



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



In the matter of:)
)
) ISCR Case No. 24-00473
)
)
Applicant for Security Clearance)

Appearances

For Government:
Andrew H. Henderson, Esq., Department Counsel

For Applicant:
Pro se

11/02/2024

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns under Adjudicative Guideline F (Financial Considerations). Based upon a review of Applicant’s testimony and the documentary evidence, national security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (SF-86) on February 26, 2023. On April 24, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR on May 21, 2024 (Answer). She requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 20, 2024. DOHA issued a Notice of Microsoft Teams Video Teleconference Hearing on June 25, 2024. The case was heard on July 15, 2024, as scheduled.

The Government presented five documents, marked as Government Exhibits (GE) 1 through 5. Applicant objected to AE 3, which is an unauthenticated Report of Investigation summarizing her background interview with a government investigator. I sustained her objection. The remaining four government exhibits were admitted without objection. Applicant did not submit any exhibits during the hearing. I kept the record open until July 16, 2024, to give Applicant the opportunity to supplement the record. She timely submitted two documents and an email, which I have marked as AE A through C for identification, respectively. AE A is Applicant's Answer, which is already a part of the record as a pleading and will therefore be excluded as duplicative. Without objection, I have admitted AE B, which she described in her email (AE C) as a corrected and updated budget. I have also admitted AE C, Applicant's post-hearing email. DOHA received the transcript of the hearing (Tr.) on July 22, 2024. (Tr. at 15-16.)

Findings of Fact

Applicant is 53 years old. She earned a bachelor's degree in June 2006. She married in 2008 and divorced in 2014. She began a new relationship in 2014. Applicant stated that her partner became abusive and she terminated their relationship in 2019. She has no children. She has a conditional employment offer of employment with a U.S. Government contractor. She seeks national security eligibility in connection with her prospective employer. She is a first-time applicant for eligibility. (Tr. at 17, 19, 25-26; GE 1 at Sections 2, 12, 13A, 17, 18, 25-26.)

In 2019 Applicant's employment at a private company (the Company) was terminated. She had worked for the Company since 2003. Her employer's termination paperwork states that she resigned, but the termination of her employment was complicated and disputed. She qualified for unemployment insurance for a period. The COVID-19 pandemic hindered her ability to find new employment in 2020. She was unemployed until February 2021. Applicant was employed in a new position until July 2022 when her employer's contract expired. She next worked from January 2023 until November 2023, when she was laid off. She is currently receiving a small pension from the Company, and prior to August 1, 2024, she received disability payments following an accident and injury. (Tr. at 19, 26-30; GE 1 at 12-16.)

The SOR sets forth six allegations involving Federal and state tax filing and tax payment delinquencies in several recent years. In the Answer Applicant admitted all of

the allegations with explanations. The specific allegations in the SOR along with the background information and the status of each matter is as follows:

SOR ¶ 1.a. Failure to file federal tax returns as required – tax years (TY) 2018 & 2019. Applicant and her then-partner earned money by renting out a room in their home through Airbnb. They did not withhold any taxes or pay quarterly taxes on this income. She claimed that she gave her partner her TY 2018 federal and state tax returns with a note for him to pay the taxes out of their joint bank account used in connection with their Airbnb income. Instead, he took the funds and failed to either file her tax returns or to pay the taxes she owed. She never accessed the account to confirm the tax payment other than to notice that the account balance was reduced by the amount of taxes she asked her partner to pay. In 2022 she learned that the partner never mailed her tax returns or paid the TY 2018 taxes owed. She was advised by the IRS that it had prepared a substitute tax return for TY 2018 in the absence of any filing. (Answer at 1; Tr. at 19-23, 31-35.)

Applicant deliberately failed to file her TY 2019 federal tax return as required. She explained that after losing her job with the Company in 2019, she supported herself on funds she withdrew from her 401K retirement account. She eventually depleted all of her funds in this account. She was aware that she would owe taxes in 2020 on the funds in 2019, since she had withdrawn them prematurely. She testified that she was relying on starting a new job starting in 2020 to pay the taxes. That job offer, however, was withdrawn due to the commencement of the COVID-19 Pandemic. Applicant panicked because she knew that she could not pay the taxes owed without the new job. She did not file her TY 2019 federal and state returns when they were due because she could not pay the taxes she owed. She thought she would file her returns when she could afford to pay the taxes owed. She believes that she filed the federal and state returns for TYs 2018 and 2019 in 2021 when she filed her TY 2020 tax returns, but the IRS's account transcripts in the record reflect it did not receive the late returns and had filed substitute returns. She has not subsequently filed or refiled her Federal or state tax returns. She considers the filing issue resolved. (Answer at 1; Tr. at 32-35, 45; GE 2 at 17-20.)

SOR ¶ 1.b. Failure to file state tax return as required – TY 2018. See discussion under SOR ¶ 1.a, above, for Applicant's explanation as to why her TY 2018 state tax return was not timely filed.

SOR ¶ 1.c. Federal tax debt for 2021 – about \$4,788. Applicant filed her federal tax return for TY 2021 but was unable to pay the taxes due on certain state benefits she received while unemployed. (Tr. at 61-62; GE 1 at 33; GE 2 at 22-23.)

To address her overall federal tax delinquencies, Applicant has met three times with IRS agents in recent months to prepare an "Offer in Compromise" acceptable to both parties to resolve all of her unpaid federal tax obligations. She has an interim agreement with the IRS to start paying \$50 per month starting in August 2024 through an automatic withdrawal from her bank account. In three or four weeks after the hearing date, she

expects to be able to begin paying her past due taxes if she is granted a security clearance and begins her employment with the U.S. Government contractor. Four weeks after the hearing date, Applicant must provide the IRS the documentation regarding her finances so that a final payment plan can be established. She understands that she owes about \$27,000 in federal taxes, interest, and penalties. She is seeking a reduction of the penalties and interest in light of her present circumstances. (Answer at 1; Tr. at 36-40, 42, 45-46.)

SOR ¶ 1.d. Federal tax debt for 2018 – about \$18,131. See discussion under SOR ¶ 1.a, above, for Applicant’s explanation why she failed to pay the federal taxes she owed for TY 2018, as required. As set forth in the discussion of SOR ¶ 1.c, above, she is working with the IRS to resolve all of her federal tax liabilities with an “Offer in Compromise.” (Answer at 1; Tr. at 35-39; GE 1 at 32.)

SOR ¶ 1.e. State tax debt for 2019 – about \$11,236. See discussion under SOR 1.a, above, for Applicant’s explanation as to why she failed to pay the state taxes she owed for TY 2019, as required. Applicant is currently paying the state tax authority \$40 per month as a preliminary resolution of all of her state tax liabilities. When she is next employed and earning an income, she intends to increase the payment by an amount to be determined. (Tr. at 40-42; GE 1 at 32; GE 2 at 2-8.)

SOR ¶ 1.f. State tax debt for 2018 – about \$3,174. See discussion under SOR 1.a, above, for Applicant’s explanation as to why she failed to pay the state taxes she owed for TY 2018, as required, and the discussion under SOR ¶ 1.e, above, regarding her plans to resolve her state tax debts for TY 2019. She understands that the state tax authority claims that she owes about \$15,000 in taxes, interest, and penalties for TYs 2018 and 2019. (Tr. at 40-42; GE 1 at 31-32; GE 2 at 5-6.)

Applicant testified that she is presently doing the best she can financially without a job. On occasion her former husband pays her rent and her friends pay her auto loan. Applicant wrote in AE C that her disability income was scheduled to expire on August 1, 2024, and that she had accepted a contract job. This new income will enable her to continue paying her living expenses. Applicant’s budget, however, demonstrates that she has very little additional income that would give her the funds to begin paying a final payment plan. (Tr. at 43, 47; AE B; AE C.)

Applicant incurred significant financial hardship in the past when she was the primary caregiver for her sister who suffered from a serious disease and died in 2009. Applicant incurred debts during this period she could not pay and subsequently filed for bankruptcy relief in 2013 under Chapter 13 of the Bankruptcy Code. She ultimately resolved these debts through her bankruptcy repayment plan. Applicant’s April 2024 credit report in the record reflects that she currently pays all of her commercial debts “as agreed.” (Tr. at 60; GE 4; GE 5.)

Whole-Person Evidence

A life-time friend of Applicant's testified as to Applicant's character. The witness described Applicant as a kind and supportive person who is always willing to help others. She also believes that Applicant is an honest person with "strong integrity." She has seen Applicant persevere through a lot of personal hardships in her life and admires Applicant's strength. (Tr. at 48-54.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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 contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under

this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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.

The record evidence supports the application all of the above potentially disqualifying conditions. The burden now shifts to Applicant to mitigate the application of these conditions.

I have considered all the mitigating conditions under AG ¶ 20 and conclude that the following five conditions have possible application to the facts of this case and could mitigate the security concerns arising from Applicant’s financial difficulties:

(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, or 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.

AG ¶20(a) partially applies. The circumstances surrounding Applicant's failure to file her state and federal tax returns and to pay her related taxes were unusual. She misplaced trust in her then-partner, but she failed to timely follow-up and confirm filing and make payments of her TYs 2018 and 2019 tax obligations. Overall, her behavior casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies. Applicant's extended unemployment during the first year of the COVID-19 pandemic constitutes circumstances beyond her control. Once she was able to regain employment, however, she did not take significant steps to resolve her tax delinquencies. As of the close of the record, she is continuing to struggle financially and lacks sufficient income to enter into realistic payment plans to pay off her tax liabilities.

AG ¶ 20(c) is not established. Applicant has not sought financial or tax counseling to help her resolve her tax delinquencies. She is in negotiation with the IRS and her state tax authority to do so, but this is not considered "counseling" under AG ¶ 20(c).

AG ¶¶ 20(d) and 20(g) partially apply. Applicant has recently entered into interim tax payment plans with the IRS and her state tax authorities. She has only been able, however, to commit to making modest monthly payments. Her intentions to make these payments are important, but her lack of financial resources to make full monthly payments undercuts the mitigation value of her payments under these conditions.

As of the close of the record, Applicant has not been able to address her tax liabilities to any significant respect. Viewed in its entirety, her evidence failed to mitigate the security concerns raised by the facts of this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I conclude that although Applicant's personal and employment history present sympathetic circumstances, she has not been able to produce sufficient evidence in mitigation at this time. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

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, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.f: | 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 interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge