



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



In the matter of:)	
)	
)	ISCR Case No. 23-02840
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2024

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 3, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On January 23, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why DOHA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On January 30, 2024,

Applicant responded to the SOR. On February 29, 2024, Department Counsel was ready to proceed. On March 12, 2024, the case was assigned to me. On May 9, 2024, DOHA issued a notice setting the hearing for May 13, 2024. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system. (HE 1)

During the hearing, Department Counsel offered three exhibits into evidence, and Applicant offered three exhibits into evidence. (Tr. 17-22; GE 1-GE 3; Applicant Exhibits (AE) A-AE C) All proffered exhibits were admitted into evidence. (Tr. 18, 23)

On May 22, 2024, DOHA received a copy of the transcript. The record closed on May 27, 2024. (Tr. 53, 54, 59, 62) Applicant provided one group of documents after her hearing, which I admitted into evidence without objection. (AE D)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, she admitted the SOR allegations in ¶¶ 1.a and 1.b. (HE 3) She also provided mitigating information. Her admissions are accepted as findings of fact.

Applicant is a 40-year-old owner-operator truck driver. (Tr. 7-8, 24) In 2002, she graduated from high school, and she has some college credits. (Tr. 7) She has not received a degree. (Tr. 7) She has not served in the military. (Tr. 7-8) She has been a long-haul truck driver since 2005. (Tr. 25) She has worked for her current employer for 10 years. (Tr. 8) In 2011, she married. (Tr. 8, 24) In 2013, she and her husband decided to operate their truck together. (Tr. 8, 27) He has a security clearance. She is away from home driving about 300 days each year. (Tr. 25)

Applicant provided 10 character statements. The general sense of her character evidence is that she is careful, conscientious, dependable, honest, and professional. (AE A)

Financial Considerations

All amounts in this section are rounded to nearest \$100 for reasons of privacy. Applicant and her husband's gross income is usually about \$250,000 a year, and their income has been substantially reduced by expenses. (Tr. 35-36) Their truck expenses, such as fuel and repairs, are about half of their gross income. (Tr. 37) Unforeseen truck repairs have had a major negative impact on their income. (Tr. 42) Her employer maintains an escrow account for Applicant and her husband of about 20 to 30 percent of each income payment. (Tr. 36) She and her husband can draw from the escrow account for medical expenses, living expenses, and taxes. (Tr. 37) In the fall of 2021, Applicant had medical issues, and she was unable to work. (Tr. 43) Her medical issues reduced their income by about \$30,000. (Tr. 43) Applicant and her husband are diabetic, and they do not have medical insurance. (Tr. 45) Her medical debts total about \$30,000, and her

husband's medical bills total about \$12,000. (Tr. 45) They are making payments on their medical bills. (Tr. 46) They live paycheck-to-paycheck, and there is little remainder after paying expenses. (Tr. 46) Since 2013, Applicant and her spouse have filed their tax returns as married filing jointly. (Tr. 39)

Applicant's May 3, 2023 SCA indicates she is making \$1,700 monthly payments to address federal income tax debts totaling \$92,900 for the following TYs: 2013 (\$8,200); 2016 (\$19,100); 2017 (\$15,000); 2018 (\$27,200); and 2021 (\$23,400).

SOR ¶ 1.a alleges Applicant owes delinquent federal income taxes in the approximate amount of \$101,100 for six tax years (TY): 2013, 2016, 2017, 2018, 2021, and 2022. Her federal taxes for those tax years are unpaid.

SOR ¶ 1.b alleges Applicant owes \$3,300 for TY 2022. She indicated in her response to DOHA interrogatories that she had an outstanding state tax liability of \$3,300. (GE 2 at 55) She said she was setting up a payment plan to resolve her state tax debt.

In Applicant's December 20, 2022 responses to DOHA interrogatories (GE 2), she indicated the information for her federal income taxes in the following table:

Tax Year	Date Federal Income Tax Return was Filed	Adjusted Gross Income	Amount Owed When Return Filed
2015	Oct. 28, 2016	\$18,600	\$3,800
2019	Mar. 22, 2020	\$24,500	\$2,600
2020	Apr. 6, 2021	\$101,100	\$22,300
2021	June 6, 2022	\$153,800	\$6,300
2022	Oct. 2, 2023	\$74,400	\$6,100
Total			\$41,800

In Applicant's December 20, 2022 responses to DOHA interrogatories, she indicated her current state income tax debt was \$3,300. (GE 2 at 66) She also provided the information for her state income taxes in the following table:

Tax Year	Date State Tax Return was Filed	Amount Owed
2013	Mar. 21, 2017	\$600
2014	June 2, 201[5]	\$0
2015	Oct. 28, 2016	\$0
2016	Apr. 27, 2017	\$2,800
2017	Oct. 10, 2018	\$3,200
2018	Oct. 11, 2019	\$4,300
2019	Mar. 22, 2020	\$0
2020	Apr. 6, 2021	\$4,800
2021	Apr. 13, 2022	\$7,600
2022	Oct. 1, 2023	\$3,300

As of the date of her hearing on May 13, 2024, Applicant and her spouse had not paid anything for their federal income taxes for TY 2023. (Tr. 37, 44) She currently makes monthly installment payments of about \$1,750 to the IRS and about \$170 monthly to the state tax authority. (Tr. 38) At her hearing, she estimated she and her husband owed the IRS \$90,000 to \$100,000. (Tr. 44) However, she did not estimate how much they owed the IRS for TY 2023.

Applicant “had numerous agreements over the years” with the IRS, however, they were unable to make the payments when the truck broke down, which resulted in the IRS voiding some of their agreements. (Tr. 38-39) They also filed hardship forms with the IRS. (Tr. 39)

A June 14, 2023 IRS Notice indicates a minimum payment of \$1,700 is due for Applicant’s installment agreement. (GE 2 at 46) The IRS said balances in the following table are owed. (GE 2 at 48)

Tax Year	Amount You Owe	Failure-to-pay penalty	Interest
2013	\$8,300	\$1,200	\$3,000
2016	\$19,000	\$3,100	\$4,000
2017	\$15,300	\$2,400	\$2,800
2018	\$27,600	\$4,600	\$4,000
2021	\$24,000	\$1,000	\$1,600
Total	\$94,200	\$12,200	\$15,400

On September 5, 2023, the IRS established an installment plan in which Applicant was supposed to pay \$1,725 monthly through a direct debit starting October 15, 2023, to address federal taxes owed for TYs 2013, 2016, 2017, 2018, 2021, and 2022. (GE 2 at 86) The letter specifies “you must continue to file returns and pay your tax due by the due date of the return, generally April 15th for most taxpayers.” (GE 2 at 87) The letter did not specify amounts owed for each of the TYs.

Applicant’s September 29, 2023 IRS tax transcript for TY 2021 shows gross receipts of \$385,200, adjusted gross income of \$153,800, and \$37,500 owed when their tax return was filed. (GE 2 at 88-94) They paid \$16,500 when her their tax return was filed. (GE 2 at 89-90) They did not have anything withheld or make quarterly payments to the IRS. The balance owed for TY 2021 was \$24,200. (Tr. 48-49; GE 2 at 88)

Applicant provided page one of her October 12, 2023 IRS tax transcript for TY 2013, which shows an account balance of \$8,500 for a tax return filed in March 2017, and for TY 2014, which shows an account balance of \$0 for a tax return filed in June 2015. (GE 2 at 81-82)

Applicant’s October 12, 2023 IRS tax transcript for TY 2016 shows a credit transferred from TY 2012 of \$400, and a payment on June 1, 2023 of \$1,700. (GE 2 at 70-72) Her October 12, 2023 IRS tax transcript for TY 2018 shows a \$1,000 estimated tax payment on July 18, 2018, and a \$1,900 payment on October 24, 2022. (GE 2 at 78-80)

Applicant’s December 27, 2023 IRS tax transcripts for TYs 2015, 2019, 2020, and 2022 showed zero balances for TYs 2015, 2019, and 2020, and \$6,800 owed for TY 2022. (GE 2 at 55-64) His December 27, 2023 IRS tax transcripts show the following balances owed; however, the tax transcript states the “balance owed” is not the payoff amount.

Tax Year	Amount Owed
2013	\$8,700
2014	\$0
2015	\$0
2016	\$12,600
2017	\$15,800
2018	\$28,600
2019	\$0
2020	\$0
2021	\$24,200
2022	\$6,900
Total	\$96,800

Applicant and her husband made \$900 monthly estimated tax payments in 2016 and \$750 monthly estimated tax payments in 2017. (AE B) They did not make monthly or quarterly estimated tax payments from 2021 to present, which resulted in increasing tax debts. They paid the IRS \$1,700 to \$1,750 from April 2023 to present in accordance with their installment plan as indicated by their tax transcripts and receipts. (AE B; AE D)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to pay annual Federal, state, or local income tax as required.

The record establishes the disqualifying condition in AG ¶¶ 19(a), 19(c), and 19(f). Additional inquiry about the possible applicability of mitigating conditions is required. Discussion of the disqualifying conditions are contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20, which may be applicable in this case are as follows:

- (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.

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant provided some important mitigating information. Two conditions contributed to financial problems, which were largely beyond her control. She and her husband had medical problems and truck repair expenses. However, "[e]ven if [an applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). She did not establish that she acted responsibly under the circumstances because she has owed delinquent federal income taxes since TY 2013, and it is unclear whether her federal income tax debt is being resolved because she is not paying the IRS to address their current federal income taxes.

SOR ¶ 1.a alleges Applicant failed to timely pay as required her federal income tax for TYs approximate amount of \$101,100 for six TYs: 2013, 2016, 2017, 2018, 2021, and 2022.

A June 14, 2023 IRS Notice states Applicant owes \$94,200 for TYs 2013, 2016, 2017, 2018, and 2021. Her December 27, 2023 IRS tax transcripts show a tax debt of

\$96,800 for those five TYs plus TY 2022. In the previous 12 months Applicant paid about \$20,000 to the IRS; however, she was not making payments to address the current tax year. The record does not contain information about any taxes owed for TY 2023.

The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

Applicant is credited with mitigating her state tax debt. She only owes state income taxes for one TY, and she said she is making payments to address this debt.

The IRS installment letter specifies “you must continue to file returns and pay your tax due by the due date of the return, generally April 15th for most taxpayers.” (GE 2 at 87) Applicant has failed to make payments for the current tax year.

Applicant has had a delinquent tax debt since 2013. None of the mitigating conditions fully apply. She did not provide sufficient information to establish she is making progress resolving her federal income tax debt. Under all the circumstances, Applicant’s federal income tax debt is not mitigated at this time.

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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 40-year-old owner-operator truck driver. In 2002, she graduated from high school, and she has some college credits. She has been a long-haul truck driver since 2005. She has worked for her current employer for 10 years. She and her husband operate their truck together. She is away from home driving about 300 days each year. Applicant provided 10 character statements. The general sense of her character evidence is that she is careful, conscientious, dependable, honest, and professional.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence is more substantial currently than the evidence of mitigation. Applicant did not establish that she was unable to make greater progress resolving her federal income tax debt. She has owed federal income taxes more than 10 years, and her federal income tax debt raises unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

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 resolution of her tax issues, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

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

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge