



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



In the matter of:)	
)	
)	ISCR Case No. 23-01889
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2024

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance. She failed to provide sufficient evidence to mitigate the security concerns raised by her unresolved delinquent debt and unfiled 2021 federal and state income tax returns. Clearance is denied.

Statement of the Case

On August 24, 2023, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, implemented on June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on October 19, 2023. The Government provided Applicant a complete copy of the file of relevant material (FORM) and the Directive. In the FORM, the Government informed Applicant that it was offering as evidence two subject interviews conducted in December 2019 by a background investigator. The Government advised Applicant of his ability to object to, correct, add, delete, or update the information contained in the two interview summaries. The Government further advised her that failure to respond could result in a determination by the administrative judge that she waived any objection to the admissibility of the two interview summaries.

She acknowledged receipt of the FORM and attached documents on November 3, 2023. She did not respond. Accordingly, the attachments to the FORM are admitted to the record as Government's Exhibits (GE) 1 through 8 without objection from either party.

SOR Amendment

On March 4, 2024, I sent an email to the parties seeking their positions on proposed SOR amendments regarding ¶¶ 1.b and 1.c. The allegations as issued are that Applicant failed to file her federal income tax returns for 2021 and 2022 (¶ 1.b) and state income tax returns for 2021 and 2022 (¶ 1.c). After reviewing the record, I proposed amending to eliminate the portions of both allegations regarding the 2022 federal and state income tax returns. The Government objected to the allegations, arguing that the original allegation is supported by Applicant's statements on the issue. Applicant did not respond. However, I find the record is not as clear on the issue. For the sake of a clearer discussion on the status of the 2022 income tax returns, I am amending the SOR as follows:

1.b You failed to file, as required, Federal income tax returns for the tax year 2021. As of the Statement of Reasons the tax returns remain unfiled.

1.c You failed to file, as required, [State] income tax returns for the tax year 2021. As of the Statement of Reasons the tax returns remain unfiled.

1.e You failed to file, as required, Federal income tax returns for the tax year 2022. As of the Statement of Reasons the tax returns remain unfiled.

1.f You failed to file, as required, [State] income tax returns for the tax year 2022. As of the Statement of Reasons the tax returns remain unfiled.

The correspondence regarding this amendment is appended to the record as Hearing Exhibit (HE) 1.

Findings of Fact

Applicant, 47, has a job offer pending with a federal contracting company. She submitted a security clearance application on November 11, 2022. She has not previously had access to classified information. She disclosed one delinquent debt for \$18,000. She also disclosed that she had not filed her federal or state income tax returns for the 2021 tax year or paid the \$20,000 tax liability. These disclosures are alleged in the SOR. Based on a statement made in response to DOHA interrogatories, the SOR also alleges that she failed to file federal and state income taxes in 2022. (GE 4, 6 - 8)

Applicant's blames her financial problems on financial mismanagement. She and her husband accumulated credit card debt they could not afford to pay. She stopped paying the debt alleged in SOR ¶ 1.a in 2018. She is aware that the creditor sold the debt to a collection agency, but she has not made any efforts to contact them or resolve the debt. Although not alleged, she admits that she had a second credit card that became delinquent between 2018 and 2019 for \$5,500. She had a third credit card account become delinquent in 2021 for \$4,553. Both credit cards were for home items and home improvements. She settled both accounts for half of the balances owed. (GE 5)

In 2021, Applicant's husband earned extra income from his parttime employment as a real estate agent. He did not set aside income tax from the additional income he earned. The couple decided not to file their 2021 federal and state income taxes because they could not afford to pay the expected \$20,000 tax liability. Early in 2021, Applicant became ill and unable to work for a few weeks. They fell behind on some of their recurring bills. They put their mortgage in forbearance because they were unable to make payments for a couple of months. The unpaid amount was added to their loan balance and their monthly payment increased by \$200 to pay the deficit. (GE 5-6)

In January 2023, Applicant's homeowners' association sued her for unpaid dues. The bill was the result of a misunderstanding between Applicant and her husband, each believing the other had paid the debt. She resolved the \$2,172 judgment in May 2023. (GE 5-6)

DOHA sent Applicant a set of interrogatories seeking information about the status of her 2021 federal and state income tax returns. In her response, dated June 2, 2023, Applicant stated that she was working with her tax preparer to file her 2021 and 2022 federal and state income tax returns. The interrogatories did not ask for any information about the status of her 2022 income tax returns, and Applicant did not offer any additional information. (GE 6)

Applicant and her husband have a net household income over \$118,000. She does not include the income earned from her husband's parttime employment because it is inconsistent. After paying their recurring bills, they have \$1,124 in disposable income. (GE 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 AG ¶ 2 describing 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.

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 clearance decision.

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

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] 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." (AG ¶ 18).

SOR ¶¶ 1.e and 1.f allege that Applicant failed to file her federal and state income tax returns for 2022. The allegation is based on Applicant's June 3, 2022 response to DOHA interrogatories that she was working with her CPA to file her 2021 and 2022 income tax returns. The allegation is based on two impermissible assumptions. The first is that because Applicant failed to mention filing a 2022 extension, it means that she did not file one. The second assumption is that absent any mention of a filing extension, Applicant's June 2023 statement that she was working on

her 2021 and 2022 income tax returns meant that the 2022 returns were also late. Accordingly, these allegations are resolved in her favor.

However, the record establishes the Government's *prima facie* case for allegations SOR ¶¶ 1.a through 1.d (as amended). Applicant is indebted to one creditor for \$18,065, she failed to file her federal income tax return for 2021 and failed to pay the resulting \$21,000 tax liability, and that she failed to file her state income tax return for 2021. The record establishes that the following financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts; and;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f) failure to file or frequently filing annual Federal, state, local income tax returns or failure to pay annual Federal, state, or local income tax as required.

None of the mitigation conditions apply. Applicant did not provide sufficient evidence of her efforts to resolve her delinquent accounts. Her financial problems continued after she completed her November 2022 security clearance application. She has not provided evidence of financial rehabilitation or that her finances or her tax obligations are under control.

Based on the record, doubts remain about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt-collection proceedings. The AGs do not require an applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. She has not done so, therefore failing to meet her burdens of production and persuasion to mitigate the security concerns raised by his history of delinquent debt.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraphs 1.e – 1.f:	For Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge