



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



In the matter of:)	
)	
)	ISCR Case No. 23-00720
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2024

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 April 28, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government mailed a copy of the file of relevant material (FORM) to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded with a memorandum dated August 23, 2023, and attached documents. She gave indications that she would like a hearing before an administrative judge. On November 16, 2023, she confirmed that she wanted to change her request to a hearing before an administrative judge. The case was assigned to me on January 4, 2024. The hearing convened as scheduled on January 31, 2024.

Evidentiary and Procedural Rulings

Evidence

Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A and B, which were admitted without objection. AE A consists of the memorandum and documents Applicant submitted in response to the FORM. AE B consists of bank statements. The record was held open for Applicant to submit additional documentary evidence. She submitted documents that I have marked and divided into a March 1, 2024 email (AE C), IRS documents and payments (AE D), state tax documents and payments (AE E and F), bank statements, same bank-different accounts (AE G and H), letter from SOR ¶ 1.g creditor (AE I), payments to SOR ¶ 1.h creditor (AE J), payments to SOR ¶¶ 1.i, 1.k, and 1.l creditor (AE K), character letters (AE L), Applicant's memorandum (AE M), two emails from May 31, 2024 (AE N and O), and an email from July 1, 2024 (AE P). All exhibits were admitted without objection.

SOR Amendment

Department Counsel withdrew SOR ¶ 1.m because Applicant was only an authorized user of the alleged account and not personally responsible for it. (Transcript (Tr.) at 42-43)

Findings of Fact

Applicant is a 51-year-old truck driver operating as an independent contractor of a defense contractor that is sponsoring her for a security clearance. She has been driving for that contractor since about April 2020. She attended college for a period without earning a degree. She has been married for more than 12 years after her first marriage ended in divorce. She has three adult children and three adult stepchildren. (Tr. at 27-28; GE 1)

Applicant has a history of financial problems, including a Chapter 7 bankruptcy, unfiled federal and state income tax returns, unpaid federal and state taxes, and delinquent debts.

Applicant was unemployed from about June 2017 to April 2018. She cared for her mother-in-law who passed away in 2017. She was employed from April 2018 to February 2020. Her husband was a truck driver before she became one. He had a cardiac event in 2019 that left him unable to work for several months. She had surgery two weeks before his cardiac event. They did not have medical insurance. She obtained her commercial driver's license in 2020 and joined her husband driving. The COVID-19 pandemic and shutdown hindered their ability to get loads. She had additional medical procedures in 2022. (Tr. at 22, 36-37; GE 1, 6, 8; AE A, M)

Applicant's son was in an auto accident and totaled her vehicle in about 2014. She was unaware that her insurance carrier cancelled her insurance for late payment.

She was unable to pay the judgment obtained by the lender for the balance of the auto loan. She felt that her only option was to file bankruptcy. (Tr. at 21; Applicant's response to SOR; GE 8)

Chapter 7 Bankruptcy

Applicant filed a Chapter 7 bankruptcy case in June 2017. She received financial counseling as a requirement of the bankruptcy. The petition did not list any claims under Schedule D, Creditors Who Have Claims Secured by Property. Under Schedule E/F, Creditors Who Have Unsecured Claims, the petition listed priority claims of \$3,000 in federal taxes for tax years 2015 and 2016, and \$200 in state taxes for 2016. The petition listed 27 nonpriority claims, including \$12,000 owed on the deficiency of an auto loan. Her dischargeable debts were discharged in October 2017. (Tr. at 63-64; Applicant's response to SOR; GE 7)

2015 Federal Taxes

Applicant had tax problems before and after the bankruptcy. She filed her 2015 federal income tax return on time, but she did not pay all the taxes due. She established an installment agreement in June 2016 and made multiple payments until October 2017 when the installment agreement ended, possibly because of the bankruptcy. She established another installment agreement in November 2017 and made multiple payments until the installment agreement ended in July 2019. From October 2016 to April 2019, there were nine \$25 penalties for dishonored payments. In March 2019, what would have been a refund of \$1,147 from her 2018 taxes was withheld and transferred to her 2015 taxes. She established another installment agreement in July 2023. She made \$154 and \$240 payments in August 2023. As of February 2024, she owed \$799 in taxes and interest. She paid \$500 in March 2024 and \$305 in April 2024 toward her 2015 federal taxes. Her 2015 federal income taxes are paid. (Applicant's response to SOR; GE 6, 8; AE A, D)

2016 Federal Taxes

Applicant filed her 2016 federal income tax return on time, but she did not pay all the taxes due. The installment agreements discussed above for 2015 also covered what she owed for 2016. Nothing was paid for 2016 because taxes owed for the oldest years are generally paid first, except a \$300 payment in October 2023 was credited to her 2016 taxes. As of February 2024, she owed \$1,181 in taxes and interest. She paid \$300 in April 2024 and \$500 in June 2024 toward her 2016 federal taxes. She made a \$400 payment on an unknown date. Her 2016 federal income taxes are likely paid. (Applicant's response to SOR; GE 6; AE A, D)

2017 Federal Taxes

Applicant did not file her 2017 federal income tax return until May 2023. She stated that she and her husband were living on the road in 2018 when the return should have been filed, and they mostly forgot about it. She did not realize that she forgot to file

the 2017 return until it was brought to her attention as part of the security clearance application process. She stated that she filed her 2017 and 2019 federal tax returns in 2022, but she forgot to sign them, and they were returned to her. She signed the returns and mailed them to the IRS. The IRS reported that the 2017 return was received in May 2023. What would have been a refund of \$1,180 was transferred to taxes owed for a previous year. (Tr. at 23, 35-40; Applicant's response to SOR; GE 6, 8; AE A, D)

2018 Federal Taxes

Applicant filed her 2018 federal income tax return on time. What would have been a refund of \$1,147 was transferred to taxes owed for tax year 2015. (GE 6)

2019 Federal Taxes

Applicant did not file her 2019 federal income tax return when it was due. The IRS received the signed return in February 2023. She stated that her husband's medical problems in 2019 contributed to her not filing her 2018 tax returns on time. However, as stated above, her 2018 return was filed on time. The 2019 return should have been filed in 2020, a year after his medical condition. (Tr. at 23, 37-38; GE 6; AE A, D)

Applicant did not pay all the federal incomes taxes for 2019 when they were due. As of August 2023, she owed the IRS \$601. She paid \$500 in February 2024 toward her 2019 federal taxes. It is likely that her 2019 taxes were paid or otherwise resolved because taxes for 2019 are not part of a later installment agreement. (GE 6; AE A, D)

2020 Federal Taxes

Applicant filed her 2020 federal income tax return on time. She received tax credits and was issued a \$499 payment in March 2021. (GE 6)

2021 Federal Taxes

Applicant filed her 2021 federal income tax return on time, but she did not pay all the taxes due. She received a tax credit and was issued a \$2,800 payment in April 2021. As of December 2022, she owed \$7,171 in taxes, penalties, and interest. As of August 2023, she owed \$7,606. (Applicant's response to SOR; GE 6; AE D)

Applicant's July 2023 installment agreement with the IRS required her to pay \$239 per month. As of August 2023, she owed \$9,965 for tax years 2015, 2016, and 2021. As indicated above, 2015 and 2016 federal taxes are likely paid. She missed a payment in December 2023. She recently paid off a vehicle loan and planned to add \$600 to her monthly payments. (Tr. at 24, 46-50; AE A, B, D)

Applicant stated post-hearing that she owed an additional \$3,800 when she filed her federal income tax return for tax year 2023. She stated that she added that amount to her existing installment agreement.¹ (Tr. at 51; AE O)

2015 and 2016 State 1 Taxes

Applicant did not file her 2015 and 2016 State 1 income tax returns on time. She filed her 2015 and 2016 federal income tax returns electronically, and she thought her state returns were filed at the same time. The returns were filed in about 2022 after she became aware that they had not been filed. She paid \$780 to State 1 on February 13, 2024, to resolve her State 1 taxes. (Tr. at 25, 51-54; Applicant's response to SOR; GE 6; AE A, C, E, M)

2017 and 2019 State 2 Taxes

Applicant filed her 2017 and 2019 State 2 income tax returns in 2022 or 2023. She paid \$825 to State 2 on February 6, 2024, to resolve her State 2 taxes for 2017 and 2019. (Tr. at 24, 54-55; Applicant's response to SOR; AE A, C, F, M)

Delinquent Debts

In addition to the Chapter 7 bankruptcy and tax matters discussed above, the amended SOR alleges five delinquent debts totaling about \$7,650. The debts are established through credit reports and Applicant's admissions. (Applicant's response to SOR; GE 2-6) The status of individual debts is as follows.

SOR ¶ 1.h alleges \$4,218 owed to a public utility company. Applicant denied owing the amount alleged because she had outages and higher-than-normal bills. She filed a complaint with the state's public utility commission. She stated that there was an investigation and a lawsuit that took two years to resolve. She did not receive a bill during that period, and when she finally did, it was more than \$4,000. She initially stated that she was willing to pay a little more than half that amount, but if she was required to set up a payment plan, she would. (Tr. at 56-57; Applicant's response to SOR; GE 2-6, 8; AE A)

Applicant decided to pay the public utility company. She initiated a \$175 per month payment plan in about July 2023. She increased her payments to \$283 per week by automatic debit. As of May 2024, she had paid \$3,478 and reduced the balance to \$738. (Tr. at 57; GE 2-6; AE J)

The SOR alleges medical debts of \$1,857 (SOR ¶ 1.i), \$553 (SOR ¶ 1.k), and \$325 (SOR ¶ 1.l) collected by the same collection company. Applicant set up a \$163 per month payment plan in July 2023, which increased to \$200 per month. Applicant's

¹ The SOR did not allege that Applicant owed taxes for 2023. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the assessment of Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

documents on these debts are less than ideal, but they are sufficient to establish that the \$325 debt has been paid, and the balances on the two other debts have been reduced. (Tr. at 58-61; Applicant's response to SOR; GE 2-6, 8; AE A, G, K)

Applicant settled the \$699 charged-off debt alleged in SOR ¶ 1.j for \$400. She paid the settlement amount on February 21, 2024. (Tr. at 63; Applicant's response to SOR; GE 2-6; AE A, C, I, M)

Applicant asserted that she plans to maintain her payments toward her delinquent debts and federal taxes. Her income will significantly increase if she receives a security clearance, which will enable her to pay her debts and taxes quicker. She admitted that applying for a security clearance was a factor in her decision to resolve her financial issues. She does not have medical insurance because it is too expensive. She does not think it makes sense to pay premiums and still have \$10,000 deductible. She indicated that she had additional medical debts of about \$15,000. She planned to start payment plans for those debts. She hoped to have all her debts paid by the end of 2024. (Tr. at 25-26, 28-35, 43-45, 61-67; Applicant's response to SOR; GE 2, 6; AE A, M)

Character Evidence

Applicant submitted multiple letters attesting to her excellent job performance and strong moral character. She is praised for her professionalism, dedication, leadership, honesty, trustworthiness, dependability, work ethic, efficiency, and integrity. She is recommended for a security clearance. (AE L)

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:

(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.

Applicant has a history of financial problems, including a Chapter 7 bankruptcy, unfiled federal and state income tax returns, unpaid federal and state taxes, and delinquent debts. The above disqualifying conditions are applicable.

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's son was in an auto accident and totaled her vehicle in about 2014. She was unaware that her insurance carrier cancelled her insurance for late payment. Her mother-in-law passed away, and she and her husband had medical issues without medical insurance. The COVID-19 pandemic and shutdown hindered their ability to get loads for their truck. Her son's accident, her mother-in-law's death, their medical problems, and the COVID-19 pandemic were beyond her control. Failure to maintain auto and medical insurance were not beyond her control. I also do not find her tax issues to be beyond her control. Additionally, to obtain the benefit of AG ¶ 20(b), she must prove that she acted responsibly under the circumstances.

Applicant paid or is paying all the non-tax debts. I find the Chapter 7 bankruptcy (SOR ¶ 1.a) and the non-tax debts (SOR ¶¶ 1.h-1.l) are mitigated.

AG ¶ 20(g) is applicable to the filed tax returns and the paid taxes (SOR ¶¶ 1.b-1.d, 1.f, and 1.g). She still owes more than \$7,000 to the IRS for 2021 (SOR ¶ 1.e). AG ¶ 20(g) has some applicability to her 2021 taxes because that tax year is in her installment plan with the IRS. However, that does not end the discussion.

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 filing tax returns and 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). This is true even when the returns are eventually filed, and the taxes paid.

This is a difficult case because Applicant is an honest, hard-working woman who is trying. However, she is addressing her finances the wrong way. She paid or is paying the medical debts alleged in the SOR, but her decision to go without medical insurance has led to an additional \$15,000 in medical debts. Her July 2023 installment agreement with the IRS required her to pay \$239 per month. As of August 2023, she owed \$9,965 for tax years 2015, 2016, and 2021, with \$7,606 owed for 2021. I am crediting her with resolving the taxes before 2021, but she now owes an additional \$3,800 for tax year 2023.

Applicant is essentially taking one step forward (paying past-due taxes and delinquent debts) and one step back (not paying the current year's taxes and accruing new delinquent debts). She owes more now than when the SOR was issued. It does little good to pay past-due taxes while at the same time not paying the current year's taxes. This may be harsh, and I understand that medical insurance is expensive, but it appears that Applicant's finances will never be stable until she obtains medical insurance and pays her current year's taxes when they are due. Additionally, a clearance holder without medical insurance would be vulnerable if a medical procedure becomes necessary. I know this is difficult for Applicant because she believes that she cannot afford to pay medical insurance and her current taxes, but until she can work out how to do that, she will not be financially stable.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances. Her financial issues are recent and ongoing, and continue to raise doubts about her judgment, reliability, and willingness to follow rules and regulations. None of the above mitigating conditions are sufficient to mitigate financial considerations security concerns raised by her unpaid 2021 federal taxes.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence. However, 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.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.l:	For Applicant
Subparagraph 1.m:	Withdrawn

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