



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



In the matter of:)
)
) ISCR Case No. 21-01847
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2024

Decision

PRICE, Eric C., 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

Applicant submitted a security clearance application (SCA) in December 2020. On November 2, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on November 9, 2022, and requested a hearing before an administrative judge. (Answer) On January 19, 2023, Department Counsel

issued Applicant an Amendment to the SOR, and Applicant answered the amended SOR on February 16, 2023. (Answer to SOR amendment) The case was assigned to me on October 16, 2023. On October 26, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference.

I convened the hearing as scheduled on November 17, 2023. The Government's exhibit list, and consolidated Notice of SOR Amendment and disclosure letter are marked as Hearing Exhibits (HE) I and II. Department Counsel offered Government Exhibits (GE) 1 through 7. Applicant testified but offered no documentary evidence. The record was held open until November 28, 2023, to permit Applicant to submit documentary evidence. She timely submitted Applicant's Exhibits (AE) A and B. GE 1 through 7 and AE A and B were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 30, 2023.

Findings of Fact

The SOR as amended alleges Applicant failed to timely file federal income tax returns for tax years (TY) 2015 through 2021 (SOR ¶ 1.a as amended), owed past-due taxes for TY 2016 through 2018 (SOR ¶ 1.b), and had three delinquent student loans totaling about \$4,728 (SOR ¶ 1.c). In Applicant's Answer to the SOR and Amended SOR, she admitted the allegations in SOR ¶¶ 1.a and 1.c and denied the allegation in SOR ¶ 1.b, with explanations. Her admissions are incorporated in my findings of fact.

Applicant is a 35-year-old insulator employed by a defense contractor since June 2023. She was employed by defense contractors as a machine operator from September 2021 to June 2023 and as a painter from March 2019 to September 2020. She was employed as a clerk from October 2015 to March 2019. She was unemployed for about two months in 2018 and from September 2020 to about September 2021. She graduated from high school in 2007 and attended college from about 2010 to 2011. She has never married and has no children. She has never held a security clearance. (GE 1, GE 4 at 4-5; Tr. 23-30, 46-54)

In Applicant's December 2020 SCA, she reported failing to file and pay, as required, her TY 2017 and 2018 federal income tax returns. (GE 1 at 37) She estimated she owed about \$1,050 in unpaid taxes for those two years, reported she mailed the returns, and stated that her outstanding taxes would be paid in full. (*Id.*) She denied any other instances of failing to file or pay federal income taxes when due in the prior seven years. (GE 1 at 38) During a March 2021 interview with a government investigator, she confirmed the income tax information reported in her SCA and said she filed both delinquent returns in December 2020 and that the delinquencies had been resolved. (GE 4 at 9)

In her September 2021 response to interrogatories, Applicant reported: she filed federal income tax returns for TY 2016 through 2020 in late 2020, she owed about \$1,300 for TY 2016 and 2017, and that she had no outstanding balance for TY 2018 through

2020. (GE 4 at 11-12) She submitted unsigned and undated income tax returns for TY 2015 through 2017 and account transcripts for TY 2018 through 2020. (GE 4 at 15-46)

Applicant attributes her financial problems to her failure to confirm that her electronically filed income tax returns had been accepted by the IRS, loss of focus on financial issues due to emotional difficulties after her mother passed away in 2018, failure to pay sufficient attention to tax filing deadlines, and unemployment. (GE 4; Tr. 95-97, 110-117) She has strived to be more responsible, moved in with her father to reduce expenses, saved about \$17,000, and has no other delinquent debts. (Tr. 25-28, 68- 109; GE 4 at 9)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a (as amended): failed to timely file federal income tax returns for TY 2015 through 2021. Applicant admitted the allegation, reported the delinquent returns had been filed, said taxes due had been paid, and submitted documentary evidence including tax account transcripts. (Answer, Answer to SOR amendment; AE A-B; GE 4 at 43-46, GE 5) Her tax account transcripts show the following:

TY	Tax Return Received/Processed	Request Filing Extension	Refund or (Last Payment)/date	Account Balance
2015	Dec 2020/Oct 2021	No	(\$367)/Oct 11, 2021	\$0
2016	Dec 2020/Nov 2021	No	(\$638)/Nov 8, 2022	\$0
2017	Dec 2020/Nov 2021	No	(\$1,355)/ Nov 8, 2022	\$0
2018	Dec 2020/May 2021	No	\$594/Sep 17, 2021 - Refund not delivered but credited to TY 2016	\$0
2019	Aug 2020/Nov 2020	No	\$3,054 credit "transferred out to 1040 200912"	\$0
2020	Aug 2021/Sep 2021	No	\$1,441/Sep 9, 2021	\$0
2021	Jan 2023/Feb 2023	No	(\$749)/Feb 2, 2023 \$1/Feb 17, 2023	\$0

Applicant testified a relative helped her electronically file federal income tax returns for TY 2015 through about TY 2018, that she was unaware the returns were not accepted by the IRS, and that she learned her TY 2015 through 2018 returns had not been filed at about the time she attempted to obtain a security clearance. She also attributed her failure to timely file her TY 2017 and 2018 returns to emotional issues related to her mother's death. She has prepared and filed her income tax returns since about 2019 but failed to timely file returns for TY 2019 through 2022 because she missed filing deadlines. She filed her TY 2022 return in June 2023; however, as of November 15, 2023, she owed \$222 because of penalties and interest. (Tr. 42-43, 61-64; AE B) She has not sought assistance from a tax preparer and was unaware she could request extensions of time to file income tax returns. (Tr. 22-44, 61-70)

SOR ¶ 1.b: owed past due taxes of about \$1,921 for TY 2016 through 2018. Applicant denied this allegation and submitted evidence she paid her delinquent taxes for TY 2016 and TY 2017 in November 2022 and resolved her past due taxes for TY 2018 in 2021. (Answer; GE 5 at 3-8; Tr. 67-68) This allegation is resolved for Applicant.

SOR ¶¶ 1.c-1.e: student loans placed for collection for \$1,750, \$2,000, and \$943, respectively. Applicant admitted each allegation and submitted evidence she applied for a student-loan forgiveness program in October 2022. (Answer) The student loan accounts were opened in March 2010 and later assigned to the government. (GE 2 at 2-3, GE 3 at 4-5) A May 2021 credit report shows the accounts in collection for \$1,750; \$2,000; and \$943, respectively. (GE 2 at 2-3) A September 2021 credit reports shows all three accounts with a last payment in June 2018, “at least 120 days or more than four payments past due,” and no balance or past due balance. (GE 3 at 4-5)

Applicant testified as follows. She made no payments on student loans incurred in about 2010 until a creditor offered her a payment plan with monthly payments of \$5 to \$20. She made payments under the agreement for six months to a year but did not recall dates. In March 2021, she told a government investigator she forgot to update payment plan documents when the loans were transferred to another creditor because she was distracted after her mother died in 2018. She believed she received notices when the loans were placed for collection but has not contacted the creditor. She was informed loan payments would be paused pending review of her October 2022 student loan forgiveness application and has not heard anything about her application since. She plans to make any required payments. (Tr. 45-60; GE 4 at 9; Answer)

Applicant testified she has earned about \$70,000 a year since September 2021. She has about \$1,000 in a checking account and \$17,000 in savings that she hopes to use to purchase real estate. She has no retirement account. She lives with her father to reduce expenses and estimates her total monthly expenses at about \$3,000. She vacationed in Country A in 2018 (1-5 days), Country B in 2020 (1-5 days), Country C in 2022 (at a cost of about \$1,000) and Country D in 2023 (at a cost of about \$1.5K); many of her travel expenses were paid by family members. She has not sought financial counseling. She hopes to do better on her taxes, does not have other delinquent debts, and said her credit score is almost 800. (GE 1 at 28-30; Tr. 25-34, 73-74)

During the hearing Applicant was informed of the importance of providing documentary evidence of income tax and debt payments, contact with creditors, efforts to address or resolve her financial problems, and her current financial circumstances. (Tr. 56-59, 64-67)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an

individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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 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).

Applicant's admissions and the documentary evidence reflecting her failures to timely file federal income tax returns for TY 2015 through 2021 and delinquent student loans are sufficient to establish the following disqualifying conditions under this guideline:

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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

AG ¶ 19(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.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 important mitigating information. She has filed all delinquent federal income tax returns alleged in SOR ¶ 1.a, paid delinquent federal income taxes alleged in SOR ¶ 1.b, and applied for debt relief for delinquent student loans alleged in SOR ¶ 1.c. And her financial circumstances have apparently significantly improved. However, the appeal board has noted:

The mere filing of delinquent tax returns or the existence of a payment arrangement with an appropriate tax authority does not compel a Judge to issue a favorable decision. As with the application of any mitigating condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of mitigating condition 20(g) as well as in considering aspects of other overlapping mitigating conditions, such as, in determining whether an applicant acted responsibly under the circumstances, whether an applicant's past financial deficiencies are unlikely to recur, or whether an applicant initiated good-faith efforts to resolve financial problems.

ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018) (citations omitted)

In this case, Applicant filed her overdue federal income tax returns for TY 2015 through 2018 after submitting her SCA. Although she filed her delinquent TY 2019 income tax return before submitting her SCA, she failed to timely file her TY 2020 and TY 2021 returns even after she was interviewed by a government investigator. Although not alleged in the SOR, she also failed to timely file her TY 2022 income tax return after she had responded to the SOR as amended. She paid her delinquent federal tax debt for TY

2016 and 2017 in November 2022 shortly before she answered the SOR. Although she incurred student loan debt in 2010, she said her only payments on those loans were monthly payments of \$5 to \$20 for about a year, a credit report shows no payments since June 2018, and the only apparent action she has taken since is to apply for student loan forgiveness in October 2022.

AG ¶ 20(a) is not established for SOR ¶¶ 1.a or 1.c through 1.e. Applicant failed to timely file her federal income tax returns for at least seven tax years (TY 2015 through TY 2021). After responding to the SOR, she also failed to timely file her income tax return for TY 2022, and, as of November 15, 2023, still owed \$222 in penalties and interest. It appears she may have experienced tax problems as early as TY 2009 based upon the \$3,054 credit from TY 2019 that was “transferred out to [TY 2009].” (GE 4 at 44, GE 5 at 9-10) She has a limited record of payment on student loans incurred in 2010 and has made no payments since June 2018, and her only action since 2018 was to apply for a forgiveness program in October 2022. The evidence is insufficient to conclude this conduct is unlikely to recur, and her behavior casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant’s periods of unemployment and emotional difficulties after her mother passed away in 2018 were conditions largely beyond her control. However, she has not provided sufficient evidence that she acted responsibly under the circumstances.

AG ¶ 20(c) does not apply because Applicant has not received financial counseling.

AG ¶¶ 20(d) and 20(g) are established for the delinquent income taxes alleged in SOR ¶ 1.b.

AG ¶ 20(d) is not established for the student loan debt alleged in SOR ¶¶ 1.c through 1.e. Applicant provided insufficient evidence to support a conclusion that she has initiated or is adhering to a good-faith effort to repay her delinquent student loans.

AG ¶ 20(g) is not established for SOR ¶ 1.a. Applicant’s eventual compliance with her tax filing obligations does not end the inquiry. A security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual’s judgment, reliability, and trustworthiness. Her long-term procrastination regarding filing federal income tax returns and addressing her student loan debt indicate she lacks the good judgment and reliability required of persons who are granted access to classified information. ISCR Case No. 14-04159 (App. Bd. Aug. 1, 2016).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant's age, education, employment history, improved financial circumstances, and that her financial problems were caused, in part, by circumstances beyond her control. I also found Applicant to be credible and sincere. However, Applicant has not demonstrated a reliable financial track record of timely filing federal income tax returns or with respect to her student loans. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability 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 towards establishment of a track record of timely filing her income tax returns and resolving her delinquent student loans, she may well be able in the future to demonstrate persuasive evidence of her security clearance worthiness.

After weighing the disqualifying and mitigating conditions under Guideline F 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 debts.

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.e:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge