



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



In the matter of:)
)
) ISCR Case No. 21-02451
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On December 13, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR dated December 9, 2021 (Answer), and requested a hearing before an administrative judge. The record is unclear as to why the Answer predates the SOR. After a delay because of the COVID-19 pandemic, the case was assigned to me on August 23, 2022.

The hearing was convened as scheduled on October 20, 2022. At the hearing, Government Exhibits (GE) 1 through 9 and Applicant Exhibits (AE) A through F were admitted in evidence without objection. At Applicant's request, I left the record open until October 27, 2022, for her to provide documents to support her case. On October 20, 2022, she submitted AE G through K, which were admitted in evidence without objection. DOHA received the transcript (Tr.) on October 27, 2022.

Findings of Fact

Applicant is a 38-year-old employee of a government contractor. She has worked for her current employer since about March 2019. She was awarded a high school diploma in 2003, an undergraduate degree in 2013, and a graduate certificate in 2014. She was married from 2008 until her divorce in 2013. She has no children. She served in the U.S. Army from 2007 until 2011, when she received an honorable discharge. (Tr. 26-30; GE 1-3)

In the SOR, the Government alleged Applicant's five delinquent debts totaling approximately \$31,000. These delinquencies are credit-card accounts (SOR ¶¶ 1.a, 1.b, and 1.d), a car loan (SOR ¶ 1.c), and a business loan for which she is personally obligated (SOR ¶ 1.e). The Government also alleged that Applicant had not timely filed her federal income tax returns for the 2016 and 2017 tax years (SOR ¶ 1.f). Finally, it alleged that she did not timely file her State A income tax returns for the 2010 through 2012 tax years and the 2016 through 2018 tax years (SOR ¶ 1.g). In her Answer, Applicant admitted all of the SOR allegations with the exception of SOR ¶ 1.g. She partially denied the allegations in SOR ¶ 1.g because she claimed that she was not required to file an income tax return in State A for the 2010 through 2012 tax years. She admitted that she had not timely filed her State A income tax returns for the 2016 through 2018 tax years. Her admissions are adopted as findings of fact. (Answer; GE 1-4, 6-9; AE A-K)

Applicant claimed her financial issues resulted from unemployment and a failed business venture. In about 2014, she started a vaping business. The business was initially profitable. However, in 2017, after a change in federal regulations, the business began losing money and she sold it in 2018. After a brief period of employment with another business in 2018 where she earned \$300 to \$400 per month, she was unemployed from November 2018 until March 2019. (Tr. 27-30; GE 1-3)

Applicant's take-home pay is about \$3,600 to \$4,600 per month. She receives about \$900.00 per month in disability pay from the Department of Veteran's Affairs (VA). She pays \$1,350 per month towards her mortgage. She does not have a car payment, but pays \$3,200 every six months for car insurance. Her latest monthly electric bill was \$250, and she pays \$55 per month for cable. Finally, she pays about \$630 per month for two personal loans. She has between \$750 and \$1,000 in her savings account and about \$8,000 in a retirement account. (Tr. 29, 38-42; GE 4)

The delinquent credit card in the amount of \$10,335 listed in SOR ¶ 1.a has not been resolved. She opened this account in 2011 or 2012 to pay for personal expenses and also used it for expenses related to her business. She became delinquent on this account in 2018 after she became unemployed. As of the hearing, she had yet to contact the creditor to try to resolve her delinquency because she is working on addressing other delinquencies. (Tr. 24, 35); Answer; GE 1-4, 6, 8, 9)

The delinquent credit card in the amount of \$7,115 listed in SOR ¶ 1.b has not been resolved. Applicant opened this account to pay for household items and goods

related to her business. She stopped making payments on this debt in about July 2017 when she could no longer afford them. As of the hearing, she had yet to contact the creditor to try to resolve her delinquency because she is working on addressing other delinquencies. The creditor filed a lawsuit against her with respect to this debt. In October 2022, the creditor filed a garnishment with her employer in order to collect on this debt. The garnishment was set to begin on November 7, 2022. (Tr. 25, 35, 40; Answer; GE 2-4, 6-9; AE K)

The delinquent car loan in the amount of \$3,568 listed in SOR ¶¶ 1.c is being resolved. Applicant incurred this debt in 2016 when she purchased an automobile. She stopped making payments on this account in about April 2018 when she could no longer afford them. She made a payment arrangement with the creditor and made payments of about \$100 per month on this account beginning in March 2022. As of October 5, 2022, the balance on this account was \$2,408.72. (Tr. 35, 42; Answer; GE 1-4, 6, 8, 9; AE D)

The delinquent credit card in the amount of \$3,375 listed in SOR ¶ 1.d is being resolved. Applicant opened this account to pay for personal and business items. She stopped making payments on this debt in about June 2018 when she could no longer afford them. She made a payment arrangement with the creditor and made payments of about \$39.75 per month on this account beginning in March 2022. As of September 21, 2022, the balance on this account was \$3,577.58. The record is unclear as to why the current balance is higher than the balance listed in the SOR. (Tr. 35-36; Answer; GE 1-4, 6, 8, 9; AE F)

