



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



In the matter of:)	
)	
)	ISCR Case No. 22-02061
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
 For Applicant: *Pro se*
 11/09/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On November 17, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 30, 2022, and she requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 29, 2023. I convened the hearing as scheduled on October 24, 2023. The

Government offered exhibits (GE) 1 through 6. Applicant testified and did not offer any exhibits. There were no objections, and the Governments exhibits were admitted into evidence. The record was held open until November 7, 2023, to allow Applicant to submit documents. She did not submit any documents and the record closed. DOHA received the hearing transcript (Tr.) on November 1, 2023.

Administrative Matters

The Government requested I take administrative notice of IRS Publication 54. I granted the request. It is marked as Hearing Exhibit I.

Procedural Matters

In accordance with DOD Directive 5220.6, the Government moved to amend the SOR to render it in conformity with the evidence admitted. The record was held open to allow Applicant an opportunity to provide additional evidence. There was no objection to the motion, and it was granted. The SOR amendments are included in Hearing Exhibit II. (Tr. 68-71)

The SOR was amended as follows:

1.t. You failed to timely file, as required, Federal tax returns for at least tax years 2017, 2018, and 2019. As of the date of this Statement of Reasons, the tax returns remain unfiled. (HE II)

1.u. You failed to timely file, as required, state income tax returns for at least tax years 2017 and 2021. As of the date of this Statement of Reasons, the tax returns remain unfiled.

Findings of Fact

Applicant denied the allegations in the SOR ¶¶ a. through 1.p. She admitted SOR ¶¶ 1.q through 1.s. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. She earned a bachelor's degree in 2012 and a master's degree in 2020. She married in March 2023. She has no children. She began her employment with a federal contractor in March 2021. She estimated her annual salary is currently about \$43,000 and her husband is paid approximately \$20.00 an hour, so it was difficult to estimate his earnings as the hours fluctuate. (Tr. 19-22)

Applicant stated that after graduating from college she worked for an insurance company from November 2013 to approximately December 2017. She obtained student loans to pay for her undergraduate degree. Her starting annual salary was about \$30,000 and increased to approximately \$38,000 to \$40,000. She was promoted in 2017 and moved from State A to State B. She started working on her master's degree in 2013. She

took classes consistently from 2013 to 2015 and then took a break from school from 2016 to 2020, when she did not attend school. She stated that her student loans were deferred while she was working on her advanced degree. (Tr. 22, 24, 33-35; GE 1)

On her April 2021 security clearance application (SCA) she disclosed she took many short trips to Mexico in 2015 and traveled internationally from 2015 to March 2018 to France (some expenses were covered by a friend), United Kingdom, Iceland, Guadeloupe, and the Bahamas. (Tr. 22, 24, 33-35; GE 1)

In 2017, Applicant accepted a job to work in China. While waiting for her visa to be approved, she was unemployed from December 2017 to April 2018. During this time, she traveled to Guadalupe and paid her own expenses. She testified that before she moved, she closed and resolved all her financial accounts. She said that she was aware of her student loans and other debts before she left for China. She said she was going to save her money while in China and start paying them when she returned to the United States. She did not give anyone in the United States access to her accounts while she was out of the country. She returned her car to the creditor and allowed it to be voluntarily repossessed. (SOR ¶ 1.k) She had to borrow money from her mother and her roommate when she arrived in China so she could secure a place to live. She repaid them both. While living in China, Applicant traveled back to the United States a few times. She also traveled for pleasure to Vietnam (October 2018), Malaysia (January 2019), Indonesia (February 2019) Sri Lanka (June 2019), Japan (September 2019), and Thailand (October 2019). (Tr. 35-45; GE 1, 2)

Applicant testified that when she returned to the United States in January 2021, she had saved about \$4,000 so she could restart her life. She continued to work for the same company until March 2021. While in China, her annual income was about \$45,000. She explained she accepted the job in China because it gave her an opportunity to work abroad. Her plans had been to move to Spain and work, but she canceled them due to family issues and the pandemic. (Tr. 45-49)

Applicant disclosed in her April 2021 SCA that she failed to timely pay her 2016 income taxes. She did not specify if she failed to pay both federal and state income taxes. She reported in her SCA "Incorrect adjustment for personal allowances under [State B] taxes filing. Need to pay remaining balance this year." She estimated the amount owed was \$1,985. She further stated, "Will set up payment plan to address remaining balance owed." (GE1)

Applicant completed government interrogatories in October 2022. The interrogatories inquired if she had filed her federal and state income tax returns from 2013 to 2021. For federal income tax returns, she responded "n/a" for tax years 2013, 2014, and 2015. She testified she put n/a because she was unable to retrieve the transcripts for these years. For tax years 2016, 2017, 2020 and 2021, she responded "yes." For tax year 2017 she provided an IRS transcript that reflects her income tax return was not filed. She had no explanation for why she failed to file. For tax years 2018 and 2019, she responded "no." Her explanation for failing to file for tax years 2018 and 2019 was because she was

both a resident and full-time employee in China during those years. Her October 2022 tax transcripts reflect that her tax returns were not filed for 2017, 2018, and 2019. In her interrogatories, she reported her total federal tax liability was \$1,648, which included penalties and interest. She reported she did not currently have an installment agreement with the IRS but had been making monthly payments of \$50 before she moved to China. (T. 29-33, 50-57, 60-65; GE 2)

Applicant responded to interrogatory questions about her state income tax returns. For each tax year from 2013 to 2021, she responded “n/a.” She checked “yes” on the interrogatory question that asked if all her state income tax returns for tax years 2013 to 2021 were filed. She responded n/a to the question which asked her to provide her current total outstanding tax liability. Prior to 2017, Applicant lived in State A that does not have a state income tax. State B, where she moved does have a state income tax. She testified that she did not file a state income tax return for 2017. (Tr. 33-35, 57-59; GE 2)

Applicant testified that she believed she did not have to file federal or state income tax returns while she was a resident and working in China. She admitted she never consulted a tax professional or anyone when she drew this conclusion. IRS publication 54 reflects that she is required to file federal income tax returns while living and working in a foreign country. She stated that when she prepared her returns it was electronically with a software program. Her 2018 and 2019 federal and state income tax returns remain unfiled. She stated she filed her 2020 and 2021 federal tax returns. She provided a copy of her 2020 federal tax transcript which reflects a negative adjusted gross income. She was asked if she reported income she earned while in China, and she said she thought the tax form permitted her to report foreign income. When Applicant returned to the United States in January 2021, she lived in State C and continued to work for the same company until March 2021. She stated that when she filed her 2021 federal income tax return, she believed she reported income she earned from this company. She moved about six months later to State D. Both states have income tax requirements. She indicated in her interrogatories “n/a” for tax year 2021 regarding her state tax return. She said she filed her state and federal income tax returns for tax year 2022 and did not owe any taxes. The record was held open to allow her to provide evidence to show she was not required to file federal income tax returns in 2018 and 2019. She did not. (Tr. 29-33, 50-59; GE 2; HE II)

Applicant stopped making payments to the IRS for her 2016 tax liability when she moved to China. She has not made any independent payments since then. She said she needed to borrow money to get settled when she moved to China. Any tax refunds she was entitled to were captured and applied to her current liability. In response to questioning as to why she did not resolve the debt when she was put on further notice of it when she received the SOR, she said she thought her refunds would cover her tax liability and she was relying on them to resolve her debt. She has not contacted the IRS to make payment arrangements to resolve her tax liability. She reported the tax debt on her SCA in April 2021. (Tr. 64-67; GE 1, 2)

Applicant provided with her interrogatories copies of federal tax transcripts. She timely filed her 2021 federal income tax return. Her 2020 tax year transcript reflects a

negative adjusted gross income of \$250. It is unknown why she has a negative amount. Tax transcripts from 2017 and 2018 reflect a return was not filed. She did not provide a transcript for tax year 2019. Her documents also reflect she still has a balance owed to the IRS of \$1,648. The documents did not reflect the tax year. (GE 2)

SOR ¶¶ 1.a (\$21,883); 1.b (\$19,515); 1.c (\$18,339) 1.d (\$12,080); 1.e (\$11,178); 1.f (\$8,349); 1.g \$6,433) 1.h (\$5,836); 1.i (\$5,808); 1.j \$5,688); 1.l (\$4,875); 1.m (\$4,544); 1.n (\$3,106); and 1.o (\$3,106) are delinquent student loans. All these loans are listed with the Department of Education (DOE) except those in SOR ¶¶ 1.e, 1.h and 1.m. Applicant testified she took out student loans for both of her degrees. She said after she received her bachelor's degree in 2012, she started her master's program in 2013. She took classes consistently from 2013 to 2015 and then took a break from school from 2016 to 2020, when she did not attend school. She said her student loans were deferred for a period and were in default, but she could not recall when that occurred. She did not make any payments on the loans when she was not attending school. (Tr. 80-89)

Applicant testified that after she graduated earning her master's degree in 2020, she did not make any payments towards her student loans. She confirmed her student loan debt with the government investigator when she was interviewed in April 2021. She stated she had received correspondence from one of the student loan creditors prior to leaving for China but could not recall the creditor. The letter put her on notice her student loans were due. She believed her loans were deferred. She stated, she was unable to contact any of the creditors while she lived in China due to her inability to access her accounts. She was confronted with additional student loan accounts and said she was unaware of their status. She intended to contact the creditors and determine the loans status. She testified that she was aware of her obligation to pay her student loans but made no attempt to do so because she was not financially stable at the time. (Tr. 81-82; GE 2)

Applicant stated that in November 2022 she applied for a student loan forgiveness program and attempted to consolidate her loans. She provided a copy of a letter from the DOE stating she qualified for the one-time Student Loan Relief plan but there were pending lawsuits challenging the program and she would be notified if and when they prevailed in court. She stated she received a letter from the creditor who held the debts in SOR ¶¶ 1.e, 1.h and 1.m. offering her the opportunity to participate in a "Fresh Start" program. She applied for the program in June 2023 and is waiting for a response. She testified that she made a payment arrangement for three of her loans and is to start paying \$148 a month beginning in December 2023. She was unable to identify which loans on the SOR are part of the agreement. When asked if she has determined the status of all her student loans, she said she had not. She was to provide documentation to substantiate her actions and specify which loans she has an agreement to pay. She did not provide any documents. (Tr. 22, 82-94; Answer to SOR)

Applicant was asked if she provided the student loan creditors her forwarding address or any contact information when she moved to China. She said she did not. She said her father received some correspondence from the creditors while she was in China.

She received letters upon her return from China. Her credit report from April 2021 reflects all her student loans are in collection. In her July 2022, October 2022, and January 2023, credit reports the loans with DOE have a notation that states “customer unable to locate consumer” and the accounts were in collection. (Tr. 89-94; GE 2, 3, 4, 5, 6)

The debt alleged in SOR ¶ 1.k (\$5,188) is the car loan and voluntary repossession from when Applicant returned the vehicle before she left for China. She understood she owed a balance. She stated she thought the car was sold. The debt was brought to her attention by the government investigator during her April 2021 interview. She told the investigator that she was not sure of the balance owed, if any, and she did not receive correspondence from the creditor because she was in China. She said she had no immediate plans at that time to contact the creditor to correct any issues but would eventually resolve the matter. She testified that she has not contacted the creditor to determine the debt’s status, dispute it, or make payment arrangements. It remains on her credit reports. It is unresolved. (Tr. 98-100; GE 2, 3, 5, 6)

The debt in SOR ¶ 1.p (\$1,073) is a debt for an apartment where Applicant lived in 2016. She stated she vacated the apartment when she moved to a different state and believed she had paid all remaining bills. She was confronted with the debt by the government investigator in April 2021 and said when she did a walkthrough with the landlord there was no damage to the apartment indicated. She told the investigator she would contact the creditor and determine why there is a balance due, and she would eventually resolve the issue. She testified that she disputed the debt with the landlord, but it was unresolved. Her April 2021 credit report indicated she disputed the debt, but it did not report it was resolved in her favor. The debt is reported on her July 2022 and January 2023 credit report. It is unresolved. (Tr. 100-102; GE 2, 3, 6)

The debt alleged in SOR ¶ 1.q (\$535) is a charged-off credit card debt. Applicant settled the debt in December 2022. The debt in SOR ¶ 1.r (\$101) was paid in December 2022. Both were resolved after receipt of the SOR. When asked why it took so long to pay these debts, she did not have an explanation. She provided documentary verification the debts are paid. (Tr. 22, 102-104; GE 2, 3, 4, 5, 6; Answer to SOR)

Applicant was asked about a delinquent debt that is on her April 2021 credit report and is not alleged in the SOR. It is a collection account for a credit card from 2018 with a balance owed of \$2,447. During Applicant’s April 2021 interview with a government investigator, she acknowledged the account and said she closed it before she left for China. She did not recall if there was a balance due or the date of her last payment. She told the investigator she would contact the creditor and attempt to resolve the issue. Applicant testified that she did not think she contacted the creditor. (Tr. 104; GE 2, 3)

Applicant and her husband have been living together since June 2021. She estimated that that since September 2021 their monthly net income is \$6,600 and after they pay their monthly expenses, they have about \$1,000 remaining, which often varies. They paid \$8,000 for their wedding in March 2023. They spent \$3,000 on a honeymoon in Portugal. She traveled to the Bahamas in 2021. She has about \$30 in her checking

account and about \$2,700 in savings. She contributes to a 401k pension plan but does not know the balance of the account. She occasionally will send her sister \$100 to \$200. She does not have a written budget. She said her husband has a lot of credit cards, but they are all being paid timely. (Tr. 72-80)

I have not considered any derogatory information in the application of disqualifying conditions. I may consider this information in the application of mitigating conditions, in making a credibility determination, and in my whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 has delinquent student loans totaling more than \$100,000 and other delinquent accounts that she failed to pay. She chose to travel extensively and not address her financial responsibilities. She did not contact her creditors and provide a forwarding address when she moved to China. She has a delinquent federal tax debt from

2016. She failed to provide evidence that she timely filed her 2017, 2018, and 2019 federal income tax returns, or provide evidence that she is not required to do so. She failed to file her 2017 and 2021 state income tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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.

Applicant provided proof that she paid the two small debts in SOR ¶¶ 1.q and 1.r after she received the SOR. An applicant who waits to resolve debts until after their eligibility for a security clearance is in question may be lacking the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) Her actions do not constitute a good-faith effort to repay her overdue creditors. AG ¶ 20(d) does not apply. She also said she made an agreement to begin a payment plan for some of student loans but could not identify which ones. She did not provide documentary evidence to show she has a payment agreement. The fact that she may have an agreement "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case

No. 12-05053 (App. Bd. Oct. 30, 2014). After her interview with a government investigator, she indicated her intent to contact creditors about her debts and then failed to do so. She has an unreliable financial track record. Her debts are recent and I cannot find that future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Although Applicant applied for a loan forgiveness program, it is unlikely, based on the amount of student loans she has they would all be forgiven, even if the program makes it through the legal challenges. She has not received approval for the Fresh Start program and has not followed up. She ignored her financial obligations before applying for these programs. She has been aware since at least April 2021 that her finances and student loans were an issue and failed to take meaningful action. 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. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961)

Applicant was aware she had a federal tax liability from 2016 before she moved to China. She has not made a voluntary payment to resolve this tax debt. She has relied on tax refunds to be involuntarily captured by the IRS and applied to the delinquent balance. She did not provide evidence that she has filed her federal income tax returns for tax years 2017, 2018 and 2019 or provided proof for why she was not required. She did not provide proof she has filed her state income tax returns for 2017 and 2021. Applicant's failure to address her tax issues "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.)

Presumably Applicant attributes her financial issues to being underemployed or living in China and not having access to her accounts. Her failure to advise her creditors of her new residence raises questions about her reliability. Based on her extensive travel, it is apparent, she made financial choices that did not include paying her creditors. These were conditions within her control. Applicant disputes certain debts that remain on her credit report. She did not provide evidence of legitimacy of her dispute or her actions to resolve the debts. There is no evidence she received financial counseling. I conclude none of the remaining mitigating conditions 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 the 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.

The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.p:	Against Applicant
Subparagraphs 1.q-1.r:	For Applicant
Subparagraph 1.s-1.u:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge