



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



In the matter of:)	
)	
)	ISCR Case No. 12-09479
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

09/14/2015

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 February 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 September 1, 2006.

Applicant responded to the SOR on March 23, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, scheduling the hearing for July 22, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE B through L and admitted without objection. DOHA received the hearing transcript (Tr.) on July 29, 2015.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. She has worked for her current employer since 1980. She seeks to retain her security clearance, which she has held for many years. She attended college for a period, but she did not earn a degree. She married in 1984 and divorced in 2000. She has two adult children.¹

The SOR alleges ten delinquent debts totaling about \$4,260 and three federal tax liens totaling about \$31,500. Applicant stated that all the debts, with the exception of the debt alleged in SOR ¶ 1.d (\$432), have been paid or are in payment plans. She stated that she was attempting to make payment arrangements with the owner of the debt alleged in SOR ¶ 1.d.

Applicant and her children had medical issues that contributed to her financial problems. Applicant established that the debts alleged in SOR ¶¶ 1.h (\$837) and 1.j (\$1,111) have been paid. Her documentary evidence is less than conclusive, but I am satisfied that the remaining non-tax debts have been paid, are in a payment plan, or are otherwise not of security significance.²

SOR ¶¶ 1.k (\$17,894), 1.l (\$11,993), and 1.m (\$1,620) allege federal tax liens that were filed in 2010 and 2012. The two larger tax liens are listed in credit reports from June 2012, October 2014, and May 2015. The \$1,620 tax lien does not appear on the 2014 and 2015 reports. Applicant stated that for about three years in the 2000s, both she and her ex-husband claimed one of their children on their income tax returns. Her husband was permitted to claim the children if he was current on his child support, but Applicant stated that he was not current. The IRS disallowed her exemption and imposed a higher tax liability. She also stated that she withdrew funds from her 401(k) retirement account when she went on strike in 2006, and she was unaware the withdrawal generated tax consequences.³

Applicant stated that she has been on a repayment plan with the IRS since 2007. The IRS also seizes her refunds. She stated that she receives a statement every month, and her last statement showed a balance of about \$17,000. She was informed of the importance of proving her payments through documentary evidence. Applicant submitted only one document related to her taxes in her post-hearing submission. It is a November 2014 letter from the IRS noting that Applicant had an installment agreement

¹ Tr. at 33, 57-58; GE 1.

² Tr. at 44, 50; Applicant's response to SOR; GE 2-5; AE A-F, H-L.

³ Tr. at 20-24, 33-34, 46-47, 55-56; Applicant's response to SOR; GE 2-5.

for tax year 2005. It states that Applicant paid \$470 on October 16, 2014, and the next \$470 payment was due by November 15, 2014. The remaining balance was \$36,298.⁴

Applicant received financial counseling. She admitted that her finances were “pretty bad,” but they are improving. She stated that she is paying her taxes and other debts.⁵

Policies

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 access to classified information will be resolved in favor of 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.

⁴ Tr. at 21-33, 43, 53-54; Applicant’s response to SOR; GE 5; AE B.

⁵ Tr. at 58-63.

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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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 or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant and one of her children had medical issues that contributed to her financial problems. Her divorce, going on strike, and her ex-husband's failure to pay child support also adversely affected her financially. Those events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

I am satisfied that the ten non-tax debts totaling about \$4,260 have been paid, are in a payment plan, or are otherwise not of security significance. Those allegations are mitigated.

The crux of this case is Applicant's failure to pay her federal income tax. The smallest tax lien does not appear on the two most recent credit reports. SOR ¶ 1.m is concluded for Applicant. The tax liens identified in SOR ¶¶ 1.k and 1.l are apparently still in effect. Applicant did little to clarify her tax situation. The only things she showed for certain were that she was on an installment plan; she paid \$470 in October 2014; and the remaining balance was \$36,298 in November 2014. Her other statements were uncorroborated by documentation and lack credibility. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

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 or that she made 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. There are no mitigating conditions applicable to Applicant's unpaid 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(a):

(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.

I considered Applicant's decades of work for a defense contractor while holding a security clearance. However, she has shirked her responsibility as a citizen to pay her taxes.

Overall, the record evidence leaves me with questions and doubts as to 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.j:	For Applicant
Subparagraphs 1.k-1.l:	Against Applicant
Subparagraph 1.m:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge