



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



In the matter of:)
)
) ISCR Case No. 22-00053
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has over \$60,000 in past-due federal income taxes and over \$20,000 in past-due state income taxes, all incurred since 2010. She did not provide sufficient evidence to mitigate the resulting financial security concerns. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 10, 2019. On March 21, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF took this action 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* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on March 25, 2022, and requested a hearing. She provided three documents, which I marked as Answer Attachments 1-3. These documents were also submitted as hearing exhibits. The case was assigned to me on February 16, 2023. On March 17, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for April 19, 2023, a date agreed to by the parties.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through O, which were admitted without objection. I held the record open to allow her the opportunity to submit additional documentation. On April 26, 2023, she submitted an e-mail (AE P) along with several other documents relating to her taxes (AE Q through AE Y). They are described in the Facts section, below. They are admitted into evidence without objection. Applicant indicated on April 27, 2023 that she had no more documents to submit, so I closed the record. DOHA received the hearing transcript on May 1, 2023.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b-1.h. She denied SOR ¶¶ 1.a, and 1.i – 1.m. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 49 years old. She and her husband have been married since November 2018. She has an adult son and an adult daughter. She earned an associate degree in 2007. She has worked for various federal contractors in various government departments since at least 2007, and for her current employer since 2017. She has held a security clearance since about 2005 or 2006, granted most recently in 2014. Her current annual salary is about \$100,000. (GE 1; Tr. 11, 37-38, 51-56) Her husband is a plumber. She was unable to estimate his income and said they handle their finances separately. (Tr. 53-54)

Applicant disclosed \$25,000 in federal income tax debt on her September 2019 SCA. (GE 1 at 47) In her October 2019 background interview, she said her 2010 federal taxes were audited in 2013 due to an error by a tax preparer. She then set up a payment plan of \$389 a month. That amount was "reset" in 2015, and she said she had been trying to restart a workable repayment plan. She also discussed other debts in her interview. (GE 5)

Applicant explained that she had a small hair-braiding business in 2010 trying to make extra money. She had a new job at that time and was also a new parent. She maintained the business from 2010 to 2013. She made less than \$10,000 a year in that job. In 2013, she was audited over her TY 2010 taxes and had tax issues as a result of certain expenses that she could not document, like mileage expenses. (Tr. 35-36, 40-41, 56-58)

Applicant further explained during her testimony that she retained a new tax specialist and was on a tax repayment plan from about 2013 to 2015. She then had additional tax problems in 2015 and 2016. In 2018, she was married and said she had tax issues with her name change. She wanted to get on a payment plan for as many years as possible. (Tr. 34)

Applicant acknowledged that her later tax issues were likely due to insufficient withholdings. (Tr. 42-44, 59) She last revised her W-4 to address her withholdings in 2017 (before she was married) She said she does not owe federal taxes for years after 2017. (SOR ¶ 1.h alleges \$5,777 in past-due taxes for TY 2018, but she asserted that was incorrect since she was on disability leave for six weeks after surgery). (Tr. 42-44) The last time Applicant prepared her own tax returns was 2016. That is now done by a family member. (Tr. 45)

Applicant denied that her tax issues resulted from living above her means. She was caring for her child at the time. She has had several vacations to international destinations but asserted that they were gifts from family members. (Tr. 59-62)

SOR ¶ 1.a alleges that Applicant failed to file her 2019 federal income tax return as required. (GE 2 at 16) She admitted the allegation in her Answer. In her hearing testimony she asserted that she filed this return on time. (Tr. 38-39) The IRS tax transcript indicates she filed the return in late July 2021. A \$1,115 credit was transferred to address her 2010 tax debt. (AE C)

The rest of the SOR allegations concern past-due income taxes. This includes federal income tax debt, from tax years (TY) 2010-2014 and TY 2016-2018 (SOR ¶¶ 1.b – 1.h), as well as state tax liens (entered between 2015 and 2018) and other state income tax debts, from TY 2019 and 2020 (SOR ¶¶ 1.i – 1.m).

Federal income taxes

SOR ¶ 1.b alleges \$5,719 in past-due federal income taxes from TY 2010. (GE 2 at 1) In July 2021, a \$1,115 credit was transferred from her TY 2019 refund to address this debt. (AE C) As of February 2022, she owed \$4,596. (AE D) After the hearing, Applicant indicated that she had been unable to acquire her 2010 federal tax transcript from the IRS, since it was too old. She was told in an “online chat” with an IRS representative to file a form to request it. (AE Q) She asserted that her federal income tax debt from TY 2010 was now “dissolved,” but this is undocumented. (AE P; Tr. 50)

Applicant owes several thousand dollars in past-due federal income taxes from later tax years. This includes SOR ¶ 1.c -- \$8,860 from TY 2011 (GE 2 at 4); SOR ¶ 1.d -- \$10,428 from TY 2012 (GE 2 at 6); SOR ¶ 1.e -- \$9,907 from TY 2013 (GE 2 at 8); SOR ¶ 1.f -- \$3,900 from TY 2014 (GE 2 at 10); SOR ¶ 1.g -- \$8,178 from TY 2016 (GE 2 at 12); and SOR ¶ 1.h -- \$5,777 from TY 2018. (GE 2 at 14) No past-due federal taxes are alleged for TY 2015 or 2017. The federal tax debts alleged in the SOR total about \$52,789, and she admitted these SOR allegations without further comment

In April 2022 (after receiving the SOR), Applicant submitted a proposed installment agreement to the IRS to address her tax debts of \$61,782 from the above tax years. She proposed paying \$300 a month until 2026, when she would increase her payments to \$650 a month (AE B) An earlier proposal from the IRS, also from April 2022, noted a minimum acceptable monthly repayment amount of \$700. (AE A) Around this time, she spoke to an IRS representative who suggested she resubmit her \$300 request. (Tr. 49-50)

Applicant testified that she is not currently on a repayment plan with the IRS for her past-due federal income taxes. She is still waiting for the agency to approve her repayment proposal. (Tr. 49) She acknowledged that she had not taken any further action since April 2022 when the IRS requested at least \$700 a month, which she was not able to pay. (Tr. 69-73) She asserted that she has been working diligently to address her federal tax debt and would like to submit an offer in compromise (to lessen the tax burden). She intends to submit a proposal for an installment agreement and pay the debt, as she is doing for her state tax debt. (Tr. 52-53, 69, 81)

Applicant filed her TY 2020 federal income tax return on or about April 15, 2021 and was issued a refund of \$185. (GE 2 at 17; Tr. 65-66) (It likely was redirected towards her tax debt from other years). She filed her TY 2019 state and federal returns in 2021 as well. (GE 4 at 49-50; AE C) She asserted during the hearing that she had filed her 2021 state and federal tax returns on time. She has not filed her 2022 state and federal tax returns, which were due the day before the hearing. (Tr. 33-35, 39-40, 65-68)

After the hearing, Applicant provided copies of her 2021 federal and state income tax returns. It is not clear from the documents when they were filed, but she said they were filed on time. For TY 2021, she was due a federal refund of \$1,937 but owed \$1,430 in state taxes. (AE P, AE R, AE S) She paid the state taxes owed with money orders, on May 6, 2022. (AE T)

State Tax liens and past due tax debts:

SOR ¶ 1.i alleges that Applicant owes \$11,649 in past-due state income taxes as the result of a September 2015 tax lien. (GE 3 at 1)

SOR ¶¶ 1.j (\$2,249) and 1.k (\$2,297) allege past-due state income taxes as the result of two additional tax liens, issued in January and February 2018, respectively. (GE 3 at 2, 3)

SOR ¶¶ 1.l (\$1,514) and 1.m (also \$1,514) allege past-due state income tax debt from TY 2019 and TY 2020, respectively. (GE 4 at 43, 49)

Applicant denied these allegations, noting that she had entered a repayment plan in 2022. (Tr. 46-49, 75-77) She made \$349 monthly payments for four months in early 2022 (AE K) As of March 28, 2022, the balance due was just over \$27,000. (AE G) By May 2, 2022, she was in default, having missed two payments. (AE H) She made efforts

to contact the state to address the matter (AE J) but the repayment plan was canceled by the state by the end of May 2022, with a balance due of \$27,283. (AE I)

Applicant said she had no unfiled state income tax returns. She said the state would not allow a taxpayer to begin a tax repayment plan if they had unfiled returns. (Tr. 40) She also acknowledged that her 2022 state tax return remained unfiled, as noted, though she said she owed, and paid \$1,545, and that she had paid the \$1,430 she owed for her 2021 state taxes. (Tr. 77-78)

After the hearing, Applicant provided several monthly installment bills from the state, dated between October 2022 and April 2023. She was to pay \$344.86 a month. The October 2022 balance owed was \$25,795 and as of April 2023, it was \$24,580. (AE U-AE Y)

Applicant testified that she loves her job and her federal contracting career, where she feels important. She said she has a good moral compass, and considers that she is trustworthy, has excellent character, and good judgment. (Tr. 17) She has no other debts, as shown by April 2023 credit reports she submitted. (Tr. 52; AE E, AE F)

Applicant submitted four reference letters from professional colleagues. They all attested to her professional skills, knowledge, dedication, honesty, integrity, and trustworthiness, including regarding protection of classified information. They also attested to her strong family life and community participation. (AE L – AE O)

Policies

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

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 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, these guidelines are applied 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(a), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 sets forth 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's tax issues began in 2010, when she had a side business to make extra money. The IRS challenged some of her deducted expenses, which led to an audit in 2013. In later years, her tax issues continued because she was not having enough money withheld from her pay. She has never really gotten on track, and now owes over \$60,000 in past-due federal income taxes and over \$20,000 in past-due state income taxes, for several years between 2010 and 2020. She failed to file her federal income tax returns for TY 2019 on time, though these returns have now been filed (as has her 2019 state return, which was not alleged). AG ¶¶ 19(a), 19(c), and 19(f) all apply.

Conditions that could mitigate 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 has a long-history of past-due state and federal income tax debt. Her debts are largely due at this point to failing to withhold enough income to address her yearly tax burden. This has gone on for several years, and she now owes more in past-due federal income taxes (over \$60,000) than what was alleged (about \$52,000). She

has not established good-faith compliance with tax requirements. Significant federal tax debt remains ongoing. She is not on a repayment plan and has made little to no effort to address the problem even by paying the IRS what she can afford. She has outstanding state tax debt as well (about \$24,000 at this point, also more than what was alleged). She is on a repayment plan for those debts, but they are ongoing, are not isolated, and they and continue to cast doubt on her current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

AG ¶ 20(b) does not apply. Applicant's tax debts are largely due to her own failures to address them responsibility and not due to circumstances beyond her control.

AG ¶ 20(c) does not apply. Applicant has pursued financial advice from tax preparers and the IRS to address her long-term tax issues, but they are not being resolved and are not under control.

Applicant has not demonstrated that she is acting in good faith. She has taken few concrete steps to address her significant federal income tax debt. She is on a repayment plan for her state tax debts but this is not enough of a track record to show good-faith given her federal tax debts as well. She has filed her past-due state and federal tax returns for TY 2019, but she had not filed her 2022 returns as of the date of the hearing. That tax year is not alleged in the SOR, and I have not considered it as disqualifying conduct, but it undercuts her claims of rehabilitation and mitigation since her tax filing issues, too, are ongoing. AG ¶¶ 20(d) and 20(g) do not fully apply.

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 owes about \$80,000 in past-due state and federal income taxes. She has not provided enough evidence to show that she is acting responsibly in addressing these debts. She has not mitigated financial security concerns. She has a long career as a federal contractor and is well regarded professionally. However, she has also had tax problems for much of this time. She is now addressing her state tax debt but has taken no recent steps to address her large, outstanding federal tax debt. Overall, the record evidence leaves me with questions and doubts as to Applicant's continued eligibility for access to classified information. She did not mitigate financial 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.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for continued access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge