



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-02387
)
 Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/02/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by her failure to timely file her tax returns or pay her taxes. She also has several past-due or delinquent debts that have not been paid or otherwise resolved. Also, Applicant has held a security clearance for almost 25 years, but deliberately withheld from her most recent security clearance application relevant and material information about her finances. Her request for continued access to classified information is denied.

Statement of the Case

On October 24, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew a security clearance required for her employment at a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is

clearly consistent with the national interest for Applicant to continue to hold a security clearance.¹

On July 29, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. However, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) timely requested a hearing,³ and the case was assigned to me on November 18, 2014. I convened a hearing on December 18, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 4.⁴ Applicant testified and presented Applicant's Exhibits (Ax.) A - F. All exhibits were admitted without objection. DOHA received the transcript of hearing (Tr.) on January 6, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant failed to file her federal income tax return as required for tax year 2009 (SOR 1.a); and that she owes \$11,810 for unpaid income tax for tax years 2008 (SOR 1.b) and 2010 (SOR 1.c). It was also alleged that she owed \$9,761 (SOR 1.e) and \$40,000 (SOR 1.f) for two delinquent mortgage accounts. Finally, it was alleged that Applicant owed \$14,352 for eight delinquent or past-due personal credit accounts (SOR 1.d, 1.g - 1.m). Applicant admitted all of the Guideline F allegations.

Under Guideline E, the Government cross-alleged as a personal conduct concern the failure to file a tax return alleged in SOR 1.a (SOR 2.a). The Government also alleged that Applicant deliberately made false official statements by omitting from her October 2013 EQIP her failure to file her 2009 tax return (SOR 2.b); by omitting her 2008 and 2010 tax debts (SOR 2.c); and by omitting the past-due or delinquent debts alleged at SOR 1.d - 1.m (SOR 2.d). As to SOR 2.a, she relied on her response to SOR 1.a. As to SOR 2.b and 2.c, Applicant denied both allegations. She admitted with explanation the SOR 2.d allegation; however, her explanation made clear that she denies that she intended to make a false statement through her omission.

In addition to the facts established by Applicant's admissions, I make the following findings of fact:

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, E3.1.7. A copy of Department Counsel's request for hearing is included in the record as Hearing Exhibit (Hx.) 1.

⁴ An index of the Government's exhibits is included in the record as Hx. 2.

Applicant is 50 years old and has been employed by the same defense contractor as a contracts administrator since March 1988. She has held a secret-level security clearance for most of her career there, and she is currently applying for a top secret clearance. Applicant is an excellent employee whose most recent performance evaluations rate her work as exceeding expectations. (Gx. 1; Ax. F; Tr. 32)

Applicant and her husband have been married since June 1986. They have two children, ages 27 and 23, whom they supported through their college educations and beyond. Applicant and her husband still provide occasional support to their older child, but they are still fully supporting the younger child. (Gx. 1; Tr. 36 - 37, 74 - 75)

Applicant earns about \$75,000 annually. Her husband is a brake operator at a local industrial company, where he earns about \$32,000 annually. He also earns about \$10,000 annually from a side business doing landscaping and yard work. Since 2007, Applicant and her husband have used an online filing program and have filed tax returns as "Married, Filing Separately." She testified they do this to get tax benefits for his small business, and because her husband could, until recently, lessen his tax liability by claiming their children as dependents on his tax return. Applicant did not otherwise elaborate about what those tax benefits would be. (Gx. 4; Tr. 36, 44 - 46, 68 - 70)

Starting in 2007, Applicant incurred tax debts that she did not pay. In addition to the \$11,810 tax debt alleged in the SOR, Applicant also owes \$4,476 for the 2009 tax year and \$3,794 for the 2012 tax year. That debt was identified after Applicant filed her 2009 federal income tax return on July 21, 2014. As of the date of this hearing, Applicant also had not yet filed her federal income tax return for the 2013 tax year. (Gx. 4; Ax. A; Tr. 42 - 46, 57 - 59)

As to efforts at resolving the tax debts at SOR 1.b and 1.c, Applicant claimed in her Answer that "[a] payment agreement has been accepted and established by IRS on July 22, 2014." Available information shows Applicant made four payments on her 2007 tax debt between July 2013 and June 2014 totaling \$1,835. For the 2007, 2008, 2010, and 2012 tax years, her total debt for unpaid taxes as of July 7, 2014, was \$21,509.52. Applicant did not document any other payments to the IRS. Applicant also claimed that she has filed her state income tax returns as required, but she could not explain how she did so without first calculating her federal income taxes each year. (Answer; Ax. A; Tr. 40 - 42, 70 - 71)

As to her other debts, Applicant claimed they were caused when her husband was laid off in 2012. He was unemployed between August and October of that year. Applicant claimed she has made arrangements to resolve the debt at SOR 1.d, incurred for the purchase of a personal computer, by settling the account for half the total balance. However, aside from her testimony, her claim is not supported in the record. Applicant continued to work and earn income while her husband was unemployed. (Answer; Gx. 2; Gx. 3; Tr. 46 - 47)

The debts at SOR 1.e and 1.f are for amounts past due on a second mortgage for \$40,000 obtained in May 2003. The mortgage is now held by a collection agency with whom Applicant claimed she has made repayment arrangements. As of the hearing, she was two weeks late in the payment due in December 2014. (Answer; Gx. 2; Gx. 3; Ax. E; Tr. 48, 72)

The debts at SOR 1.g and 1.h are for past-due bills for dental treatment. Applicant provided an account statement from her dentist that showed treatment in October 2014 for which she had only partially paid, and which showed a previous unpaid balance of \$629 and a current balance due of \$780. Applicant did not document any payments on this account. (Answer; Gx. 2 - 3; Ax. D; Tr. 51)

The debts at SOR 1.i and 1.j are debts incurred for the purchase of a personal computer by her husband. On the day of this hearing, Applicant reached a repayment agreement with the collection agency holding this debt. The first of 12 monthly payments of \$213 was to be made the next day. (Answer; Gx. 2 - 3; Ax. B; Tr. 52 - 53)

Also on the day of her hearing, Applicant reached a repayment agreement with the creditor for the debt at SOR 1.k. The deal calls for five monthly payments between December 2014 and April 2015 for a total of \$545. (Answer; Gx. 2; Ax. C; Tr. 53)

As to the debts at SOR 1.l and 1.m, Applicant averred in her Answer that she had paid or had made arrangements to pay both accounts. At hearing, she stated that SOR 1.l was for a credit card she let her younger child use while at school. As to SOR 1.m, despite her claimed resolution in response to the SOR, she testified at hearing that she does not know what the debt at SOR 1.m is for. (Answer; Gx. 2; Tr. 54 - 56)

When Applicant submitted her EQIP, she answered “no” to all of the questions in Section 26 regarding past-due or delinquent debts, including failure to file tax returns and unpaid taxes. As to her failure to list that she had not filed her 2009 tax return on time, as alleged in SOR 2.b, Applicant claimed she was unaware when she submitted her EQIP that the return was not processed for filing by the online tax program she used. However, at hearing, she testified that the online tax program, which she has used since 2007, usually sent an email confirming that her return was processed and accepted. She testified she did not receive such an email for her 2009 return in 2010, but “assumed that it went through and it was more than a year later that [she] found out it did not go through.” Based on her testimony, Applicant knew in 2011 or 2012, that her 2009 return had not been filed. Yet she went on to testify that she only became aware after she submitted her EQIP in 2013 that the 2009 return had not been filed. During the hearing, it was also shown that she had not filed her 2013 tax year returns. I find Applicant’s response to the SOR and her testimony on these matters to be inconsistent with the record evidence and not credible. Accordingly, I conclude she intended to conceal her failure to file her 2009 tax return. (Answer; Gx. 1; Gx. 4; Ax. A; Tr. 34, 40 - 42)

Applicant's denial that her omission of her 2008 and 2010 tax debts, as alleged in SOR 2.c, was intentional. Instead she claimed that those tax debts have been paid and that "payment arrangements have been set up for tax year 2009." This is simply not true, as shown by the IRS information in Ax. A. Also, Applicant also incurred a debt for unpaid taxes in 2007 that she failed to list in her 2013 EQIP. Applicant testified that she is now paying \$100 a month toward some or all of her tax debts, but she did not support her claim with reliable documentation. (Answer; Gx. 4; Tr. 42 - 46)

As to the debts at SOR 1.d - 1.m, the Government's information shows that those debts have been delinquent since between 2007 and 2012. Applicant was interviewed in December 2013 by a Government investigator. In reviewing her answers to financial questions in Section 26 of the EQIP, Applicant confirmed that she did not have any debts that she should report as required by the questions therein. She was then confronted with the contents of a credit report that showed numerous debts, including those alleged in SOR 1.d - 1.m. Applicant claimed she either misread pertinent questions about certain debts or that she did not list her debts because she did not know their status. (Gx. 2; Gx. 3; Tr. 62 - 63, 70)

Applicant is responsible for managing her family's finances, but admits she has no idea how much they have remaining each month after expenses, and she acknowledges they generally live paycheck to paycheck. (Tr. 63 - 65, 74 - 75)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they

⁵ See Directive. 6.3.

represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

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.

Since 2007, Applicant has incurred unpaid tax debts, she has not filed federal income tax returns on time for at least two of the past five tax years, and she has accrued mortgage and other personal credit delinquencies that have not been timely addressed in any meaningful way. All of the foregoing supports application of the

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); AG ¶ 19(c) (*a history of not meeting financial obligations*); and AG ¶ 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*).

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

(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.

None of these mitigating conditions apply. Applicant's financial problems are ongoing in view of her failure to act to resolve her debts in a timely and good-faith manner. Applicant's husband's lay-off in 2012 is only a small factor in her financial problems, as many of her debts, including unpaid taxes for 2007, 2008, and 2010, were already delinquent before 2012. Also, Applicant continued to earn income during her husband's relatively brief unemployment, and she did not show that she has acted reasonably in response to her debts. Most of her actions to correct some of her debts occurred at or near the day of her hearing in this matter. She also did not establish that she has a plan to resolve her debts; she has not received any counseling or other professional help to manage her finances; and she and her husband are living paycheck to paycheck. In summary, Applicant has failed to mitigate the Government's security concerns under this guideline.

Personal Conduct

Available information shows that Applicant has not filed her federal income tax returns as required on more than one occasion; and that she deliberately omitted from

her EQIP in 2013 relevant information about her tax obligations and about her finances. These facts raise security concerns about Applicant's personal conduct and reliability that are addressed at AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Specifically, the record requires application of the following AG ¶ 16 disqualifying condition:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's failure to file her 2009 income tax return falls within the general statement of concern under this guideline. Her conduct regarding her tax obligations indicates a general disregard for routine rules and regulations. Applicant denies knowingly falsifying her answers to EQIP questions about her finances. However, based on all of the facts and circumstances, including Applicant's conflicting statements and testimony about her finances, I conclude the totality of facts and circumstances probative of this issue show she intended to withhold information from the Government. Applicant's debts and unpaid taxes were incurred long before she submitted her EQIP. Applicant has held a security clearance for most of her 25-year tenure with her employer. She is, or should be, familiar with the questions asked in a security questionnaire. She also should be aware of the need to be candid and forthcoming about information needed by the Government to assess her suitability for clearance.

In response to the Government's information in this case, Applicant did not provide information that supports any of the mitigating conditions at AG ¶ 17. Rather than make a prompt, good-faith effort to correct her falsifications at her subject interview in 2013, she stood by her negative EQIP answers before being confronted with her credit report by the Government investigator. At hearing, Applicant's explanations for why she did not report her tax information or other debts were simply not credible. On balance, there remain substantial security concerns about Applicant's honesty and her judgment.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). The positive information about Applicant's job performance is not sufficient to overcome the doubts about her suitability for access to classified information that have been raised by the Government's information. Because protection of the national

interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge