



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 24-01071

Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

03/20/2025

Decision

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On July 18, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The action was taken 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR in writing (Answer) on August 8, 2024, including Attachments 1 and 2, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 4, 2024. The case was assigned to me on November 13, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 20, 2024. I convened the hearing as scheduled on December 11, 2024. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits A through F at the hearing. She asked that the record remain open for receipt of additional documentation. She submitted Applicant Exhibit G in a timely fashion and the record closed. Applicant's exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 23, 2024.

Findings of Fact

Applicant is 41 years old, married, and has four children. She has an associate degree. She is employed by a defense contractor as an human resources/facilities manager. She has worked for them since January 2023. She is attempting to obtain national security eligibility for a security clearance. (Government Exhibit 1 at Sections 12, 13A, 17, and 18; Applicant Exhibit B; Tr. 6-7, 16-17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a through 1.c under this guideline with explanations.

Applicant was laid off from her previous job in April 2022 after working for them nine years. She was unemployed until January 2023, when she obtained her current job. During the period of her unemployment she had to cash in her 401(k) retirement account to provide funds for living expenses. When Applicant prepared her 2022 tax return, but before filing it, she found that she owed over \$6,000 in taxes that she could not pay. She got scared and did not file her tax return. In 2024 her current employer's facility security officer worked with Applicant to resolve her unfiled tax returns and unpaid tax delinquency as shown below. (Government Exhibit 1 at Sections 13A and 26; Tr. 18-24.)

1.a. Applicant admitted that she had not filed her 2022 Federal tax return in a timely manner. She submitted documentation from the Internal Revenue Service (IRS) with her Answer showing that the return was received on July 22, 2024. (Attachment 1; Tr. 20-21.)

1.b. Applicant admitted that she had not filed her 2022 State tax return in a timely manner. She submitted documentation from the State tax authority with her Answer showing that the return was received on July 22, 2024. (Attachment 2; Tr. 20-21.)

1.c. Applicant admitted that she owed the Federal government for delinquent taxes for tax years 2022 and 2023. She entered into a payment agreement with the IRS in October 2024. In accordance with that agreement she pays at least \$250 a month. She submitted documentation from the IRS showing that she has made her first two installment payments in a timely fashion. As of October 21, 2024, she owed \$11,544. This tax debt is being resolved. (Government Exhibit 1 at Section 26, Government Exhibit 3; Applicant Exhibits D, E, and G ; Tr 24-27.)

Applicant is financially stable. She is able to pay her debts with her income, and that of her husband. They are both due to receive raises. She has received credit counseling from her credit union to assist in maintaining financial stability. She submitted documentation showing that she had resolved other past-due indebtedness incurred during her period of unemployment to the satisfaction of the creditors. This fact is confirmed by Department Counsel. (Government Exhibit at Section 26, Government Exhibit 2 at 12-14; Applicant Exhibit F; Tr. 19-23, 28-35.)

Mitigation

Applicant is a very successful and respected employee at both her current and prior employers. This is supported by letters from her supervisors in each position. Her current supervisor is the chief legal officer. Applicant was recently promoted in her current job. (Applicant Exhibits A and B; Tr. 36-38.)

Applicant's current facility security officer also filed a letter on her behalf. He states in Applicant Exhibit C:

One of the standout qualities of [Applicant] is her impeccable trustworthiness. Since I began with [her current employer], she has been extremely open and honest with her financial struggles. She walked me through all her debts and explained her plans to pay them all off. She has also displayed sound judgment and discretion in handling sensitive matters, making her an invaluable asset to our team.

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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.

Applicant admitted that she had not filed her 2022 Federal and state tax returns. She also admitted having a delinquent Federal tax debt. AG ¶¶ 19(a), (c), and (f) apply. The burden thereby shifts to Applicant to mitigate the adverse inference of her tax situation.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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.

With regard to allegations 1.a and 1.b, Applicant submitted documentation showing that she had filed Federal and state 2022 tax returns. She also is resolving her delinquent tax debt with the IRS through timely payments, resolving allegation 1.c. There is compelling evidence that her financial difficulties were in relation to her being unemployed for nine months in 2022. Once she was gainfully employed, she worked with her facility security officer and credit union to resolve her tax issues and improve her financial situation. It is important to note that she resolved other debts that were not alleged in the SOR, but arose during the same time period she was unemployed. AG ¶¶ 20(a), (b), (c), (d), and (g) apply to the tax debt and her tax returns.

In support of these findings, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. (internal citations and quotation marks omitted).

Based on all of the available evidence, Applicant has mitigated the security concerns of this guideline.

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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has fully mitigated the security concerns of her financial conduct. As stated elsewhere in this decision, and supported by the evidence, Applicant is a talented and successful person who works hard at her job. She has resolved, or is resolving, her financial situation. Such financial difficulties will not occur in the future. Her conduct has earned her the privilege of being granted national security eligibility. Paragraph 1 is found for Applicant.

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:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge