



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



In the matter of:)
)
) ISCR Case No. 19-03560
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On May 1, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on December 21, 2020, and requested a hearing before an administrative judge. The case was assigned to me on June 22, 2021. On June 25, 2021, Applicant indicated that she planned to hire an attorney to represent her. She ultimately decided to represent herself.

The hearing was convened as scheduled on April 28, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. She was granted several extensions. She submitted emails and documents that I have marked AE H through V and admitted without objection.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. She has worked for her current employer since July 2022. She worked for another employer from May 2019 until she was laid off because she did not have a security clearance. She is applying for a security clearance for the first time. She attended college off and on since 1989. She earned a bachelor's degree in 2006. She married in 2002 and divorced in 2005. She has a 19-year-old child. (Tr. at 55-56, 62-67, 74; GE 1; AE H)

The SOR alleges two defaulted student loans totaling about \$85,000; four unpaid judgments totaling about \$16,500; five delinquent medical debts totaling about \$1,850; three miscellaneous delinquent debts totaling about \$2,000; and failure to file her federal and state income tax returns for tax years 2016 and 2018. Except as addressed below, the allegations are established through credit reports, court records, and Applicant's admissions.

Applicant attributed her financial problems to her 2005 divorce after her ex-husband abandoned her and their infant child, and he did not pay child support. She has ongoing health issues that at times prevented her from working. She had surgeries in 2021 and 2022. Her child also had health problems when he was about two years old, resulting in nine days in the hospital, followed by home treatment, during which Applicant was unable to work. She had periods of unemployment and underemployment. (Tr. at 21-23, 77-81, 101, 131; GE 1, 2; AE H)

Applicant did not file her federal and state income tax returns for tax years 2016 and 2018 during the normal period. She submitted a Questionnaire for National Security Positions (SF 86) in March 2019. She reported a number of delinquent debts, including her defaulted student loans, unpaid medical debts, a judgment, and other delinquent debts. She also reported that she had not filed her 2016 income tax returns. She wrote that she missed the due date. The 2018 returns were not yet due. (GE 1)

Applicant was interviewed for her background investigation on April 23, 2019. She stated that she did not receive a W-2 from her employer for 2016. She told the investigator that she filed her 2016 and 2018 income tax returns in April 2019. (GE 2)

Applicant replied to interrogatories from the Defense Office of Hearings and Appeals in February 2020. She reported that she had not filed her 2016 and 2018 federal and state income tax returns. She stated that she prepared the 2018 returns and gave them to her mother to mail, but her mother never mailed them. She stated that she would file the returns when she filed her 2019 returns. She also indicated that there was a problem with her 2017 taxes because her former employer incorrectly submitted a 1099 form for an auto loan, which increased Applicant's tax liability for 2017. She indicated that she contacted the employer to correct the 1099. She stated that if the employer did not correct the 1099, the IRS would investigate the employer for submitting a fraudulent 1099. (Tr. at 87-89; GE 2)

Applicant responded to the SOR in December 2020. She admitted that she had not filed her 2016 and 2018 federal and state income tax returns. She wrote: "I have contacted the IRS regarding these tax years in February 2020 to rectify the situation, my taxes have been placed on hold due to a discrepancy from my previous employer who fraudulently claimed a \$6,200 car loan as taxable work hours – once solved I can re-file my taxes."

Applicant testified that she filed her 2016 and 2018 tax returns in about September or October 2021. She stated that she did not think that she was required to file a return if she was due a refund. An IRS account transcript shows that the IRS received her 2018 tax return in October 2021. Her total income was \$11,577, and her adjusted gross income was \$11,222. Because her gross income for 2018 was less than \$12,000, she was not required to file a federal tax return for that year. (IRS Publication 501 for 2018) The same is true for her state return. She would have been due a refund of \$541, but it was withheld and applied towards her federal taxes owed for 2017. She stated that she still owed the IRS about \$2,500 and some amount to her state for tax year 2017.¹ (Tr. at 26-40, 82-86, 92-96; AE A, C)

Applicant submitted an IRS wage and income transcript for tax year 2016. A wage and income transcript is a different document than an account transcript, which is what she submitted for tax year 2018. Her wages, tips, and other compensation was \$31,123, so she was required to file an income tax return. She testified that she would have been due a refund of \$3,067 if she filed on time. Any refund she would have received was forfeited because the return was not filed within three years of the normal filing date. Applicant was informed at her hearing that the wage and income transcript did not show that she filed a return. She held up what was apparently a 2016 return. She was told that she could submit proof after the hearing that she filed her 2016 returns. She submitted a document from the IRS showing that the balance due (likely from 2017) was \$1,848. After receipt of her post-hearing documents, she was again informed that she did not submit proof that she filed her 2016 returns. She did not submit any additional documents proving that she filed the 2016 returns. (Tr. at 26-27, 33-34, 84-85; AE A, B, I, S-U)

A default judgment of \$198 plus \$56 costs was entered against Applicant on behalf of a fitness club in October 2011 (SOR ¶ 1.c). She stated that she unaware of the debt until she received the SOR. She attempted to contact the company to pay the debt, but the business had changed hands, and the new owner was not in a position to accept payments. (Tr. at 97-99; Applicant's response to SOR; GE 3)

Applicant was sued for unlawful detainer in February 2016. A default judgment of \$2,746, plus \$700 attorney fees, and \$178 costs and other fees was entered against her on behalf of a landlord in March 2017 (SOR ¶ 1.e). She stated that she gave 60 days'

¹ The SOR did not allege that Applicant owed taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered for its effect on Applicant's finances, when assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

notice to the landlord, and she was unaware of the judgment, but she was attempting to arrange a payment plan. (Tr. at 24-25, 105-110; Applicant's response to SOR; GE 3; AE H)

Applicant was sued for unlawful detainer in October 2017. A default judgment of \$1,900, plus \$700 attorney fees, and \$149 costs and other fees was entered against her on behalf of a landlord in November 2017 (SOR ¶ 1.d). She stated in her response to the SOR that she contacted the court, and the plaintiff in the case "retracted and the judgement has been dismissed." Court records show that a garnishment was dismissed in January 2018 because of "No Funds." She later realized that the garnishment was dismissed, but not the judgment. In her post-hearing documents, Applicant provided account information on where her payments will be sent, but no evidence that any payments had been sent. (Tr. at 100-106; Applicant's response to SOR; AE H, V)

Applicant was sued for unlawful detainer in May 2018. A default judgment of \$9,450, plus \$59 costs, and \$945 in other fees was entered against her in June 2018 (SOR ¶ 1.f). She stated that the home had significant problems, and she withheld the rent, but she did not hold it in an escrow account. She stated that she intends to pay the judgment. (Tr. at 110-113; Applicant's response to SOR; GE 1-3; AE I, L)

Applicant defaulted on two student loans totaling about \$85,000 (SOR ¶¶ 1.l and 1.m). She stated that she had not paid the loans since 2015. Credit reports show the last payments on the loans were made in August 2018. Her federal student loans were placed on pause pursuant to COVID-19 relief. As such, she was not required to make loan payments. The pause was extended several times. It is currently extended through December 2022. She stated that she plans to clear up everything else, and then aggressively pay her student loans, at least \$1,500 a month. (Tr. at 31, 42-44, 66-74, 118-130; Applicant's response to SOR; GE 1, 2, 4, 5; AE A)

Applicant or her insurance provider paid six delinquent medical debts totaling about \$2,400 in August 2020 and December 2020. The two largest medical debts alleged in the SOR (¶¶ 1.g - \$749 and 1.k - \$549) were paid. It is unclear if the other paid debts were the ones alleged in the SOR. However, no other medical debts appear on the recent credit reports, so I find that all of the medical debts alleged in the SOR are resolved. (Tr. at 50-54, 114-117; Applicant's response to SOR; GE 2, 4-6; AE A, M, N)

SOR ¶¶ 1.n (\$1,340) and 1.o (\$480) allege debts owed to the same collection company for the same bank. Applicant settled and paid both debts. (AE G for the \$1,340 debt and AE J for the \$480 debt). It is unclear when the debts were paid, but they were still listed on the December 2019 credit report. Applicant reported the \$480 debt as paid when she responded to the SOR. Her account statement from the collection company is dated May 29, 2022. It reflects that the account was paid, but it does not indicate when it was paid. In her SOR response, Applicant indicated that she settled the \$1,340 debt for \$818, with \$40 monthly payments. She wrote that she had about \$500 still to pay. Her documentation from the collection company showed that the settlement amount was paid in full no later than April 27, 2022. (Tr. at 50-53, 130-132; Applicant's response to SOR; GE 1, 2, 4-6; AE A, G, F, I, J, M-R)

Applicant asserted that she paid the \$191 delinquent debt owed to an insurance company (SOR 1.p). The debt is reported by TransUnion on the April 2019 combined credit report. It is not reported on the later Equifax credit reports. (Tr. at 132-133; Applicant's response to SOR; GE 1, 2, 4-6)

Applicant stated that her finances have improved. Her current credit report is clean, and she was able to buy a home. She has not received financial counseling, but she maintains a written budget. She owns her car outright without a loan. She stated that she would receive a \$5,000 raise if she receives a security clearance. She stated that she plans to pay all of her debts. (Tr. at 25, 41, 75, 133-141; AE A, H)

Applicant submitted a letter attesting to her excellent job performance and moral character. She is praised for her dedication, can-do attitude, initiative, and trustworthiness. (AE E)

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 a history of financial problems, including defaulted student loans, unpaid judgments, and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Applicant did not file her 2016 federal and state income tax returns when they were due. AG ¶ 19(f) is applicable. She did not file her federal and state income tax returns for tax year 2018 until September or October 2021. Because her gross income for 2018 was less than \$12,000, she was not required to file a federal tax return for that year. (IRS Publication 501 for 2018) The same is true for her state return. AG ¶ 19(f) is not applicable to the 2018 returns. The language in SOR ¶¶ 1.a and 1.b that refers to tax year 2018 is concluded for Applicant.

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.

A number of events beyond Applicant's control contributed to her financial problems, including her divorce, her ex-husband's failure to pay child support, her and her child's health problems, unemployment, and underemployment. AG ¶ 20(b) also requires that "the individual acted responsibly under the circumstances."

Applicant's testimony and her documentation were somewhat disjointed and confusing. Some of her claims were not supported by documentation, even though the record was held open and extended several times. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). I believe Applicant attempted to be honest in these proceedings, and that any misrepresentations

were not due to an intent to fabricate the facts. I have therefore given her credit without documentation on some allegations.

Applicant was told multiple times that her documentation (IRS wage and income transcript instead of an IRS account transcript) did not establish that her 2016 tax returns had been filed, but she never submitted the correct documentation. Applicant knew that her unfiled returns were an issue when she submitted her SF 86 in February 2019; when she was interviewed in April 2019; when she responded to interrogatories in February 2020; and when she responded to the SOR in December 2020. I accept without documentation that her federal and state income tax returns for 2016 were filed in September or October 2021. AG ¶ 20(g) is applicable to the filed income tax returns for 2016, but that does not end the discussion.

Applicant testified that she would have been due a refund of \$3,067 if she filed her 2016 federal tax return on time. If she was due a refund, it was forfeited. Her failure to file tax returns, whether she owed taxes or was due a refund, cannot be considered responsible behavior.

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). This may be true even when the returns are eventually filed.

The timing of ameliorative action is a factor that should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

As to her other financial issues, I am satisfied that the five delinquent medical debts totaling about \$1,850 and the three miscellaneous delinquent debts totaling about \$2,000 have been resolved. Those debts are mitigated. I also find that the small judgment from 2011 no longer has any security significance. That is also mitigated.

Even with those matters resolved, Applicant still has about \$85,000 in student loans, more than \$16,000 in judgments, and federal and state income taxes for 2017 to be paid. The student loans are deferred as part of COVID-19 relief, but they will have to be addressed at some point.

Applicant asserted that her finances have improved, and she plans to pay her debts. However, intentions to resolve financial problems in the future are not a

substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

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.b:	Against Applicant (except for the language "and 2018," which is found for Applicant)

Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraphs 1.g-1.k:	For Applicant
Subparagraphs 1.l-1.m:	Against Applicant
Subparagraphs 1.n-1.p:	For Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge