



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 23-01588
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s federal tax debt obligations have not been paid. Her state tax obligations were not paid until 2023, but before she received the State of Reasons (SOR0. She has nine medical debts that are still outstanding. The remaining security concerns are unmitigated. Eligibility for security clearance access is denied.

Statement of the Case

On October 13, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) for security clearance eligibility so that she could work for a defense contractor. On April 2 and May 2, 2023, Applicant provided personal subject interviews (PSIs, Item 4) with an investigator from the Office of Personnel Management (OPM). On September 14, 2023, the Defense Counterintelligence Security Agency (DCSA) could not make the necessary affirmative finding to grant Applicant’s security clearance and issued an SOR to her detailing security reasons under the financial considerations guideline (Guideline F). The action

was taken under Executive Order (E.O.) 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) effective in the DOD on June 8, 2017.

Applicant provided her answer to the SOR on November 21, 2023. She elected to have her case decided on an administrative (written) record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant on February 12, 2024. Applicant received the FORM on February 24, 2024. The Government advised Applicant that, in her response, she could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. The response was due on March 25, 2024. No response was received by Defense Office of Hearings and Appeals (DOHA). Items 1 through 9 are entered into evidence. The handwritten page numbers for Item 4 appear in lower right hand corner of each page of the 49-page-exhibit. The case file was assigned to me on June 6, 2024.

Findings of Fact

The SOR contains two delinquent federal and state tax allegations, and nine delinquent medical accounts. The last allegation represents a Chapter 13 Bankruptcy petition filed in 2010, and discharged in 2019.

Applicant admitted all allegations in the SOR. She acknowledged owing the Federal Government \$95,189. She admitted owing the state tax agency, but claimed she paid the delinquent taxes in July 2023. She admitted eight of the nine medical accounts, but denied owing the SOR ¶ 1.k account because she paid the balance in full. Finally, she agreed that she filed a Chapter 13 Bankruptcy petition (SOR ¶ 1.l) in 2010 that was discharged in November 2019. (According to Item 6 at 1 through 7, this Chapter 13 petition was filed in September 2014 and discharged in November 2019.) she also filed three other bankruptcy petitions in 2008, 2011, and 2012. (Item 6)

Applicant is 49 years old and married in October 2001. She has owned her own residence since 2005. She has been separated from her husband since May 2021, but the parties have taken no further action to terminate their marriage. She has a 22-year-old daughter and a 19-year-year-old son from this marriage. She received her bachelor's degree in May 1998, and real estate diploma in October 2002. She has been a self-employed real estate broker since October 2002. She was an asset manager from January to May 2008. (Item 3 at 7-15 Item 4 at 2, 18)

Historical Reasons for Tax and Delinquent Medical Problems

Applicant filed the Chapter 13 Bankruptcy petition 2014 when her husband was laid off resulting in her being unable to pay her mortgage. Two mortgages became

delinquent. Since the discharge in November 2019 (SOR ¶ 1.l), Applicant has been current on her mortgage. (Item 4 at 5)

Regarding her delinquent Federal and state taxes, Applicant indicated in her October 2022 e-QIP that she had not filed nor paid her Federal and state income taxes for 2016, 2017, and 2018. The reason for the three foregoing delinquent tax years was previously unpaid Federal taxes for tax years 2013 and 2014. A Federal tax lien in the amount of \$37,000 was filed against her in August 2016. (Item 5) When the Internal Revenue Service (IRS) rejected her payment plan (probably sometime in 2016), she became puzzled over how to address the Federal tax problem. For some period of time, she procrastinated about handling the problem. She claimed that she had paid some taxes. The tax transcripts show that she filed Federal returns for all the missing tax years identified in the SOR. (Item 4 at 28-43) She recognized that she needed to contact the IRS to establish another payment plan. She stated that she also needed to contact a company for assistance. She stated that the creditor for the SOR ¶ 1.k account obtained a judgment and she claimed that she set up a payment plan and resolved the account in October 2022. (Item 3 at 38-43; Item 4 at 5-6; Item 5) No further information was provided.

