1.g through 1.s.

Applicant's SOR admissions, and those at her hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 39 years old. She graduated from high school in 2001, and earned a bachelor's degree in 2005. She married in 2009 and divorced in 2017. She has a nine-year-old disabled son (autistic-nonverbal).

Applicant was employed between 2006 and 2013. Her son was born in March 2013. She testified she was in disability-maternity leave between March and September 2013. (Tr. 18-19) When her maternity leave ended and she was not able to return to work, her employer terminated her employment. She was hired in June 2014 and was employed until February 2019. She testified that between March 2019 and October 2020, she had two operations and was placed under the protection of the Family Medical Leave Act (FMLA) and placed on long-term-disability (LTD). While in LTD, she was earning \$2,600 a month, which was insufficient to pay her rent, car note, and living expenses. She noted

that because of her son's condition, she has larger expenses for daycare and medical services.

Applicant's current employer and security sponsor, a federal contractor, hired her in November 2021. She is making about \$85,000 a year. (Tr. 26) In Section 26 (Financial Record) of her 2020 SCA, Applicant disclosed that she had financial problems that included owing income taxes to her state and a car repossessed in 2017.

Applicant explained that her financial problems resulted from her period of separation and divorce, her periods of medical disability when she was earning only 60 percent of her salary, underemployment, and the expensive, special medical treatment and medicines required for her disabled son.

Applicant stated she filed federal income tax returns for tax years (TY) 2007 through 2011. She did not file federal income tax returns for TY 2012 through 2021. She did not file state income tax returns for TY 2018 through 2019. She owes her state about \$14,000 for taxes, as evidenced by liens filed against her in 2007, 2015, and 2016. As of her hearing date, Applicant had not filed her delinquent federal or state income tax returns. She had not contacted the state tax authority to establish a payment plan to pay her delinquent income taxes. She testified that she owes her state income taxes for TY 2008 through 2021. (Tr. 21)

Applicant averred she was not sure whether she had to file federal or state income tax returns for some of the years in question because she was only making a little over \$30,000 a year from her disability payments. According to IRS regulations, in 2012, a person making over \$9,750 gross income had to file an income tax return, and in 2021, the filing threshold was \$12,550 gross income. Applicant did not present documentary evidence to show she was below the IRS or her state filing threshold for the years in question.

When asked at her hearing why she did not file her federal and state income tax returns, Applicant testified that after her son was born in 2013, he became her first priority and filing her tax returns was not a priority. She claimed she did not have the financial means to pay an accountant or tax preparer, or to pay her taxes. Because of her low income, she was more concerned about paying the family's living expenses than her debts. She noted that the expenses associated with her divorce, her and her son's medical problems, her periods of unemployment and underemployment, and she being the sole provider for her family made her financial situation difficult.

Applicant claimed a prospective employer offered her a job paying over \$100,000, provided she is eligible for a clearance. She believes that if she is granted clearance eligibility, she will be able to resolve all of her financial problems. She noted she was been upfront and truthful during the clearance process. Her intent is to file all her delinquent income tax returns and pay her delinquent taxes. She acknowledged there were periods where she could have been more proactive addressing her taxes and her delinquent debts.

SOR ¶ 1.f alleges an unpaid judgment for \$294 filed against Applicant in 2019. She claimed she received the court notice sometime during the pandemic and started to investigate the collection. She claimed she called the creditor two weeks before her hearing to discuss a settlement. She presented no documentary evidence of her contacts with the creditor. She has not paid the judgment. (Tr. 33)

At hearing, Applicant disputed all the delinquent medical accounts alleged in SOR ¶¶ 1.g through 1.s. Her documentation established that she was injured at work, filed for workmen's compensation several times, and received disability payments. She is in the process of disputing the collections and resubmitting her medical bills to her worker's compensation insurance carrier. Based on her testimony and evidence, I considered SOR ¶¶ 1.g through 1.s mitigated. (Tr. 36 – 41)

She promised to be financially responsible in the future. She presented no evidence to show that she is following a budget or that she has participated in financial counseling. Applicant was honest and upfront during the security clearance process and disclosed her tax issues and financial problems in her 2020 SCA, during her background investigation interview with government investigators, and at her hearing.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in Security Executive Agent Directive (SEAD) 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems: Failure or inability 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive

presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's financial problems are documented in the record. She failed to timely file federal income tax returns for TY 2012 through 2020, and state tax returns for TY 2018 and 2019. She owes her state about \$14,000 for unpaid taxes as evidenced by liens filed against her in 2007, 2015, and 2016. Additionally, she has an unpaid \$294 judgment filed against her in 2019.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(f) failure to file . . . annual Federal, state, or local income tax returns . . . or failure to pay annual Federal, state, or local income tax as required." The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th

Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant stated that her failure to file her income tax returns, pay the tax liens, and pay the judgment was caused by a combination of factors. After her son was born in 2013, he became her first priority and filing her tax returns was not a priority. She did not have the financial means to pay an accountant or tax preparer, or to pay her taxes. Because of her low earnings, she was more concerned about paying the family’s living expenses than her debts. She noted that the expenses associated with her divorce, her and her son’s medical problems, her periods of unemployment and underemployment, and she being the sole provider for her family made her financial situation difficult.

I have considered as circumstances beyond Applicant’s control her divorce, her and her son’s medical problems, her periods of unemployment and underemployment, and she being the sole provider. These circumstances could have adversely affected her ability to timely file her income tax returns, albeit for a short period, or aggravated her financial situation. I do not find her failure to file her tax returns as a circumstance beyond her control.

As of the day of her hearing, Applicant had taken no action to file her delinquent income tax returns, pay her state taxes, or to pay the 2019 judgment filed against her. Her evidence is insufficient to establish that she has been financially responsible under the circumstances.

Applicant disclosed her tax problems in her October 2020 SCA. She also answered questions about her tax problems when she was interviewed in December 2020. These incidents should have crystalized for Applicant the security concerns raised by her failure to file income tax returns, and the importance for her to do so. Notwithstanding, she has done nothing to file her delinquent federal and state income tax returns and presented no evidence to show he has paid her state taxes.

About the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting

debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The record evidence shows that Applicant has a problem complying with government rules, regulations, and systems. She failed to establish full mitigation of the financial considerations security concerns. I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to timely file her income tax returns or pay her taxes. Applicant's financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 39, seeks clearance eligibility for the first time. The evidence against grant of Applicant's security clearance is substantial. She failed to timely file federal income tax returns for many years, and she failed to pay delinquent state taxes. Her financial problems are recent and not under control.

Applicant knew that she needed to file her federal income tax returns and pay her income taxes. Whether she knew she was going to receive refunds or had sufficient or insufficient funds to pay any taxes owed, she had a legal requirement to timely file her tax returns. She did not fully understand or appreciate the importance of timely filing of tax returns in security clearance determinations. Applicant's promises of future financial responsibility are insufficient to fully mitigate the financial considerations security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

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.f:	Against Applicant
Subparagraphs 1.g - 1.s:	For Applicant

Conclusion

In light of all 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 or continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge