



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



In the matter of:)	
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XXXXXXXXXXXXXXXXXX)	ISCR Case No. 20-00797
)	
Applicant for Security Clearance)	
)	
)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

04/18/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided evidence sufficient to mitigate the national security concern arising from her problematic income tax history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her security clearance application (SCA) on March 30, 2017. On August 31, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on December 1, 2020 (Answer) and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 10, 2022. The case was assigned to me on October 5, 2022. On January 24, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on February 15, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted exhibits marked Applicant's Exhibits (AE) A and B. After the hearing, Applicant timely submitted AE C through AE H. AE A through AE H were admitted without objection. The record closed on March 15, 2023. DOHA received the transcript (Tr.) on February 28, 2023.

Findings of Fact

Applicant is 57 years old and is a college graduate (July 1990). She married in May 1996 and divorced in December 2011. She has two sons ages 20 and 24. She was unemployed from January 2015, when her employer eliminated her position, until July 2016, when she was hired by the same employer, a federal contractor. (GE 1.)

Under Guideline F, the August 31, 2021 SOR alleged that Applicant: (a) failed timely to file federal income tax returns for tax years 2010, 2011, 2013, 2015, and 2016; (b) failed timely to file a federal income tax return for tax year 2017; (c) is indebted to the federal government for unpaid taxes of \$9,439, for tax year 2016; (d) failed timely to file state income tax returns for tax years 2012 and 2013; (e) failed timely to file state income tax returns for tax years 2014 and 2015, and; (f) is indebted to the state for a tax lien of \$19,419, entered against her in December 2013. (SOR.) She admitted those allegations. (Answer.)

Applicant testified about the circumstances she faced that preceded and accompanied her federal and state income tax problems. She estimated that what she called "the chaos" started "earlier" than she even knew, about 2005. (Tr. 48.) In about 2010, she found out her husband had been cheating on her and had been for years. In 2011, he failed timely to file their 2010 income tax returns. (Tr. 20.) She had relied on her husband to file their income tax returns. In hindsight, she did not know "everything about the financial aspects of marriage." "It was a hard time because of what was happening in the marriage." In 2009, she and her husband separated, but "it took about until 2011 to get the papers filed." (Tr. 20-21.) The divorce was finalized in 2012. (Tr. 13-14.)

In January 2015, three years after the divorce, Applicant's job was eliminated. She went from a six figure income to zero. In response, she started her own consulting business. But the business only generated about \$12,000 per year. So, in 2016, she started doing hourly work for her former employer earning \$12 per hour. She worked her way up to nearly what she was earning before her position was eliminated. In July 2016, she was re-hired full time by her former employer. She now earns \$123,000 per year. (Tr. 39-41; GE 1.)

The following are the SOR allegations, the relevant testimony, and exhibits.

SOR ¶¶ 1.a - b: Failure timely to file federal income tax returns for 2010-2011, 2013, and 2015-2017. Applicant believed she filed all those tax returns in 2019, because she was a candidate for a public trust position at that time. That filing was before the SOR was issued in August 2021. She missed her filings, because of the “difficulties” in her life, e.g., “failed marriage, divorce, and the loss of a job in 2015.” (Tr. 15-18.) AE C contains IRS Account Transcripts for 2010-2011, 2013, and 2015-2017. Although those transcripts do not match her recollection of filing dates, they show that her returns for the years in question were filed in 2012, 2015, and 2017 through 2019, respectively. For three of those years (2015-2017), she established payment plans that she has satisfied. These SOR allegations have been resolved.

SOR ¶ 1.c: Applicant is indebted to the federal government for unpaid taxes of \$9,439 for 2016. Applicant believed this indebtedness has been cleared. She set up a payment plan in 2019 and made all payments. Those payments and any refunds were applied to satisfy this debt. Her payments were \$248 per month. (Tr. 24-25.) Her testimony is materially consistent with the record. AE C has the Account Transcript for 2016. She filed her return in January 2018 and began a payment plan in April 2018. Her monthly payments were, with some variations, \$246 per month. She successfully completed the plan in November 2022. AE G further documents those payments. This SOR allegation has been resolved.

SOR ¶¶ 1.d – e: Failure timely to file state income tax returns for 2012 through 2015. In her Answer, Applicant admitted these returns were not timely filed but they were filed and any amounts due were paid. They were belatedly filed, however, in 2019 due to the “chaos in [her] life.” She does not owe any taxes for 2012 or 2013. (Tr. 26.) AE E are certified copies of her state tax returns for 2012 through 2015. Those returns, however, were filed in 2014, 2015, undated, and 2019, respectively. Those returns show no taxes due for the four years at issue, only modest refunds. These SOR allegations have been resolved.

SOR ¶ 1.f: Applicant is indebted to the state for a tax lien against her in December 2013 for \$19,419. In April 2017, Applicant and her employer received a Notice of Income Tax Wage Lien for \$30,472 from the state. (AE A.) She recalled that the tax years in question were 2001 through 2006, and 2009. There was a tax lien, because her ex-husband also had a business and, and unbeknownst to her, failed to take out taxes for that business. The lien was “rectified with the garnishment [the lien].” AE B is a document confirming that the tax lien was released on April 23, 2018. All of her state tax returns after 2015 have been filed timely, and there have been no tax debts since then. (Tr. 30-34.) AE H is a screen shot of a March 15, 2023 state judgment and lien search and shows no current judgments or liens filed against her. This SOR allegation has been resolved.

Current finances: Applicant currently makes \$123,000 per year. Her net monthly remainder is between \$400 and \$500. Some of her monthly remainder goes to savings,

and ten percent goes to her church. She underwent free financial counseling online in 2019. In 2023, she took her mother on a vacation for her 80th birthday. That cost about \$2,100. She has taken no other vacations. She has one car, a 2015 model that costs \$350 per month. She has three checking accounts, one with a \$500 balance, another with \$1,500, and a business account with \$50. Her savings account has about \$2,000. She has three retirement accounts, a 401k with \$58,000, another 401k with \$19,000, and a Roth IRA with \$7,000. She pays off her credit cards regularly and has no unpaid or unfiled taxes. (Tr. 40-45.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F: Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise any questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes a condition that raises security concerns under AG ¶ 19. The following is applicable in this case:

(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.

Applicant's failures timely to file tax returns and pay overdue taxes are established by her admissions and the Government's exhibits. AG ¶19(f) applies.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

(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; 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.

Even though Applicant did not know at the time, one of her tax problems began long ago, in 2001, when her husband failed to set aside taxes for his income from a side business he had. That continued through 2006 and repeated in 2009. It did not surface, however, until April 2017, when she learned a tax lien was imposed on her wages, five years after her divorce. She satisfied that lien in 2018.

Unrelated to this tax issue, Applicant experienced a marital separation, a divorce, and a job loss, all between 2005 and 2015. Keeping up with her taxes was just one of many aspects of the chaos in her life. Faced with those adversities, she started a consulting business. When that could not make ends meet, she did hourly work for her

former employer. She also set up payment plans with taxing authorities and over time filed her tardy federal and state income tax returns. She fulfilled those payment plans. Confronting circumstances beyond her control and unlikely to recur, she acted responsibly, put remedial tax plans in place, and adhered to them. All of her tax remediation efforts began well before the August 2021 SOR was issued. Applicant's tax delinquencies have been mitigated under AG ¶¶ 20(a), (b), and (g).

Whole-Person Concept

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. In applying the whole-person concept, an 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under that guideline and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Philip J. Katauskas
Administrative Judge