The delinquent loan in the amount of \$6,948 listed in SOR ¶ 1.e has not been resolved. Applicant opened this account in January 2018 to pay for business expenses. She stopped making payments on this debt in about June 2018 when she could no longer afford them. She claimed that she has attempted to contact the creditor to set up a payment arrangement, but she has been unable to make one. (Tr. 35; Answer; GE 3, 4, 6, 8)

Applicant failed to timely file her federal income tax returns for the 2016 and 2017 tax years despite being required to do so. She claimed that she did not file her 2016 federal income tax return because she forgot about it. She claimed that she did not timely file her 2017 federal income tax return because she was worried that she would owe taxes and did not think she would have enough money to pay them. She filed her 2017 federal tax return in about August 2022. She has yet to file her 2016 federal tax return. She believed that once she files her 2016 federal income tax return, she will owe approximately \$5,000.¹ She filed her 2018 federal income tax return late on an unknown date. She filed her 2019 federal income tax return in May 2020 and filed her 2020 federal income tax return in March 2021. She claimed that she timely filed her 2021 federal income tax return. On March 17, 2022, she made a \$2,933 payment to the IRS for the 2017 tax year. Her plan is to save money prior to filing her 2016 federal tax

¹ Any adverse information not alleged in the SOR, such as Applicant's potential tax debt, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

return so that she can pay the taxes she believes she will owe. (Tr. 28-29, 32-34, 42-43; Answer; GE 3, 4; AE A-C, G-I).

Applicant was not required to file state income tax returns with State A for the 2010 through 2012 tax years as she was not a resident of State A. She failed to timely file her state income tax returns in State A for the 2016 through 2018 tax years. She claimed that she did not file her 2016 state income tax return because she forgot about it. She claimed that she did not timely file her 2017 and 2018 state income tax returns because she was worried that she would owe taxes and did not think she would have enough money to pay them. She believed that once she files her 2016 state income tax return, she will owe some taxes but does not know how much. She filed her income tax returns late for the 2017 through 2019 tax years on an unknown date. She timely filed her 2020 and 2021 state income tax returns. On March 7, 2022, she made a payment of \$902 to State A for state taxes. The record is silent as to which tax year this payment was applied. On October 13, 2022, she made a payment of \$329 to State A for state taxes. The record is silent as to which tax year this payment was applied. Her plan is to save money prior to filing her 2016 state tax return so that she can pay the taxes she believes she will owe. (Tr. 28-29, 32-34, 42-43; Answer; GE 3, 4; AE E, J)

Applicant has two additional delinquent credit cards that are not listed in the SOR. She is making minimal monthly payments on both. She claimed that she has been paying down delinquent debts not listed on the SOR beginning in 2019 after she starting working for her current employer because she had the income to do so. In September 2007, while Applicant was serving in the U.S. Army, she was granted a security clearance with a warning that her clearance would be suspended if she did not resolve her delinquent debts. These 2007 delinquent debts consisted of student loans, a residential lease, and a utility, and were caused by her unemployment prior to her military service. (Tr. 26-27, 36-38; Answer; GE 5; AE F)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 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 tax as required.

Applicant has had financial issues that have been ongoing for at least five years. She had several delinquent credit cards and loans. Beginning in 2017, she did not timely file multiple years of federal and state income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

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;
- (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.

While Applicant has provided evidence that she is resolving two of the SOR debts (and two non-SOR debts) through payment arrangements, she has not provided evidence that the three other SOR debts are being resolved in a meaningful way. She still has significant unaddressed delinquent debt. She also has not filed all of her delinquent federal and state income tax returns, and she believes that she will have tax indebtedness when she does. Her financial issues are ongoing and I cannot find they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's credit card and loan delinquencies arose as a result of a business failure and unemployment. These conditions were beyond her control. She must also

show that she acted responsibly under the circumstances with respect to these debts. While she has made and complied with payment arrangements on some of her SOR and non SOR debts, having had over three years of gainful employment, her overall progress on her SOR debts is lacking and should be further along. Moreover, her failure to timely file her federal and state income tax returns was not due to circumstances beyond her control. AG ¶ 20(b) does not apply.

Despite making and complying with payment plans on some of her delinquent debts, Applicant's failure to make any headway on resolving the majority of her SOR debts makes AG ¶ 20(d) only partly applicable. AG ¶ 20(d) is not applicable to her unfiled federal and state income tax returns.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018). While Applicant has filed some of her delinquent income tax returns, and has timely filed her federal and state tax returns for a couple of years, she still has unfiled state and federal income tax returns for the 2016 tax year. She also believes that she will owe taxes once she does file, which has informed her decision not to file these income tax returns. She has not provided evidence that she has arrangements with the IRS or the taxation authority for State A to file her 2016 income tax returns. Likewise, she has not provided evidence that she has and is complying with a payment arrangement with either of these tax authorities.

As none of the mitigating factors is fully applicable, Applicant's financial issues continue to cast doubt on her current reliability, trustworthiness, and good judgment. The financial considerations security concerns are not mitigated.

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 have considered Applicant's military service and I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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-1.g:	Against Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge