



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXX) ISCR Case No. 22-00424
)
Applicant for Security Clearance)

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

09/07/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from her problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application (SCA) on September 21, 2020. On May 15, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under Guideline F (financial considerations). This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The *Adjudicative Guidelines for*

Determining Eligibility for Access to Classified Information (AG), effective within the Defense Department on June 8, 2017, apply here.

Applicant answered the SOR on May 25, 2022 (Answer) and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 8, 2022. The case was assigned to me on March 24, 2023. On May 19, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on July 11, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 4 were admitted without objection. Applicant testified and submitted two exhibits marked Applicant's Exhibits (AE) A and B, which were admitted without objection. Without objection, the record was left open until August 18, 2023, to allow Applicant to submit additional exhibits. She timely submitted documents that were marked as AE C through AE H and were admitted without objection. DOHA received the transcript (Tr.) on July 20, 2023.

Findings of Fact

Applicant is 60 years old, married since August 1989, and has two sons, ages 30 and 32, and a daughter age 27. She has a bachelor's degree (1991) and a doctor's degree (2002). Her last employment was for another federal government agency. Her project there ended in March 2023, and she is currently unemployed.. Her spouse is also unemployed (since June 2022). She has a top secret security clearance and is sponsored by a defense contractor. (GE 1 and 2; Tr. 32-33, 40, 83, 87.)

Under Guideline F, the May 15, 2022 SOR alleged that Applicant: (1) has an account placed for collection for \$494; (2) failed to file her federal income tax return for tax year 2013; (3) is indebted to the federal government for delinquent taxes of \$35,336, and; (4) is indebted to the state for \$37,778 in taxes for tax years 2009 to the present. (SOR). She admitted SOR ¶ 1.a but claimed that the account has been satisfied. She denied SOR ¶ 1.b and claimed that all federal tax returns and amended tax returns have been filed. She admitted SOR ¶ 1.c but is waiting for a payment plan with the Internal Revenue Service (IRS) to be approved. She denied SOR ¶ 1.d and claimed that the state released that tax delinquency. (Answer.)

SOR ¶ 1.a. Applicant testified about SOR ¶ 1.a, an account in collection for \$494. With her Answer, she included a receipt for \$148. She testified that the receipt was her evidence of paying this account. She could not recall what type of account it was or what type of purchase it was. She did not receive any notices from the creditor that it was delinquent. The receipt is dated October 2020, and she met with the Office of Personnel Management (OPM) investigator in October 2020, who brought this account to her attention. She thought her husband had handled this account. She settled this account after the meeting with the investigator. (Tr. 49-55.) SOR ¶ 1.a has been resolved.

SOR ¶ 1.b. Applicant testified about SOR ¶ 1.b, which alleged that she failed to file her federal income tax return for tax year 2013, as required. Her Answer denied that allegation. Applicant testified that she was sure they had filed returns for 2009 to 2020 or

2021. She was not sure exactly when. (Tr. 66-70.) She produced her 2013 federal income tax return for tax year 2013 showing that it was filed on July 16, 2015. (AE C.) She admitted that she had been irresponsible in failing to file her tax returns on time and had “not been paying very close attention to [her] tax situation.” (Tr. 65-66; GE 2 at 19.) SOR ¶ 1.b has been resolved.

SOR ¶ 1.c. Applicant testified about SOR ¶ 1.c, which alleged that she is indebted to the Government for delinquent taxes of \$35,336 for tax years from 2009 to the present. She admitted that allegation and claimed that she is awaiting a payment plan from the IRS.

Applicant was directed to Applicant’s Exhibit A, an IRS Form 656, Offer in Compromise. (Tr. 82.) That exhibit was signed by Applicant and her spouse on June 29, 2023. (Tr. 24-25.) The exhibit states that her plan is to pay \$105,000 over 24 months (\$4,375 per month), but the SOR states the amount owed is about \$35,000. Applicant explained that the \$105,000 was an offer, but the amount owed is approximately \$200,000, which includes interest, late fees, and penalties. She submitted this offer through her revenue officer at the IRS. She has not heard back from the IRS with the official paperwork. The revenue officer does not have authority to approve an Offer in Compromise. That officer is Applicant’s liaison to the IRS. The Offer in Compromise is still pending. (Tr. 83-86, 94-96.)

Applicant was asked how she would be able to pay the \$4,375 per month she put in her Offer in Compromise. She explained that she was waiting for several offers that paid “well over \$100 an hour.” There were several opportunities if her “clearance was granted.” She also had offers from local governments and federal contractors that do not require a clearance. Some of those opportunities are “not an offer letter, but . . . if they like my resume’ then I can get a job.” (Tr. 118-121.)

Applicant testified that she cannot have a payment plan with IRS until there is an approved Offer in Compromise. She could, however, make “good faith” payments to the IRS, so she gave her spouse money to make such payments. They were “sporadic” payments made before and after her October 2020 meeting with the OPM investigator. She made those payments from 2020 until she stopped working. Her spouse made “small payments” to the IRS from 2009 to 2015. (Tr. 86-89.) She produced documentation showing two “good faith” payments. One was \$503 for tax year 2018 received by IRS on November 18, 2021. The second was \$1,500 for tax year 2020 received by IRS on December 13, 2021. (AE F and AE G.) SOR ¶ 1.c has not been resolved.

SOR ¶ 1.d. Applicant testified about SOR ¶ 1.d, which alleged that she is indebted to the state for \$37,778 in taxes for tax years 2009 to the present. She was directed to a spreadsheet in Government Exhibit 2, page 21. She prepared this spreadsheet using her state tax returns that were actually filed for tax years 2009 through 2021. It tracked her taxes owed and tax refunds due for that time period. Between 2009 and 2021, she had a \$3,022 total net credit. (Tr. 102-105.) This spreadsheet assisted her in convincing the state to issue the April 23, 2021 tax release (for \$43,301) that is part of her Answer. She has satisfied her state tax obligation. (Tr. 104-105.) SOR ¶ 1.d has been resolved.

Applicant's Finances

Applicant has been unemployed since March 2023, and her spouse has been unemployed since June 2022. Her three children live with her and her husband, and they support the children. She testified about her sources of income. Her spouse worked for the Government for seven years and has a Thrift Savings Plan (TSP), but she does not. She has never been a government employee and was always a contractor. She has no retirement fund. The TSP is one of their sources of income. She does not know the current balance, but it started at \$85,000. Her spouse only makes withdrawals as needed. When his job was eliminated, he received \$8,000 per month (\$40,000 total) in severance. (Tr. 108-112, 123.)

Applicant has two cars. Her business car is a 2015 model she bought in 2021. Its engine is dead. The repair would cost \$33,000; she paid \$43,000 for it. She has filed a Lemon Law claim. Her monthly payment is \$798. (Tr. 113.)

Applicant's family car is a 2012 model. She owes about \$3,000 to \$4,000 on it. She is a couple of months behind on both car payments. (Tr. 113-114.)

Applicant has no health care coverage. She has one unpaid medical bill for \$300. (Tr. 117-118.)

Food is about \$2,000 per month. Utilities are about \$800 to \$1,000 per month. (Tr. 112, 115.)

Applicant's mortgage is \$4,000 per month. This is the second month she has not paid the mortgage. (Tr. 111.)

The family entertainment is cable, cellphones, and the Internet, about \$800 per month. They do not dine out. Applicant's hobby is watching documentaries. (Tr. 115-116.)

Applicant visited her daughter at medical school five times between 2017 and 2019. Each trip cost about \$1,000. Applicant used credit cards to pay for those trips. Other than those trips, Applicant has not taken any vacations or tours. (Tr. 129-132.)

Applicant's sons are in college, and they graduate in 2024. Her daughter returns to medical school for September 2023 through December 2023, which is her last semester. (Tr. 132.)

Only Applicant's oldest son contributes to the household income, about \$400 per month. (Tr. 111.)

Applicant keeps expenses as low as possible, just food, utilities, and cars; she does not send out dry cleaning. She and her family are living on credit cards. Her credit card balance is about \$16,000. (Tr. 112, 116-117, 126-127.)

Applicant's checking account balance is usually negative \$1,000. (Tr. 123-124.)

Applicant received financial counseling from a credit-repair service from 2013 to 2016. (GE 2.) She also retained a credit-repair service in about 2018 or 2019. She is not currently receiving financial counseling. (Tr. 127-128.)

Applicant's two credit reports show the following financial picture (other than back federal taxes). The October 2020 report shows 30 accounts. All accounts are PAYS AS AGREED. (GE 4.) The January 2022 report shows three collection accounts, one for \$561 that is marked PAID, one for \$5,534 that is marked DISPUTED and CHARGED OFF, and one for \$233 that is open. (GE 3.) Applicant's financial status has apparently not yet been reflected on the two credit reports in the record. The record does not show a history of not paying or an unwillingness to pay her household or consumer debts.

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 conditions that could raise security concerns under AG ¶ 19. Only the following is potentially applicable in this case: "(f) failure to file or . . . pay annual Federal, [or] state income tax as required."

Applicant's tax liabilities are established by her admissions. AG ¶ 19(f) applies.

AG ¶ 20 includes the following conditions that could potentially 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;
- (c) the individual has received . . . financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control; 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.

I have considered AG ¶ 20(a). Applicant's federal income tax woes began many years ago, dating to 2009. That was, of course, long ago. Those troubles, however, persist to this day and have yet to be unraveled and solved. Applicant only recently, on June 29, 2023, signed an IRS Offer in Compromise. It has not been approved by the IRS. She admitted that the debt owed to IRS is \$200,000. Her offer was to pay \$105,000 over 24 months at \$4,375 per month. Those terms proposed by Applicant and her spouse seem unrealistic for them to meet, even if the IRS approves the offer. They are both unemployed and living on credit cards. They are behind on their mortgage and car payments with usually a negative balance in their checking account. Only one of their three adult children who live with them contributes to the family budget. Applicant's current financial and tax

circumstances cast doubt on her current reliability. Mitigating condition AG ¶ 20(a) does not apply.

AG ¶ 20(b) has two requirements. First, the conditions causing financial problems must have been “largely beyond” an applicant’s control. Second, the applicant must have “acted responsibly” under the adverse circumstances she confronted. Applicant’s and her spouse’s recent loss of employment are conditions largely beyond her control. She admitted, however, that she had been irresponsible in failing to file her tax returns on time and had “not been paying very close attention to [her] tax situation.” Thus, her loss of employment did not cause her tax problems. It was irresponsible conduct *in the past* that caused those problems. AG ¶ 20(b) does not apply.

I have considered AG ¶ 20(c). Applicant has received financial counseling in the past, which is to her credit. There are, however, no indications that such counseling has resolved her outstanding federal income tax problems or brought them under control. AG ¶ 20(c) does not provide any significant mitigation.

I have considered AG ¶ 20(g). The analysis under AG ¶ 20(a) above applies equally here. There is no IRS-approved arrangement in place. To her credit, Applicant did make two “good faith” payments to the IRS (totaling \$2,003) to be applied to back income taxes owed. That does not, however, satisfy this mitigating condition

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

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 not mitigated the security concerns raised by her delinquent federal income taxes.

Formal Findings

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

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a and b:	For Applicant
Subparagraph 1.c:	Against Applicant

Subparagraph 1.d:

For Applicant

Conclusion

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

Philip J. Katauskas
Administrative Judge