



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



In the matter of:)
)
) ISCR Case No. 23-00455
)
)
Applicant for Security Clearance)

Appearances

For Government: A.H. Henderson, Esq., Department Counsel
For Applicant: *Pro Se*

07/28/2023

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant's tax and financial problems have persisted for decades, and there is no evidence of current repayment plans or payments made for her Federal taxes, state taxes, or consumer debts. She has not demonstrated that she has acted responsibly to address and resolve her financial delinquencies. Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 22, 2023, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The CAF acted 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 implemented by the DOD on June 8, 2017.

In Applicant's April 3, 2023 response to the SOR (Answer), she admitted all of the allegations except SOR ¶ 1.b. She explained that she was working on establishing payment plans to pay her delinquent Federal and state taxes and was working with a debt-

relief program to resolve her two delinquent consumer accounts. She did not provide any documentary evidence to corroborate her claimed debt-resolution efforts. She requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On April 27, 2023, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Government Exhibits (GE) 1 through 11. GE 3 consists, in part, of the summary of an interview with an investigator from the Office of Personnel Management (OPM) conducted on August 18, 2022. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the admissibility of GE 3.

On May 5, 2023, Applicant received the FORM and its attachments. She did not submit a response to the FORM within 30 days of receipt. She did not raise any objections to the admissibility of GE 3 or dispute any of the contents of the interview summary. The case was assigned to me on July 14, 2023. GE 1 through 11 are admitted in evidence without objection.

Findings of Fact

Applicant is 59 years old. She graduated from high school in 1982. From August 1987 to December 2020, she was employed full time as a financial management analyst for the DOD. She has also been employed full time as direct-support personnel for an in-home health care company since April 2008. Her June 2022 security clearance application is sponsored by a DOD contractor; however, it is unclear whether she has started employment there. She has been married since August 1985, and she has three adult children. (GE 2; GE 3; GE 8)

On June 23, 2022, Applicant certified and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). In the e-QIP, she reported that she owed approximately \$60,000 in delinquent state taxes and that she had not filed state income tax returns for at least one tax year (TY). She also reported that she owed approximately \$90,000 in past-due Federal income taxes. (GE 2)

On August 18, 2022, Applicant was interviewed by an OPM investigator. During the interview, Applicant attributed her financial delinquencies to her reduced hours of employment during the COVID-19 pandemic. She also referenced reduced income in 2013 due to illness and insufficient sick leave, resulting in her 2014 bankruptcy filing (SOR ¶ 1.a.). Applicant explained that she was currently paying \$840 a month on her delinquent state income taxes and that she had been paying the IRS \$850 a month on her delinquent Federal taxes until she retired (December 2020). She claimed to have been enrolled in a debt-resolution program for about two years. (GE 3; GE 6)

Applicant provided the OPM investigator several documents. An undated letter from a debt-resolution company stated that Applicant had been enrolled in a debt-

resolution program; however, the letter does not identify account numbers, include a repayment plan, or show completed payments. An undated letter from a taxpayer-relief company claimed that the company had prepared Applicant's tax returns for TY 2010 through 2019 and had calculated her delinquent taxes at approximately \$104,412. The missing returns were not provided. Applicant also provided the OPM investigator with four installment plans from a state tax authority, stating Applicant owed approximately \$61,463 as of June 27, 2022. (GE 3)

Bankruptcy Filings

Applicant previously filed a Chapter 7 bankruptcy petition in June 1992. The dischargeable debts were discharged in November 1992. This bankruptcy petition is not alleged and will not be considered as disqualifying conduct; however, it is relevant when evaluating Applicant's evidence in mitigation. (GE 7)

On March 11, 2014, Applicant filed a Chapter 7 bankruptcy petition (SOR ¶ 1.a.). A summary of schedules lists \$270,811 in liabilities. She reported owing approximately \$100,000 to the IRS for TY 1995 through TY 2014 and owing \$7,000 to the state tax authority for TY 2007 through TY 2014. Applicant completed the credit counseling course required by the bankruptcy case. (GE 8)

Federal Income Taxes

In her Answer, Applicant denied that she failed to file her Federal income tax returns for TY 2010 through 2014 (SOR ¶ 1.b.). In her e-QIP, she indicated that she owed delinquent Federal and state taxes, and she listed the date of 2014 for when her issues with her Federal income taxes began. There is no evidence to establish that she failed to file her Federal income tax returns for TY 2010 through 2014.

Applicant admitted that she owed delinquent Federal taxes, interest, and penalties - totaling approximately \$68,936 - for TY 2015 through 2019. During her August 2022 security interview, she indicated that she had established a repayment plan with the IRS, but she had discontinued the plan upon her retirement in December 2020. There is no documentary evidence of any payments on Applicant's delinquent Federal taxes. (Answer; GE 3)

For TY 2015, Applicant filed her Federal income tax return on June 1, 2016. As of November 23, 2022, she owed approximately \$28,002.99 in delinquent taxes, interest, and penalties (SOR ¶ 1.c.). Although a payment plan was established in September 2021, there is no evidence of payments made. (GE 4)

For TY 2016, Applicant filed her Federal income tax return on September 25, 2017. As of November 23, 2022, she owed approximately \$24,340.30 in delinquent taxes, interest, and penalties (SOR ¶ 1.d.). Although a payment plan was established in September 2021, there is no evidence of any payments made. (GE 4)

For TY 2017, Applicant timely filed her Federal income tax return. As of November 23, 2022, she owed approximately \$1,748 in delinquent taxes, interest, and penalties (SOR ¶ 1.e.). Although a payment plan had been established in September 2021, there is no evidence of any payments made since the return was filed in April 2018. (GE 4)

For TY 2018, Applicant filed her Federal income tax return on May 18, 2020. As of November 23, 2022, she owed approximately \$12,483.75 in delinquent taxes, interest, and penalties (SOR ¶ 1.f.). Although a payment plan had been established in September 2021, there is no evidence of any payments made. (GE 4)

For TY 2019, Applicant filed her Federal income tax return on March 9, 2021. As of November 23, 2022, she owed approximately \$2,361 in delinquent taxes, interest, and penalties (SOR ¶ 1.g.). Although a payment plan was established in November 2021, there is no evidence of any payments made. (GE 4)

On January 15, 2009, a Federal tax lien was filed against Applicant in the approximate amount of \$76,057. Although this tax lien was not alleged and will not be considered as disqualifying conduct, it is relevant in evaluating Applicant's evidence in mitigation. (GE 9)

State Tax Liens

Applicant admitted the four alleged state tax liens (SOR ¶¶ 1.h.-1.k.), totaling approximately \$61,718, filed between September 2017 and October 2019. Although Applicant claimed to have established a payment plan and made payments on these delinquent taxes, there is no documentary evidence to corroborate her claims. (Answer; GE 3; GE 10)

Consumer Accounts

SOR ¶ 1.i. This account became delinquent in about February 2022. As of April 2023, this account was past due in the approximate amount of \$1,035. There is no evidence of any payment plan or payments to resolve this delinquent debt. (GE 6)

SOR ¶ 1.m. This account was opened in September 2021 and became delinquent in December 2021. As of April 2023, this account was past due in the approximate amount of \$3,663. There is no evidence of any payment plan or payments to resolve this delinquent debt. (GE 6)

Applicant did not provide any information about her monthly income and expenses. There is no information about when she enrolled in the debt-relief program or whether she established a payment plan and made payments on her delinquent accounts. There is no evidence of any credit counseling since her 2014 bankruptcy. Applicant has not explained why she has failed to pay her Federal and state income taxes for so many years.

Policies

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse 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 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

The guideline notes 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.

In March 2014, Applicant filed a Chapter 7 bankruptcy petition, listing approximately \$270,000 in liabilities, including approximately \$107,000 in delinquent taxes. In her Answer, Applicant admitted owing delinquent Federal income taxes for TY 2015 through 2019, totaling approximately \$68,936, and state tax liens totaling approximately \$61,718. Lastly, she admitted two delinquent consumer accounts, totaling approximately \$4,698. AG ¶¶ 19(a), 19(c), and 19(f) apply.

The Government did not establish that Applicant failed to file her Federal income tax returns for TY 2010 through TY 2014. SOR ¶ 1.b. is found for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (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 has 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 bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Although Applicant attributed her financial problems to the COVID-19 pandemic, her tax and financial problems began many years before the pandemic. Applicant's 2014 bankruptcy filing shows that her Federal and state delinquent taxes date back to 1995. Applicant's 1992 bankruptcy filing further supports the conclusion that her financial problems have persisted for decades. Under AG ¶ 20(b), Applicant must establish circumstances largely beyond her control, and that she acted responsibly under the circumstances. Applicant's numerous tax problems predate the pandemic and she has not demonstrated that she has acted responsibly to address and resolve her financial and tax delinquencies, so neither prong applies. She has admitted her delinquent Federal and state taxes and her two delinquent consumer accounts; however, she has not established current payment plans and payments in furtherance of these plans. There is no information about Applicant's monthly income and expenses and no evidence of credit counseling since her 2014 bankruptcy. None of the financial considerations mitigating conditions apply. Applicant did not mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's tax and financial problems have persisted for decades, and there is no evidence of current repayment plans or payments made for her Federal taxes, state taxes, or consumer debts. She has not demonstrated that she has acted responsibly to address and resolve her financial delinquencies. Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraphs 1.c.-1.m.:	Against Applicant

Conclusion

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

Eric H. Borgstrom
Administrative Judge