



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



In the matter of:)	
)	
)	ISCR Case No. 23-00804
)	
Applicant for Security Clearance)	

Appearances

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

01/25/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. She failed to timely file Federal and state income tax returns for multiple years and she has unresolved tax delinquencies. She is financially unable to pay her creditors and the bulk of her delinquent debt remains unresolved. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) in October 2022. (Item 2) In June 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) Applicant provided an undated response to the SOR, and requested a decision based upon the administrative record. She also provided copies of her filed Federal and state income tax returns for years 2020 and 2021. (Item 1)

A copy of the file of relevant material (FORM), dated August 15, 2023, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 8. Applicant received the FORM on August 23, 2023, and she was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. On September 16, 2023, she responded to the FORM with a personal

statement, and she did not submit any supporting documentation. On November 29, 2023, the case was assigned to me.

Findings of Fact

Applicant is 59 years old. She earned a bachelor's degree in 1987. She was on active duty in the U.S. Air Force from December 1989 to April 1995. She was married in 1989 and divorced in 2000 and has 31-year-old daughter. Since 2014, she has cohabitated with her domestic partner. From March 2015 to March 2021, she was employed as an IT quality control analyst for a company. She then worked for a state government contractor from February 2021 to May 2021 when she was laid off. Applicant is currently unemployed. (Item 2)

The record evidence shows that Applicant has significant outstanding financial obligations; to include (1) a total of \$41,916 in delinquent Federal income taxes for tax years (TY) 2017-2019, (SOR ¶ 1.f.); (2) \$13,272 in outstanding State A taxes for TY 2016-2019 (SOR ¶ 1.g.); and (3) various consumer debts delinquent in the approximate amount of \$24,898. (SOR ¶¶ 1.h-1.s.) The record evidence further demonstrates that Applicant has failed to timely file her Federal income tax returns for TY 2017 through 2022. She failed to timely file State A income tax returns for TY 2017 through 2022. (SOR ¶¶ 1.d and 1.e.) Applicant provided documentation, with the exception of TY 2022, that both the Federal and State A tax returns have since been filed. Applicant filed for bankruptcy protection in 1998, 2008, and 2013. (SOR ¶¶ 1.a-1.c.) (Items 1- 8)

In her response to the SOR, Applicant admitted all of the SOR allegations. She also clarified that based on the advice from her tax representative, she did not earn sufficient income to require the filing of Federal and state income tax returns for TY 2022. Her admissions are accepted as findings of fact. (Item 1)

The October 2022 SCA showed that Applicant had disclosed multiple delinquent accounts and listed that she had not filed Federal or state income tax returns for TY 2020 “[d]ue to Covid, layoffs and not working. Just recently after exhausting all [of her] savings, [she] has not been able to pay due to hardship.” (Item 2)

Applicant was interviewed by an authorized DOD investigator in December 2022. She attributed her unpaid taxes and account delinquencies to her May 2021 loss of employment. She was paying delinquent taxes until June 2022, when she depleted the remaining funds in her savings account. She is willing but financially unable to satisfy her creditors. Her current financial situation is dire unless steady employment can be secured. (Item 3)

In September 2023, Applicant responded to the Government's FORM. She stated that she faced a series of life challenges, including a divorce, periods of homelessness, and the responsibility of being a single mom to two children (although only one child was listed on the SCA). Caring for her parents with medical issues also contributed to her financial struggles. She admitted to making financial mistakes in life, but her primary focus was always on providing for her family. Applicant does not believe her financial challenges classify her as a risk to U.S. security. (FORM response)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(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."

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 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.

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 concern under Guideline F (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

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.

The record evidence establishes the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. 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 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 or provides evidence or 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 burden of production and persuasion in mitigation. She has failed to provide supporting documentation to demonstrate her good-faith efforts to remedy her significant amount of outstanding taxes, as well as her other delinquent accounts alleged in the SOR. She has a long history of financial indebtedness, even during periods of employment, and she has a pattern of filing her Federal and state tax returns late. These procrastinations cannot be wholly attributed to her May 2021 loss of employment, which is a circumstance beyond her control. Since she depleted her savings account in June of 2022, she has not been able to make any payments to any creditors because she does not have the financial means to do so. The bulk of Applicant's debts remain unresolved. I do not find that her finances are under control or that future delinquencies will not recur. Financial considerations security concerns are not mitigated.

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 Applicant's lengthy career as a state government contractor and 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. I conclude Applicant has not met her burden of proof and persuasion. She did not mitigate the financial considerations security concerns or establish her eligibility for a security clearance.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of her delinquent debts, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.s:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge