



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



In the matter of:)	
)	
)	ISCR Case No. 12-09545
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/08/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 21, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 within the DOD on September 1, 2006.

Applicant answered the SOR on June 22, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 18, 2015. I convened the hearing as scheduled on September 16, 2015. The

Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. In addition, the Government submitted a copy of the discovery letter sent to Applicant and an exhibit list that were marked as Hearing Exhibits I and II. Applicant testified and offered Applicant Exhibits (AE) A through N, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional documents, which she did. The documents were marked as AE O through S. The Government did not object to the documents and they are admitted into evidence.¹ DOHA received the hearing transcript (Tr.) on September 24, 2015.

Procedural Issue

The Government moved to amend the SOR and added ¶ 1.q to read: “You failed to timely file 2005, 2006, 2007, 2008, and 2009 federal income tax returns as required.” There was no objection and the motion was granted.²

Findings of Fact

Applicant admitted SOR allegations in ¶¶ 1.d, 1.e, 1.f, 1.j, 1.k, 1.m, 1.n, 1.o, and 1.p, and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 60 years old. She has three bachelor’s degrees and a master’s degree. She married in 1985 and separated from her spouse in 2005. They divorced in July 2015. Her two children from the marriage are ages 26 and 29.³

Applicant was employed from March 1996 to March 1998, and her annual salary was approximately \$55,000. She changed jobs and worked from March 1998 to April 1999, and earned approximately \$85,000 annually. In April 1999, she accepted a new job and earned approximately \$96,000 annually. In June 2004, she changed jobs and earned \$110,000, until November 2005. From then until October 2010, Applicant’s annual salary was approximately \$150,000. Due to an economic downturn in the defense industry, she was unemployed from October 2010 to February 2011, when she started work for her current employer, where she earns approximately \$98,000 annually. Her salary increased incrementally each year by about 1%.⁴

Applicant experienced marital problems in 2004, and she and her spouse separated in 2005. In 2004, 2008, and 2010, Applicant had a total of four surgeries, each requiring a six-to-eight week leave of absence from work where she was paid a reduced salary. Applicant attributed her financial problems to marital issues, tax issues,

¹ HE III is the Government’s email memoranda.

² Tr. 114-115.

³ Tr. 22-23; AE N.

⁴ Tr. 24-30.

and medical conditions beginning in 2005 that were exacerbated by her decreased income and a period of unemployment.⁵

When Applicant separated from her spouse in 2005, she owned two investment rental properties that she purchased in her name in the early 1980s, before she was married. There was a third investment property owned by her spouse. Applicant sold her two properties in 2005. She and her spouse were having difficulty communicating at the time, and she was concerned her husband might attempt to claim the properties in a property settlement because he had done work to improve them. She testified she was not sure how she and her spouse were going to settle their marital property in a divorce. She was aware that there were tax consequences when she sold the properties. When Applicant sold the two properties she realized a \$300,000 profit. She did not pay the capital gains tax on the properties. Instead she spent \$250,000 as a down payment on a new residence she was purchasing for \$400,000. Applicant stated she had some of the remaining \$50,000 for a while, but used it to pay other expenses and to also make the mortgage payments on the marital property where her spouse still resided. Her spouse was not making the payments because he had lost his job. She stated she did not pay the capital gains tax when due because she was not sure how she and her spouse would settle the division of their property. She did not finalize her divorce until July 2015.⁶

Applicant failed to timely file her 2005 federal income tax return until 2010. She stated the reason was because she and her spouse had not resolved the property settlement. She indicated that she did not realize how high the capital gains taxes would be. Applicant also failed to timely file her 2006, 2007, 2008, and 2009 federal income tax returns. In 2010, she sought the assistance of a certified public accountant (CPA), and the delinquent returns were filed. She filed her federal tax returns as married filing separately. She indicated that she owed approximately \$65,000 for capital gains taxes on the two properties that were in her name that she sold in 2005. In 2010, her husband sold the third property, and she received about \$20,000 from the sale. Applicant declared the money on her tax return, but stated she did not have the money to pay the taxes. In 2011, she borrowed money from her 401(k) retirement account and intended to pay it back, but failed to meet the deadline and incurred additional taxes and penalties. Applicant stated she owed federal income taxes for tax years 2005, 2010, and 2011. The other years she was due a refund. She used some of the money from the sale of the third house to pay her CPA and for a tax resolution service.⁷

In 2011, Applicant submitted to the Internal Revenue Service (IRS) an offer to compromise her debt, which was denied. She hired a tax resolution service to work with the IRS and negotiated an installment agreement. Applicant testified she began making payments to the IRS in 2012. She provided a letter from the IRS dated November 29,

⁵ Tr. 31, 52, 66-69; AE A.

⁶ Tr. 31-43, 53.

⁷ Tr.38-47, 58, 98, 112-113; AE M and R.

2012, which indicated that she owed \$149,008, which did not include penalties and interest. Her documents support that in January 2013, she began making \$441 monthly payments toward her federal tax debt. It appears Applicant has made consistent payments since 2013. At the end of 2014, the IRS increased the payment to \$450. During a periodic review of Applicant's case, the IRS suspended payments for six months, from January to June 2015. While the tax payments were suspended, Applicant used the money to pay other delinquent debts. Applicant believed her tax liability was approximately \$121,000.⁸

Applicant stated that during her separation from her spouse she supported the children and did not receive child support. She paid the mortgage on the marital house, where her husband lived. The mortgage on the marital residence was held jointly. The house eventually foreclosed. It was repurchased by her husband at foreclosure. Applicant testified the mortgage was satisfied. She indicated that she received some financial counseling from her mortgage company in 2010, regarding managing a budget and reducing her homeowners insurance.⁹

In 2013, Applicant had an unexpected expense when a road repair in front of her house caused problems with the foundation of her house. Her insurance would not pay the cost to repair it, and the county would not reimburse her. The cost was \$6,500. She borrowed \$5,000 from a friend and saved the rest to pay for the expense. She has not repaid the loan, but intends to repay it with interest.¹⁰

The SOR alleged 16 delinquent debts. SOR ¶¶ 1.o (\$65,000) and 1.p (\$25,000) are the IRS debts discussed above. The medical debts alleged in SOR ¶¶ 1.j and 1.k are duplicates.¹¹ Ten of the debts are for medical expenses, totaling approximately \$3,175. Applicant stated that the reason she did not pay her medical debts when due was because she believed her health insurance covered the expenses, and she never checked her credit report. She admitted that she received some medical bills, but did not follow-up on them as she should have. She put some in a stack of papers and did not start diligently addressing them until she received the SOR.¹² The debts are verified in credit reports from June 2012, October 2014, and April 2015.¹³

- SOR ¶ 1.a (\$215) is a medical debt. She paid the debt in June 2015.¹⁴

⁸ Tr. 30-31, 47-50, 60-61; AE M, P, Q and R.

⁹ Tr. 52-55.

¹⁰ Tr. 62-64.

¹¹ The Government conceded these two debts are the same.

¹² Tr. 69-74, 81-96.

¹³ GE 2, 3, 4.

¹⁴ GE 2, 3, 4; AE C.

- SOR ¶1.b (\$45) is a communication company debt. Applicant indicated she converted her service and believed the balance rolled over to the new service. She paid the debt in June 2015.¹⁵
- SOR ¶ 1.c (\$85) is a medical debt Applicant believed was covered by her health insurance. She paid the debt in June 2015.¹⁶
- SOR ¶ 1.d (\$9,789) is a car loan that Applicant cosigned for her daughter in 2009. Her daughter made the car payments until she lost her job. Applicant made payments for six months then stopped. She indicated she made some period payments later. Her daughter continued to drive the car until it was repossessed in 2012. Applicant negotiated a settlement agreement with the creditor on September 12, 2015, and agreed to pay \$3,034. She made her first payment of \$505 on September 24, 2015.¹⁷
- SOR ¶ 1.e (\$419) is a medical debt. She received the bill, but did not pay it as required. She paid the debt in August 2015.¹⁸
- SOR ¶ 1.f (\$28) is a medical debt. She stated she should have addressed this debt years ago. She paid the debt in September 2015.
- SOR ¶ 1.g (\$82) is a medical debt. Applicant indicated it was paid years ago. She provided a document showing a zero balance on the account.¹⁹
- SOR ¶ 1.h (\$59) is a communication company debt. Applicant believed the account balance rolled over to the new service. She indicated she paid the account. Her documents show a payment for \$59 was pending. They also show that her new balance with interest and fees was \$88.²⁰
- SOR ¶ 1.i (\$415) is a medical bill for Applicant's daughter when she was a minor. Applicant received the bills, but assumed her daughter was responsible for them. She did not inquire about the bill when she received it. She stated it is likely eight years old. She paid it in June 2015.²¹

¹⁵ GE 2, 3, 4; AE D.

¹⁶ GE 2, 3, 4; AE E.

¹⁷ Tr. 74-81; GE 2, 3, 4; AE F and S.

¹⁸ GE 2, 3, 4; AE G and S.

¹⁹ GE 2, AE S.

²⁰ GE 2, AE I and J.

²¹ Tr. 89-91; GE 2; AE K.

- SOR ¶¶ 1.j and 1.k (\$172) are duplicate medical debts. Applicant indicated that she likely received the bill, but when she contacted the collection creditor, it did not have a record of a debt owed. Applicant could not find the original creditor.²²
- SOR ¶ 1.l (\$1,044) is a medical debt that Applicant disputed regarding the proper medical code. She indicated the insurance company paid the debt and she paid the required copay.²³
- SOR ¶¶ 1.m (\$232) and 1.n (\$67) are medical debts. Applicant contacted the collection company and was advised she did not have outstanding debts. She indicated she was unable to determine the original creditor.²⁴

Applicant estimated she has about \$340 net remainder each month after paying her expenses. She has between \$100-\$200 in her savings account and \$300-\$500 in checking. She estimated she has about \$2,000 in 401(k) accounts. She has kept track of her budget for the past ten years on a spreadsheet. She has completed paperwork to modify her current mortgage loan, but it has not yet been acted on. She has two credit cards with balances of \$800 and \$200. She indicated she tries to pay at least the minimum payment on them. She admitted she did not make the best choices when she purchased her house in 2005 and cosigned on her daughter's car loan. She chose to pay the mortgage on the marital house that her husband remained living in, which was about \$1,200 a month. She paid it from 2005 until approximately 2008 or 2009.²⁵

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 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, these guidelines are applied 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.

²² Tr. 91-92.

²³ Tr. 93; GE 2, 3, 4; AE L.

²⁴ GE 2.

²⁵ Tr. 64-65, 100-112.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 Executive Order 10865 provides that 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant had 15 delinquent debts that were unpaid or unresolved. Two are tax debts that she owed from 2005 and 2010. Applicant failed to timely file her 2005, 2006, 2007, 2008, and 2009 federal income tax returns. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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's tax debts are still being resolved. Her tax obligations did not occur under unique circumstances that are unlikely to recur. Her inaction in addressing her delinquent taxes and other debts casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to medical issues, a reduction in income, unemployment, and a divorce. These were matters beyond her control. However, for the full application of AG ¶ 20(b), Applicant must have acted responsibly

under the circumstances. In 2005, Applicant separated from her husband. She did not divorce until 2015. That same year, she sold two investment properties in her name and realized a \$300,000 profit. She was responsible for paying the capital gains taxes on the profit. Instead of paying the capital gains taxes, she chose to use the profits to make a \$250,000 down payment to purchase a new residence and used the remaining \$50,000 for other expenses. Her explanation for her failure to pay the capital gains tax was because she and her husband were resolving the dissolution of their property, and she was uncertain if he would make a claim on the profit. She failed to file her 2005 through 2009 federal income tax returns, thereby avoiding her responsibility for addressing the capital gains issues for five years. She could have chosen to make a lesser down payment and pay the capital gains, but did not. With at least \$250,000 in equity in her residence, Applicant could refinance her home and reduce her tax liability. Instead she is addressing a tax debt that is at least \$90,000, and likely well over \$100,000, with small monthly payments of \$450.

Applicant's finances were later impacted by medical issues, reduction in income, and unemployment for five months, but this was after she incurred the tax liability. When the third property sold in 2010, she used some of the profit to pay her CPA and a tax resolution service. She incurred additional tax issues when she withdrew money from her 401(k). Applicant has not acted responsibly regarding her finances. AG ¶ 20(b) partially applies.

Applicant had some financial counseling in 2010. She did not begin in earnest to address her non-tax debts until after she received the SOR and the IRS suspended her payments. She believed some of her medical debts were covered by her insurance, but she also failed to inquire about bills, instead putting them in a stack of papers. She has paid or resolved many of the small debts alleged in the SOR. She had difficulty finding the original creditor for others, but she made an effort to research the debts. She has a settlement agreement for the loan on a repossessed vehicle. Based on Applicant's total debt and her irresponsibility in handling her tax liability and other debts, I cannot find that there are clear indications that her problems are under control. AG ¶ 20(c) partially applies. AG ¶ 20(d) marginally applies as a good-faith effort to pay the debts that were addressed after receiving the SOR.

Applicant has paid, resolved, or researched some debts that she questioned. I find in her favor on those debts. AG ¶ 20(e) applies to the debts she questioned.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 60 years old. She has had well-paying jobs throughout her professional life. She experienced a reduction in income after a period of unemployment. She also experienced medical issues that required surgery, periods of reduced income while recuperating, and unexpected expenses. These issues impacted her finances. However, Applicant is a well-educated person, who owned two investment properties. She made a significant profit of \$300,000 when she sold them in 2005. She had the money to pay the capital gains tax when it was due. She chose to use all of the profit to purchase a house and pay other expenses. She failed to file her federal income tax returns for five years, thereby continuing to ignore her tax liability. She neglected her tax issues until 2010. She started making installment payments to the IRS in 2013. She attributed her inaction to the difficulty she had with her husband and the division of their property. She did not address most of the smaller debts alleged until after she received the SOR. She has a history of being financially irresponsible. Applicant's conduct raises questions about her judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the 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.n:	For Applicant
Subparagraphs 1.o-1.q:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge