



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



In the matter of:

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) ISCR Case No: 15-00865
)
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Applicant for Security Clearance)

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

07/29/2016

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated delinquent debts between 2007 and 2014. She has not resolved state tax issues from 2007 and 2008. She filed her 2009 tax returns two years after the deadline, and only recently began paying the outstanding taxes. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On May 14, 2012, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP), as part of an investigation for a security clearance. On September 29, 2015, the Department of Defense (DOD) 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 for Determining Eligibility for Access to Classified Information effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on October 26, 2015, and requested a hearing before an administrative judge. On March 10, 2016, DOHA issued a Notice of Hearing setting the case for April 5, 2016.¹ The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through GE 5 into evidence without objection. Applicant testified and called one witness. She offered Applicant Exhibits (AE) 1 through AE 23 into evidence without objection. DOHA received the hearing transcript (Tr.) on April 12, 2016. The record remained open until April 27, 2016, in order to provide her time to submit additional documents. That deadline was extended to May 6, 2016. Applicant timely submitted AE 24 through AE 31, which were admitted without objection, after which the record closed.

Findings of Fact

In her Answer to the SOR, Applicant admitted all allegations, except those alleged in ¶¶ 1.f, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 1.q, 1.s, and 1.t. She asserted some of those allegations were resolved or that she was unfamiliar with the creditor. All admissions are incorporated herein.

Applicant is 34 years old and married her second husband in 2010. She married her first husband in 2009 and was divorced about 10 months later. She does not have children. She started working for her employer in 2002, while attending college. In 2004 she earned a bachelor's degree and then became a full-time employee. (Tr. 24-26.)

Applicant's financial problems began in 2009 while she and her former husband were divorcing and she did not have enough money to pay her bills. At that time she was financially helping her mother, who went into a nursing home. She said her finances improved after she married her second husband and while he was working. However, in 2012 he had a spinal fusion and has not returned to work since the surgery. He had been earning \$80,000 annually. In 2013 her annual salary of \$75,000 was reduced by \$10,000. She subsequently used money from her 401(k) and other savings for living expenses. She is slowly paying debts on her income. Her husband is waiting for a determination from the Social Security Administration about his disability status. (Tr. 27-30; AE 19.)

In August 2012 a government investigator interviewed Applicant about matters in her March 2012 e-QIP, including delinquent debts. During that interview, Applicant addressed many of her outstanding debts, including debts subsequently alleged in the SOR, and her outstanding tax problems. (GE 2.)

¹ On March 17, 2016, the Defense Office of Hearings and Appeals (DOHA) officially assigned the case to me.

Based on credit bureau reports (CBR) from July 2015, January 2015, and May 2012, the SOR contained 20 allegations, which included 15 delinquent debts, a foreclosure, and 4 tax issues for 2007, 2008, and 2009. Those allegations totaled \$31,560, and do not include an outstanding \$400 owed for 2009 Federal taxes. These problems accumulated between 2007 and 2014. A summary of the status of each debt is as follows:

Debts Paid/Resolved/Resolving:

SOR ¶ 1.b. The \$625 credit card debt owed to a retailer was paid in November 2015. (Tr. 32; AE 24.) It is resolved.

SOR ¶ 1.c. The \$11,023 debt owed for an automobile repossession was placed on a payment plan in April 2016. She is making automatic monthly payments of \$150 to the collection agency. The current balance is \$9,861. (Tr. 34; AE 27.) It is being resolved.

SOR ¶ 1.e. The \$544 debts owed to a credit card company was recently placed on a monthly payment plan. In April 2016 she paid \$50. The balance is \$504. (Tr. 36; AE 28.) It is being resolved.

SOR ¶ 1.f. The \$154 bank account loan was paid in 2011. (Tr. 37-38; AE 4 at 8.)

SOR ¶ 1.g. In 2010 Applicant defaulted on her mortgage and it went into foreclosure. She said she does not owe any money to the bank because the matter was fully resolved. (Tr. 38-39.)

SOR ¶ 1.i. The \$585 debt owed to a credit card company is being paid through monthly payments of \$48. Applicant began those payments in March 2016. The balance is \$243. (Tr. 42; AE 6.)

SOR ¶ 1.l. The \$558 debt owed to a department store was paid in 2012. (Tr. 45; AE 30.)

SOR ¶ 1.m. The \$947 debt owed was paid or resolved. (Tr. 46; AE 4 at 31.)

SOR ¶ 1.n. Applicant said she paid the \$16 debt owed to a utility company in 2011. (Tr. 47.)

Debts Unresolved:

SOR ¶ 1.a. The \$208 medical debt is unpaid. Applicant said she is unable to locate the creditor. (Tr. 3.)

SOR ¶ 1.d. The \$1,697 debt owed to a credit card company is unpaid. Applicant said she has been unsuccessful with her communications with the company. (Tr. 35.)

SOR ¶ 1.h. The \$6,812 alleged is owed to the holder of Applicant's student loans. In February 2016 she made a \$227 payment on the loans. She said she was required to make seven or eight payments, in order to put the loans into a rehabilitated status. She said that the payments were automatically deducted from her bank account. (Tr. 40-41.) She did not submit documentation verifying that she made those payments and the student loans are no longer in a default status.

SOR ¶ 1.j. The \$26 medical bill is unresolved. She does not know the nature of the bill. (Tr. 44.)

SOR ¶ 1.k. The \$248 credit card is unresolved. Applicant cannot locate the creditor; however, this debt was originally for purchases made at a bridal shop. (Tr. 45; GE 5 at 4; GE 2.)

SOR ¶ 1.o. The \$946 debt owed to a creditor is unpaid and unresolved. Applicant cannot locate the creditor. (Tr. 47; GE 5 at 10.)

SOR ¶ 1.p. The \$2,182 debt is owed to a furniture store for purchases Applicant made in 2007. Applicant said she made payment arrangements in 2012. She is uncertain of the status. (Tr. 48-49.) It is unresolved.

Tax Issues:

SOR ¶ 1.q. This paragraph alleged that Applicant owes unpaid state income taxes to State 1 for 2007 in the amount of \$4,490. She said that she did not reside in State 1 during that year, and has requested information from her resident state (State 2) in order to resolve the matter with State 1. She testified that she contacted State 1 about six months ago. (Tr. 54.) During her August 2012 interview, she stated that State 1 filed a suit against her in 2010, which was stayed pending resolution. She told the investigator that she was hoping to hear from her contact person in State 1, and would contact them in two weeks. She said she disputed this debt, but failed to provide any information pertinent to her dispute. (Tr. 52; GE 2.) It remains unresolved.

SOR ¶ 1.r. This paragraph alleged that Applicant owes unpaid personal property taxes for 2008 to State 1 in the amount of \$489. Applicant admitted that she owes this debt, but cannot resolve it until the above 2007 State 1 matter is resolved. (Tr. 53-55; Answer.) In August 2012 she discussed this debt with the investigator and said she intended to set up a payment plan with State 1. (GE 2.) This debt remains unresolved.

SOR ¶ 1.s. This paragraph alleged that Applicant failed to file a state income tax return for 2009. Applicant filed the return in November 2012. She said she did not file the return in April 2010 because of her situation with her former husband, and her inability to pay an additional \$3,000 in taxes for that year. (Tr. 51; GE 2; AE 11.) This allegation is resolved.

SOR ¶ 1.t. This paragraph alleged that Applicant failed to file a Federal income tax return for 2009. She admitted that she filed the return in November 2012. She owed \$2,972 for her 2009 Federal taxes. In March 2016 the Internal Revenue Service (IRS) applied an overpayment of \$2,484 from her 2015 taxes to the 2009 unpaid tax debt. In March 2016 the IRS notified her that she owed \$488 on the 2009 debt. In April 2016 she began making monthly payments of \$100. (AE 8, AE 9, AE 10, AE 31.) The matter is not resolved.

Applicant submitted a copy of her budget. Her annual salary for 2015 was \$80,000. Her net monthly income is \$5,000 and expenses are \$3,620, including payments on some delinquent debts and her student loans. She has about \$1,320 remaining. (AE 23.) She has not participated in financial or budget counseling. (Tr. 57.)

Applicant's husband testified. He served in the National Guard for 15 years before being medically discharged. He was an E-6. He said that his disability is the result of the failed back surgery he had in 2012. (Tr. 62-66.)

Applicant submitted her performance evaluation for 2015. She received an "Exceeds" rating, along with a bonus. (AE 16, AE 18.) She also provided letters of recommendation from friends, her father, co-workers, and employer. All authors attest to Applicant's honest and hard-working character. The commanding officer of an Air Force base, who participated in a program that Applicant organized, complimented Applicant's detailed work, dedication and organized presentation. (AE 12, AE 13, AE 14, AE 15, AE 20, and AE 21.)

Applicant testified candidly and honestly. She said she timely filed her 2010 through 2015 income tax returns. (Tr. 51.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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.

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 avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 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 access to classified information. 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

AG ¶ 19 notes three disqualifying conditions that could potentially raise security concerns in this case:

- (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.

As documented by CBRs and her admissions, Applicant began accumulating delinquent debts between 2007 and 2014, which she has been unable or unwilling to resolve. She failed to timely file her 2009 Federal and state income tax returns. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those three disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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;

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 financial problems have been ongoing over the past nine years. Hence, AG ¶ 20(a) does not apply. Some delinquent debts arose as a result of Applicant's marital situation, which were circumstances beyond her control. Because she did not present sufficient evidence demonstrating that she attempted to responsibly manage the debts while they were accumulating only a limited application of AG ¶ 20(b) is warranted.

Applicant did not provide evidence to support the application of AG ¶ 20(c). She has not participated in credit or financial counseling, nor established a detailed long-term budget or plan to address the unresolved SOR debts and unpaid state tax liabilities. There are not clear indications that her financial issues are under control.

Applicant paid 5 of the 15 SOR-listed debts and is paying 3 of them. She resolved her foreclosure. Those actions exhibited a good-faith effort to resolve nine debts, and support the application of AG ¶ 20(d) as to the allegations. She filed her outstanding 2009 state tax return in November 2012. Given the lateness of said filing, and the fact that they were filed two months after her August 2012 interview, she did not establish mitigation of good faith under AG ¶ 20(d) as to that allegation. Seven delinquent debts remain unresolved, as do three tax-related allegations. She did not provide evidence to document that she formally disputed her tax debt with State 1, or any other debt, as required for application of AG ¶ 20(e).

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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a 34-year-old woman, who has successfully worked for a defense contractor since 2004. She has earned the support and recommendation of friends, co-workers, and her employer. Between 2009 and 2010 she and her first husband separated and divorced, resulting in financial difficulties. In 2012 she began supporting her family because her husband became disabled and stopped working.

Applicant presented evidence that she has paid or has recently started paying nine delinquent debts. These debts total \$14,452 of the \$31,950 alleged debt. She has not resolved seven delinquent debts, which total \$12,119, or three old tax debts from 2007, 2008, and 2009, which total \$5,379. These unresolved allegations total \$17,498. In November 2012 she filed her 2009 income tax returns.

While Applicant experienced circumstances that affected her ability to pay debts, her failure to file a 2009 state tax return for more than two years past its deadline raises concerns about her judgment and reliability. These concerns are exacerbated by the fact that she has not resolved the assessed state taxes for 2007 and 2008, although she has had knowledge of the problems for many years. In August 2012, almost four years ago, she told an investigator that she was in the process of resolving the state debts. They remain unresolved. Recently she began paying outstanding Federal taxes for 2009, about five years after they were due. At this time the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising under the financial considerations guideline.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e through 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Subparagraph 1.i:	For Applicant
Subparagraphs 1.j and 1.k:	Against Applicant
Subparagraphs 1.l through 1.n:	For Applicant
Subparagraphs 1.o through 1.t:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge