



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



In the matter of:)
)
) ISCR Case No. 23-01781
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 4, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant submitted an undated response to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on March 7, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 18, 2024. As of May 2, 2024, she had not responded. The case was assigned to me on July 2, 2024. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 65-year-old employee of a defense contractor. She has worked for her current employer since November 2021. She attended college for several years, but she has not earned a degree. She is twice married and divorced, with her second marriage ending in 2007. She has two adult children. (Items 3, 9)

Applicant has a history of financial problems, primarily failure to file tax returns and pay her taxes when due. She attributed her financial and tax problems to periods of unemployment, underemployment, the COVID-19 pandemic, and assisting her elderly parents. Her father owned a defense contracting company. In 2016, he informed her that he had cancer and asked her to come to work for the company at a reduced income. She accepted the position, and she provided caregiving to her father. Applicant expected to inherit part of the company along with her stepmother, and she hoped to resolve some of her tax problems through the inheritance. However, the company was transferred to a trust in her stepmother's name. Her father passed away in 2019, without Applicant receiving any ownership in the company. Her stepmother sold the company in 2019, and Applicant was let go by the new owner the same year. (Items 2-5, 9)

Applicant moved in with her mother in 2014. Her mother had an accident in late 2019 and required a joint replacement. Applicant became the primary caregiver for her mother in 2022. Her mother has been diagnosed with early onset dementia and cancer. (Items 3, 4, 9)

2016

Applicant's 2016 federal income tax return was received by the IRS on July 3, 2017. Her adjusted gross income for 2016 was \$90,172, and her taxable income was \$61,600. The IRS issued a refund of \$11,840 in July 2017. In April 2019, the IRS assessed \$2,638 in additional taxes and \$219 in interest. From October 2019 through December 2019, Applicant made five payments of \$469 each. As of September 2023, she owed \$935 in taxes and interest. (Item 5)

2017-2021

Applicant has not filed federal or state income tax returns for tax years 2017 to 2021. She lived in State A, and when employed, she worked in State B. She admitted that she did not file income tax returns for either state, "as required." (Items 2-5, 9)

Applicant's payments to the IRS of \$469 and \$260 in December 2019 were applied to her 2018 taxes, which were undetermined because she had not filed a return. She has a \$729 credit for 2019. (Item 5)

2022

Applicant timely filed a federal income tax return for 2022. Her adjusted gross income for 2022 was \$63,783, and her taxable income was \$50,833. Her payment of

\$1,172 with her return was dishonored. As of September 2023, she owed \$1,267 in taxes, penalties, and interest. (Item 5)

Applicant wrote that she has hired accountants and lawyers to address her tax issues. She wrote in response to interrogatories in June 2023:

To get back to the reason for not getting paid, I believe I was just overwhelmed with caregiving, loss of salary, and loss of assets.

I answered my vetting to date truthfully and am committed to paying off the taxes I ow[e]. It is unfortunate that the process to get accountants, lawyers, IRS, and State Tax authorities coordinated to process all of this is taking much longer than expected. I hope with your supervision of this process I can retain my current position and continue to have an opportunity to pay this debt over time. (Item 4)

Applicant did not respond to the FORM, so additional information about her taxes is unavailable.

Debts owed to “Collection”

SOR ¶¶ 1.f to 1.j allege five debts owed to “Collection.” The SOR lists account numbers and amounts, but no other information is provided as to the identity of the creditors. Credit reports do not provide additional identifying information. Applicant denied owing the five debts, writing that she cannot figure out the identity of the creditors. (Items 2, 6-8)

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 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:

(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.

Applicant has not filed federal or state income tax returns for tax years 2017 to 2021. She filed her 2016 and 2022 income tax returns, but she owes federal taxes for both years. As of September 2023, she owed the IRS \$935 in taxes and interest for 2016, and \$1,267 in taxes, penalties, and interest for 2022. The above disqualifying conditions are applicable.

SOR ¶¶ 1.f to 1.j allege five debts owed to “Collection.” The SOR lists account numbers and amounts, but no other information is provided as to the identity of the creditors. Credit reports do not provide additional identifying information. Applicant denied owing the five debts, writing that she cannot figure out the identity of the creditors. The Directive states that “An unfavorable clearance decision shall not be made unless the applicant has been provided with a written SOR that shall be as detailed and comprehensive as the national security permits.” (¶ E3.1.3) I find the SOR is lacking detail and has not provided Applicant with sufficient notice of what she has to address. SOR ¶¶ 1.f to 1.j are concluded for Applicant.

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

(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; 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 attributed her financial and tax problems to periods of unemployment, underemployment, the COVID-19 pandemic, and assisting her elderly parents. Applicant clearly went through a difficult time, but at some point, her legal obligation to file her tax returns and pay her taxes must be addressed. It is impossible to determine how much, if anything, she owes the IRS and States A and B because she has not filed tax returns for tax years 2017 to 2021.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant stated that she intends to file the tax returns and pay the taxes. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant does not have a track record that would enable me to find that her tax problems will be resolved within a reasonable period. She did not act responsibly under the circumstances, and she did not make a good-faith effort to pay her taxes. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

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 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.

Applicant has unpaid taxes for two tax years, and she has unfiled federal and state income tax returns for five tax years. She has gone through difficult times with her parents, but 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.” I am obligated to follow that directive.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraphs 1.f-1.j:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge