



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



In the matter of:)
)
) ISCR Case No. 24-00040
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2024

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 February 8, 2024, 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 February 16, 2024, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on March 6, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 17, 2024. She responded with an email dated March 22, 2024, and attached documents that I have marked Applicant Exhibits (AE) A through F and admitted in evidence without objection. The case was assigned to me on March 29, 2024. The Government exhibits included in

the FORM are admitted in evidence without objection. I also considered the documents Applicant submitted in her response to the SOR.

Findings of Fact

Applicant is a 46-year-old former employee of a defense contractor. She worked for the contractor from December 2022 until she was recently released from employment when her interim security clearance was withdrawn. Her former employer is still sponsoring her for a security clearance and will rehire her if she receives one. She earned a bachelor's degree in 2017. She has been married for more than 25 years, and she has four children between the ages of 18 and 24. (Items 4, 5)

Applicant's husband owns a construction business. She helped him with the business, but she was not paid a salary or hourly wage, and she did not have another job for about 24 years until she accepted the job with the defense contractor in December 2022. Her husband's business had upturns and downturns. During one of the downturns from about 2017 to 2019, their income was considerably reduced. An IRS account transcript for tax year 2018 shows they filed a joint return. They had adjusted gross income of \$29,399 and taxable income of \$4,319. After various credits, they received a refund of \$4,170. Their 2019 account transcript shows adjusted gross income of \$30,245 and taxable income of \$4,676. After various credits, they received a refund of \$4,619. (Items 4, 5, 9; AE A)

During the downturn. Applicant was unable to pay all her credit cards, and some accounts became delinquent. Her student loans were also reported as in default. She and her husband realized about \$400,000 in profit from the sale of their home in March 2021. They used some of the proceeds to pay off her credit cards. Her student loans were paused and placed in good standing under the relief granted by the CARES Act. They used much of the remaining proceeds from the sale toward the purchase and construction of a new home, which was also financed through a mortgage loan. The January 2024 credit report lists a mortgage loan with a balance of \$374,187. (Items 4-9)

Applicant's husband managed the finances of his business, and he also handled their taxes and tax returns. Applicant did not realize that he did not pay their joint taxes. The SOR alleges that Applicant owes federal income taxes of \$9,158 for tax year 2020 (SOR ¶ 1.a); \$8,854 for 2021 (SOR ¶ 1.b); and of \$20,334 for 2022 (SOR ¶ 1.c). Those amounts are established by Applicant's admissions and IRS records. (Items 4-6, 9)

Because Applicant's husband is self-employed, he does not have wages from which income taxes can be withheld. Because they file joint returns, he and Applicant are obligated to pay their own taxes and in certain situations, prepay their taxes. An IRS account transcript for tax year 2020, obtained in December 2023, shows adjusted gross income of \$76,648 and taxable income of \$41,478. The IRS did not receive a tax return until April 2022. They received certain credits, a payment of \$100 was received in May 2023, and estimated tax of \$275 was transferred in this tax year in July 2023, but the transcript does not show any other taxes paid. Penalties were levied for not prepaying tax and for late payment of tax. An installment agreement was established in August

2023. With penalties and interest, the balance was \$9,236. They did not use any of the proceeds from the sale of the house to pay their taxes. (Items 4-6, 9)

An IRS account transcript for tax year 2021, obtained in December 2023, shows adjusted gross income of \$77,604 and taxable income of \$42,003. The IRS received the tax return in April 2022. Applicant and her husband received certain credits, and a payment of \$100 was received by the IRS in May 2023, but the transcript does not show any other taxes paid. Penalties were levied for not prepaying tax and for filing tax return after the due date. An installment agreement was established in August 2023. With penalties and interest, the balance was \$8,854. (Items 4, 6)

An IRS account transcript for tax year 2022, obtained in September 2023, shows adjusted gross income of \$151,862 and taxable income of \$125,962. The IRS received the tax return in May 2023. The transcript reported a \$2,000 credit, and \$2,995 was withheld from wages, almost certainly Applicant's wages. The transcript does not show any other taxes paid. Penalties were levied for not prepaying tax, late payment of tax, and filing tax return after the due date. An installment agreement was established in August 2023. With penalties and interest, the balance was \$20,334. (Items 4, 6)

Applicant reported in her December 2022 Questionnaire for National Security Positions (SF 86) that her husband filed their 2020 and 2021 tax returns in 2022 and they "do currently owe for those years." She was interviewed for her background investigation in March 2023. She stated that her husband handles the taxes, and that they owed about \$23,000. She told the investigator that her husband told her that he would make arrangements to make them current on their taxes. (Items 5, 9)

Applicant responded to interrogatories in August 2023. She provided tax transcripts and other tax information showing the installment agreements discussed above. She wrote that they "have a payment plan in place." (Item 6)

Applicant provided documentation that her husband paid the IRS \$1,411 in February 2024. There is no evidence of any other payments between the establishment of the installment agreement and this payment. She or her husband talked to a representative from the IRS on February 15, 2024. Their installment agreement for tax years 2020 through 2022 was modified so that \$555 would be deducted on the seventh of each month, starting on April 7, 2024. The IRS sent Applicant's husband a notice on March 4, 2024, that it intended to terminate his installment agreement because the IRS did not receive one or more payments from him. The notice indicated that \$555 was due immediately. This notice may have been automatically generated and sent out without consideration of the \$1,411 payment and modified installment agreement in February 2024. (Item 4; AE A-C)

Applicant stated in her response to the FORM that she "had no idea that the original [installment] plan was in default as that was an arrangement made by [her] husband with the IRS and payments were to be debited from his acc[ount]." She provided documentation that she has been paying her student loans, with payments of \$1,159; \$380; \$750; and \$380 made between December 2023 and March 2024. She

and her husband owed state income taxes of \$5,205 for tax year 2020 and \$5,331 for 2021. They paid \$5,205 to the state in March 2024. (AE A, D-F)

Applicant assures that she is not a security risk, as her “work ethic, morals, and personal values overshadow any debt that [she] may have.” She believes the amount of taxes owed is minimal in comparison to their more than \$400,000 in equity in their house that is under construction. She does not understand why the payment plan with the IRS is not enough to mitigate any concerns. She wrote that “whatever determination has been made about my character based on owed taxes from my husband’s income (which we have a payment plan for) is an insult to me and my family.” (Item 4)

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:

- (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 and her husband did not pay their federal income taxes for tax years 2020, 2021, and 2022. The above disqualifying conditions are applicable.

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.

Applicant helped her husband with his construction business, but she was not paid a salary or hourly wage, and she did not have another job for about 24 years until she accepted the job with the defense contractor in December 2022. Her husband's business had upturns and downturns, as reflected in the account transcripts for tax years 2018 and 2019. Their income increased in 2020 and 2021 and was sizeable in 2022. They also profited \$400,000 from the sale of their home in March 2021. They used some of that amount to pay credit card debts, and the rest toward their new home, but nothing went to their taxes. Applicant let her husband manage their taxes. However, once they filed joint returns, she accepted responsibility for their taxes.

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 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).

Except for the \$2,775 that was withheld from Applicant's paycheck, she and her husband paid almost nothing in actual taxes, prepaid or otherwise, for tax years 2020 through 2022. Because Applicant chose to forego a hearing, I was unable to evaluate her credibility or question her about the status of her 2023 taxes. In spite of those reservations, I would have given serious consideration to granting Applicant's clearance had they maintained the payments under the installment agreement they entered in August 2023. As is, I am left with Applicant's statement that they intend to pay the

taxes. 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).

Applicant does not have a track record that would enable me to trust that she will adhere to the new installment agreement and pay the past-due taxes. There is insufficient evidence for a determination that her tax 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 taxes. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has unpaid taxes for three tax years, and her payments toward those taxes were minimal. 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." I am obligated to follow that directive.

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.c:	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.

Edward W. Loughran
Administrative Judge