



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 22-00384
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2023

Decision

HOGAN, Erin C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 30, 2019. On December 20, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented on June 8, 2017.

Applicant answered the SOR on May 12, 2021, and requested a decision based on the administrative record. (Item 3) Department Counsel submitted the Government's

written File of Relevant Material (FORM) on February 24, 2023. On March 1, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on March 7, 2023. On April 7, 2023, Applicant requested an extension to submit matters. Her request was granted. She was given until May 8, 2023, to submit a response. She did not submit additional documents. The case file was forwarded to the DOHA Hearing Office on May 30, 2023. The case was assigned to me on June 7, 2023.

Findings of Fact

Applicant is a 60-year-old employee of a defense contractor, employed since 2002. She earned a bachelor's degree in 2012 and a master's degree in 2013. She is divorced and has four adult children. This is her first time applying for a security clearance.

The SOR alleges under Guideline F, that Applicant failed to file her federal tax returns and is indebted to the Federal Government for delinquent taxes for tax years 2014 - 2017 (SOR ¶¶ 1.a-1.h: Item 1 at 34-36; Item 6); and that she failed to file her state income tax returns for tax years 2014 – 2017 (Item 1 at 34-36). The SOR also alleges five additional delinquent debts totaling approximately \$15,764.00 (SOR ¶¶ 1.j-1.n). Applicant admits the federal and state tax allegations, she admits SOR ¶¶ 1.l and 1.n, and denies SOR ¶¶ 1.j, 1.k, and 1.m. The record evidence is sufficient to support the SOR allegations.

In her response to the SOR, Applicant indicates she filed all of her federal tax returns and that she is working with a tax firm/association to help her settle the tax debt that is owed to the Internal Revenue Service (IRS). They hope to arrange a monthly payment plan on her behalf that she can afford. They are also working on her state tax issues. She disputes the debts alleged in SOR ¶¶ 1.j, 1.k and 1.m because she does not recognize the debts. The \$72 medical debt alleged in ¶ 1.n is for a flu shot. Applicant was under the impression she could receive the flu shot for free. She paid the bill and she now gets her flu shots from a local pharmacy which provides flu shots at no charge. (Answer to the SOR)

The debt alleged in SOR ¶ 1.l is a mortgage account that is past due in the amount of \$7,083, with a total balance of \$158,617. Applicant admits that is for her home. Her home has serious issues that need to be repaired related to a leaking roof. She needs to refinance her mortgage to pay for the repairs. She claims the previous owner made some quick fixes in order to pass the home inspection. (Answer to SOR)

In February 2022, Applicant encountered severe health issues. She was off work for six months. She appreciates the opportunity to explain her situation. She also is seeking budget counseling from a nonprofit organization in order to help her with a debt management plan. She would have sought counseling earlier, but her health issues put a hold on everything. Applicant states she is a good worker and has never sold out her country. She would like to get her budget and tax issues in order. (Answer to SOR)

The status of the SOR allegations are as follows:

SOR ¶ 1.a: Failure to file Federal income tax return for tax year 2014: Applicant filed her Federal income return for 2014 on November 18, 2019. (Item 6 at 9 -10)

SOR ¶ 1.b: \$9,182 Federal income tax debt for tax year 2014: Applicant is in the process of working on this issue. She claims to be working with a tax firm/association but did not provide documentation of her agreement with the tax firm/association and the status of the federal tax debt. The debt remains outstanding. (Item 6 at 9 -10)

SOR ¶ 1.c: Failure to file Federal income tax return for tax year 2015: Applicant filed her Federal income return for 2015 on November 5, 2018. (Item 6 at 6-8)

SOR ¶ 1.d: \$13,345 Federal income tax debt for tax year 2015: Applicant is in the process of working on this issue. She claims to be working with a tax firm/association but did not provide documentation of her agreement with the tax firm/association and the status of the federal tax debt. The debt remains outstanding. (Item 6 at 6-8)

SOR ¶ 1.e: Failure to file Federal income tax return for tax year 2016: Applicant filed her Federal income return for 2016 on November 25, 2019. (Item 6 at 4-5)

SOR ¶ 1.f: \$7,160 Federal income tax debt for tax year 2016: Applicant is in the process of working on this issue. She claims to be working with a tax firm/association but did not provide documentation of her agreement with the tax firm/association and the status of the federal tax debt. The debt remains outstanding. (Item 6 at 4-5)

SOR ¶ 1.g: Failure to file Federal income tax return for tax year 2017: Applicant filed her Federal income return for 2017 on November 11, 2019. (Item 6 at 2-3)

SOR ¶ 1.h: \$18,893 Federal income tax debt for tax year 2017: Applicant is in the process of working on this issue. She claims to be working with a tax firm/association but did not provide documentation of her agreement with the tax firm/association and the status of the federal tax debt. The debt remains outstanding. (Item 6 at 2-3)

SOR ¶ 1.i: Failure to file state income tax returns for tax years 2014, 2015, 2016, and 2017: Applicant states she is working on this issue. She provided no documentation indicating her state income tax returns were filed for tax years 2014, 2015, 2016 and 2017. The status is unresolved.

SOR ¶ 1.j: \$503 debt placed for collection: Applicant denies this debt because she does not recognize it. The January 2022 credit report indicates "Account information is disputed by consumer." Applicant did not provide additional information or documentation about the outcome of the dispute. At the close of the record, the debt remains unresolved. (Item 8 at 2; Item 9 at 2; Answer to SOR)

SOR ¶ 1.k: \$92 medical debt placed for collection: Applicant denies this debt. I find for Applicant regarding this debt because the pleading is too vague for Applicant to determine the identity of the creditor. The amount of the debt is de minimis. (Item 8 at 2; Answer to SOR)

SOR ¶ 1.l: A mortgage account that is past due in the amount of \$8,014, with a balance of \$158,617: Applicant admits that she is behind on her mortgage payment. She hopes to refinance her mortgage. At the close of the record, no action was taken to resolve the past due mortgage amount. (Item 7 at 12; Item 8 at 3; Item 9 at 3; Answer to SOR)

SOR ¶ 1.m: \$8,014 account placed for collection: Applicant denies this debt because she does not recognize it. At the close of the record, the debt remained unresolved. (Item 9 at 2; Item 10 at 11; Answer to SOR)

SOR ¶ 1.n: \$72 medical account: In her Answer to the SOR, Applicant states that this was for a flu shot received at her doctor's office. She mistakenly thought it was free. She claims she paid this debt. She did not provide a receipt showing that she paid it. The debt does not appear on her most recent credit report. I find SOR ¶ 1.n for Applicant. (Item 9 at 2; Item 10 at 11; see Item 7 and Item 8)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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.

The documentary evidence in the record is sufficient to establish the disqualifying conditions AG ¶¶ 19(a), (c), and (f). Applicant failed to file her state and federal income tax returns for tax years 2014, 2015, 2016, and 2017. She owes the IRS an approximate total of \$48,580 in unpaid taxes for these tax years. She has several other delinquent debts to include a past due mortgage account, and two consumer accounts.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

AG ¶ 20.a does not apply because most of her debts remain unresolved. AG ¶ 20.b partially applies. Applicant's significant health issues in 2022 were beyond her control. This mitigating condition is given less weight because most of Applicant's financial issues arose well before 2022. Her state and federal tax issues involve tax years 2014 – 2018, and have been delinquent for several years.

AG ¶ 20.c does not apply. Applicant has not received financial counseling and her financial problems are not under control. AG ¶ 20.d does not apply. While Applicant intends to resolve her debts, she has not demonstrated a good-faith effort to resolve her delinquent debts.

AG ¶ 20.e: does not apply. Applicant disputes the debts alleged in SOR ¶¶ 1.j and 1.m, but provided no documents indicating that she submitted a formal dispute nor the outcome of a dispute for either debt.

AG ¶ 20.f applies with respect to SOR ¶¶ 1.a, 1.c, 1.e, and 1.g because Applicant filed her federal income tax returns for tax years 2014 – 2017. It does not apply with regard to SOR ¶¶ 1.b, 1.d, 1.f and 1.h because she still owes federal income taxes for tax years 2014 – 2017, a total balance of approximately \$48,580. It does not apply to SOR ¶ 1.i because Applicant has not filed her state income tax returns for tax years 2014, 2015, 2016 and 2017.

When tax issues are involved, an administrative judge is required to consider how long an applicant waits to file his or her tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments. The Appeal Board's emphasis on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets.").

The guidelines encompass 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). A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information. ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

I have considered Applicant's recent serious health issues. However, Applicant's financial problems have been longstanding and occurred before her illness. Some mitigation applies because Applicant filed her Federal income tax returns for tax years

2014-2017. However, she filed her federal income tax returns in 2018 and 2019. She had over four years to arrange a payment plan with the IRS to pay her delinquent federal taxes, but she took no action. Concerns under financial considerations remain.

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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's 20-year history as an employee of a defense contractor. I considered her recent significant health problems. I find her unresolved tax debts and ongoing financial issues outweigh any evidence of mitigation in Applicant's case.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. I conclude Applicant has not mitigated the security concerns raised by her financial delinquencies.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a, 1.c, 1.e, 1.g, 1.k and 1.n: **For Applicant**

Subparagraphs 1.b, 1.d, 1.f, 1.h, 1.i, 1.l and 1.m: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

Erin C. Hogan
Administrative Judge