The Federal tax account transcripts show that Applicant owes Federal taxes totaling \$95,189 for tax years 2016, 2017, 2018, 2019, and 2021. (SOR ¶ 1.a, Item 4 at 26-41) Apparently, Applicant paid the delinquent Federal taxes for tax years 2019 (\$2,321) and 2021 (\$569) in November 2022, and eliminated the back taxes she owed for those two tax years. (Item 4 at 39-40) In August 2023, Applicant paid all her delinquent state taxes for 2016, 2017 and 2018. (SOR ¶ 1.b, Item 4 at 22, 43-49)

In her Answers to Interrogatories, Applicant explained that the delinquent debts (SOR ¶¶ 1.c through 1.j) were the result of a serious car accident she and her daughter had in September 2021. She was disputing the low coverage that her union, the medical companies, and her medical insurance was providing. She conceded that she was procrastinating in dealing with the other parties. (Item 4 at 18)

Applicant explained that her current financial situation is moderate to fair. She is able to address her regular bills like her mortgage and utilities. Her only delinquent debts were her Federal and state taxes, and her medical bills. She planned to find a second job as a background investigator to generate extra income. Notwithstanding her delinquent Federal taxes, and nine delinquent medical accounts, she has taken seven vacations to various countries in the southern hemisphere between January 2015 and June 2023. (Item 3 at 24-32; Item 4 at 4, 7).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (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.

While Applicant has filed her Federal tax returns for the missing years, she still owes approximately \$92,000 to the IRS for tax years 2016, 2017, and 2018. She still owes the medical accounts identified in SOR ¶¶ 1.c through 1.k, and she has not addressed the federal tax lien that was filed in August 2016. The IRS taxes, the lien, and the medical accounts remain delinquent. AG ¶¶ 19(a), 19(c), and 19(f) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

(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; and

(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 has filed four bankruptcy petitions over the years. There is insufficient evidence in the record to conclude that the financial problems will not persist in the future. AG ¶ 20(a) does not apply.

Applicant receives only limited mitigation under the first prong of AG ¶ 20(b). Her husband's loss of employment was an event beyond her control which caused her to file the Chapter 13 Bankruptcy petition in 2008 to reduce her mortgage payments. However, rejection by the IRS of her proposed repayment plan at some time in 2016, was not a condition beyond her control. Instead of quickly renegotiating a plan with the IRS, she procrastinated as her delinquent Federal taxes grew. Applicant warrants some mitigation for the car accident in September 2021. However, she has provided scant documentation, partially due to procrastination, of what she has done to negotiate a settlement with the parties involved. Finally, she has had continuous employment since 2002.

There is no indication that Applicant has engaged in financial counseling or some other kind of assistance (though she recognized that she needed assistance) to reestablish control over her tax problems and her medical issues. AG ¶ 20(c) does not apply.

Based on Applicant's inability to reconstruct a payment plan with the IRS, and furnish documentation to confirm she satisfied the SOR ¶ 1.k creditor, and has taken action regarding the other medical debts arising from the September 2021 car accident,

she has not demonstrated a good-faith effort to repay her debts. (AG ¶ 20(d) does not apply.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 49 years and has an adult-aged son and a 19-year-old daughter. She has been a real estate broker since 2002. She filed a Chapter 13 Bankruptcy petition to save her home.

The foregoing positive is insufficient to counter the negative evidence. Applicant has known about her financial problems since 2013. Rather, than taking immediate action to negotiate a new repayment plan with the IRS, she allowed the delinquent tax debt to accumulate.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish her case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. See, e.g., ISCR Case No.17-04110 at 4 (App. Bd. Sept. 26, 2019); ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan aimed at debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006)

From the record presented, Applicant does not have a repayment plan with the IRS in place. She has supplied too little evidence of how she intends to deal with the problems associated with the car accident in September 2021. After a full review of the entire record from an overall common-sense point of view, Applicant has not mitigated the security concerns stemming from the guideline for financial considerations.

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.c-1.l:	Against Applicant
Subparagraph 1.b:	For 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 eligibility for access to classified information. Applicant's application for a security clearance is denied.

Paul J. Mason
Administrative Judge