



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



In the matter of:)
)
 REDACTED) ISCR Case No. 15-01182
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

02/06/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file federal income tax returns for tax years 2012, 2013, and 2014, and she owed medical and credit card collection debt despite annual income exceeding \$100,000. She filed her delinquent income tax returns in January 2016 and satisfied her past-due debts in December 2015. Yet her disregard of her income tax filing obligation for several years continues to raise doubts about her judgment, reliability, and trustworthiness. Clearance is denied.

Statement of the Case

On November 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action 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 for*

Determining Eligibility for Access to Classified Information (AG) effective within the DOD on September 1, 2006.

On December 17, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 22, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 25, 2016, I scheduled a hearing for May 18, 2016. On May 3, 2016, counsel for Applicant entered his appearance and requested a continuance because of a schedule conflict. Department Counsel did not object, and on May 5, 2016, I issued a notice of cancellation.

On May 19, 2016, I scheduled a hearing for June 15, 2016. I convened the hearing as rescheduled. Five Government exhibits (GEs 1-5) were admitted into evidence without objection. Applicant submitted 19 exhibits (AEs A-S), which were accepted into the record without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 22, 2016.

I held the record open for two weeks after the hearing for additional documentary submissions from Applicant. On June 29, 2016, Applicant submitted six exhibits, which were admitted into the record as AEs T-Y without objection from the Government. The record closed on June 29, 2016, when Department Counsel expressed no objection to the post-hearing exhibits.

Findings of Fact

The SOR alleges under Guideline F that Applicant failed to file her federal income tax returns for tax years 2012, 2013, and 2014 (SOR ¶ 1.a), and that, as of November 27, 2015, Applicant owed medical collection debt totaling \$1,014 (SOR ¶¶ 1.b-1.g, 1.k), a credit card collection debt of \$241 (SOR ¶ 1.h), and charged-off debts of \$174 (SOR ¶ 1.i) and \$263 (SOR ¶ 1.j).

When Applicant answered the SOR allegations, she admitted that she had not filed her income tax returns as alleged, but indicated that they would be filed by January 15, 2016. She admitted the debts in SOR ¶¶ 1.b through 1.j, with a minor correction to the balance of SOR ¶ 1.h, and explained that the debts were paid in full in December 2015. Applicant denied the \$251 medical debt in SOR ¶ 1.k, indicating that she had paid it in 2014.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 53-year-old engineer with two bachelor's degrees awarded after five years of study and with a master's degree awarded in January 1998. (GE 1; AEs J, R.) She has never married but has been in a cohabitant relationship since June 2012. (GE 2; AE R.) Applicant has been employed by a defense contractor since August 1986, continuing to

maintain her employment through several corporate mergers and acquisitions. She transferred to her present location in June 1996. (GEs 1, 2; AEs N, P, R; Tr. 19-20.) Applicant seeks to retain a DOD secret clearance, which was granted to her most recently in July 2007. (GE 1; Tr. 19-20.)

On June 26, 2012, Applicant certified to the accuracy of a Questionnaire for National Security Positions (SF 86) completed on June 21, 2012. Applicant responded affirmatively to a financial record inquiry concerning any failure to file or pay federal, state or other taxes in the last seven years, and she disclosed that she had not yet filed her 2011 federal return because she was “still pulling together paperwork.” She indicated that because she usually received refunds, she did not anticipate owing any taxes. Applicant also answered “Yes” to inquiries concerning any delinquency involving routine accounts. She stated that she had generic bills of approximately \$100 not yet resolved. She stated in explanation, “Bills have gotten lost in my pile of paperwork, and forgotten to have been paid.” (GE 1.)

As of June 28, 2012, Applicant’s credit report showed that she was \$20 past due 60 days on a \$50 retail charge balance (SOR ¶ 1.i), and that two accounts were in collection for \$263 (SOR ¶ 1.j) and \$251 (SOR ¶ 1.k). A zero balance was reported on an account in collection as of December 2006, which Applicant disputed. (GE 3.)

On October 3, 2012, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). She admitted that she had not yet filed her federal income tax return for tax year 2011 because she was busy at work and at home, was not very organized,¹ and did not think about her taxes because she usually receives a refund. She expressed her intent to file her return as soon as possible because she knew it was important to do so. About delinquent bills, Applicant explained that she was poor with paperwork, which resulted in some accounts becoming delinquent in the last seven years. Applicant admitted that her account with the creditor in SOR ¶ 1.j was over 120 days past due and may have been in collection, but she claimed that she had paid it about eight years ago. Applicant could not recall any accounts that had been over 120 days delinquent in the last seven years. She indicated that she was current on her finances. She was then confronted about some adverse credit information on her record. She did not realize that the account in SOR ¶ 1.j was still in collection. Applicant did not dispute a \$251 medical collection debt incurred in 2012 (SOR ¶ 1.k), which she thought had been covered by insurance. She expressed her intent to resolve her past-due debts. (GE 2.) At her hearing in June 2016, Applicant attributed her delinquent accounts to exhaustion. At night, she was mentally drained and had basic household obligations. (Tr. 27-28.) She also testified that she received “so much mail that it’s inundating so these types of bills would come and get lost in the piles.” (Tr. 29.)

An engineer in new product introduction for most of her career, Applicant achieved, and in some cases exceeded, performance objectives at work for 2010 and 2011. (AE N.) She did not provide her performance reviews for 2012 or 2013, which were difficult and stressful years for her. (Tr. 22-25.) She was hospitalized overnight in September 2012 for

¹ Among the several certificates in AE J is a certificate noting her completion in the fall of 1988 of a course in “Getting Organized.” (AE K.)

chest pain, and in October 2013, she was placed on blood-pressure medication. (AE T; Tr. 26-27.) Co-worker input for her 2012 annual performance review attested to Applicant being a talented engineer as well as a “take-charge” person, “meticulous, thorough, and precise in all she undertakes.” (AE N.) A technical operations manager, who worked with Applicant for two years starting in 2011, indicates that Applicant “drove actions to closure in a timely manner as needed to meet an aggressive test schedule.” She was a dedicated member of their team and paid attention to details. (AE Q.) In 2013, Applicant was nominated for an award at work. (AE M.)

At her request, Applicant transferred to a quality assurance position in early 2014. (AE P.) She found that position less stressful (Tr. 27), and she consistently met her commitments while taking on more work and responsibilities than several of her co-workers. (AEs P, Q.) She was rated overall as a “high performer” for 2014, having quickly established herself in an organization new to her in a challenging assignment. Her ratings manager described her as “a highly motivated, diligent and detail-oriented team member.” (AE N.)

As of January 12, 2015, Applicant’s credit record showed no progress toward resolving the credit card delinquency in SOR ¶ 1.j. Several other accounts were reportedly in collection: a \$241 debt placed in April 2014 (SOR ¶ 1.h) and six medical debts totaling \$763 referred between March 2013 and May 2014 (SOR ¶¶ 1.b-1.g). Applicant was making timely payments of \$329 per month on an automobile loan obtained for \$19,302 in September 2014, and of \$1,727 per month on a mortgage obtained for \$207,222 in August 2003. Her mortgage loan had been delinquent 30 days in the past, most recently in January 2013. (GE 4.)

As of July 27, 2015, the six medical collection debts in SOR ¶¶ 1.b-1.g and the consumer credit debts in SOR ¶¶ 1.h-1.j had not been paid. The medical debt in SOR ¶ 1.k was no longer on her credit record. Applicant’s car loan had been 30 days past due in May 2015, but she brought her loan current. (GE 5; AE I.)

In response to DOHA interrogatories, Applicant admitted on November 13, 2015, that she had not yet filed her federal income tax returns for tax years 2012, 2013, and 2014. Applicant disclosed that she had requested IRS account transcripts for 2010 and 2011 on October 29, 2015. She was not required to file state returns because her state does not tax individuals on their incomes. In response to whether she had any information to add, Applicant related that she had made some attempts to improve her situation, including changing to a less stressful position at work in March 2014, filing her federal income tax return for 2011, and giving the paperwork needed to file her return for 2012 to her accountant. She indicated that she had some paperwork to gather for 2013 and 2014, but also that she had given her accountant some records for 2013. Applicant submitted with her response to the interrogatories IRS tax transcripts for tax years 2010 and 2011. The IRS transcript for 2011 shows that the IRS filed a substitute return on May 5, 2014, after an inquiry for non-filing on May 21, 2013, and filing of a duplicate return on April 20, 2014. (GE 2.)

On November 27, 2015, the DOD CAF issued an SOR to Applicant because of the unresolved delinquencies on her credit record and her unfiled federal income tax returns for tax years 2012, 2013, and 2014. Applicant received the SOR on December 8, 2015. Applicant sought assistance from her facility security officer, who “explained how to read [her credit report], what to focus on, and that [she] didn’t have to go through all [her] paperwork to get the information.” (Tr. 50.)

On December 17, 2015, Applicant satisfied the debts in SOR ¶¶ 1.h-1.j. (AEs C-F.) On December 18, 2015, her account was debited \$794 to resolve the medical collection debts in SOR ¶¶ 1.b-1.g. (AEs D-E.) Applicant believes that she paid the medical collection debt in SOR ¶ 1.k in 2014. (Tr. 33.)

As of December 15, 2015, Applicant had provided her accountant with the paperwork to file her delinquent returns. Her accountant planned to have them prepared for filing before January 15, 2016. (AE A.) By letter dated January 8, 2016, Applicant’s accountant mailed to Applicant her income tax returns for filing for tax years 2012, 2013, and 2014. On January 12, 2016, the accountant mailed Applicant her income tax return for filing for 2011.² (AE B.) Applicant expected refunds of \$2,750 for 2011, \$2,828 for 2012, \$2,005 for 2013, and \$1,488 for 2014. (AEs B, V-X.) The IRS received Applicant’s income tax returns for 2012, 2013, and 2014 on January 19, 2016, which showed that her annual income exceeded \$100,000 for each of those years.³ (AEs V-X.) Applicant attributed her noncompliance with her income tax filing obligation to stress and giving priority to her job. (Tr. 46.)

Applicant filed her federal income tax return for tax year 2015 on time. On adjusted gross income of \$140,558, she underpaid her federal tax liability by \$7,739. (AE Y.) Applicant paid the IRS by check with her return on April 15, 2016. (AE U.)

On June 3, 2016, Applicant completed online financial education in setting financial goals and creating a budget, learning about her relationship with her bank, and understanding credit and credit reports. (AE G; Tr. 28, 32-33, 48.) Applicant also completed a personal financial statement on June 3, 2016, reporting monthly discretionary income of \$3,194 and significant financial assets. (AE H.) She owed no outstanding consumer credit card debt. (AE I.) She has only one credit card that is being repaid automatically from one of her accounts. (Tr. 63.) She has no other credit card accounts because “they get lost in the paperwork.” (Tr. 29.) Her annual salary is approximately

² Applicant testified that she filed her 2011 income tax return in 2013. (Tr. 40, 43.) She then indicated that she did not recall the date she filed her 2011 return. She indicated in response to interrogatories in November 2015 that her 2011 tax return was filed. (GE 2.) A document from the IRS submitted with her response to the interrogatories shows that the IRS filed a substitute return in May 2014, but also “duplicate return filed” on April 20, 2014. AE B contains a copy of a letter from her accountant dated January 12, 2016, forwarding her 2011 federal income tax return for filing. When confronted with the evidence that she had not filed her 2011 income tax return until January 2016, Applicant responded, “If that’s what the letter says. If that’s what it says. I thought I had separated them out and the ’11 got paid first and then I was working on ’12, ’13, ’14.” (Tr. 44.) Whether Applicant filed her 2011 return in 2014 or in 2016, it was late.

³ Available IRS transcripts for 2012, 2013, and 2014 reported only what Applicant showed on her returns and not any IRS assessments for late filings.

\$138,000, which is adequate to pay all her expenses. (Tr. 20-21.) Applicant's contributions to her employer in 2015 were in line with expectations relative to stated objectives and achievement of those objectives. (AE N.) Former and current co-workers who provided reference letters attested to Applicant having integrity and an excellent work ethic. (AE Q.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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.

As of the issuance of the SOR on November 27, 2015, Applicant had not filed her federal income tax returns for tax years 2012, 2013, and 2014. She also filed her 2011 income tax return late, apparently around April 2014, although her accountant inexplicably provided her 2011 tax return for filing in January 2016. As of November 2015, she owed medical collection debt totaling \$763 and credit card delinquencies totaling \$678, despite having income more than sufficient to pay those debts. Applicant believes that she satisfied the \$251 medical collection debt alleged in SOR ¶ 1.k in 2014. That debt was no longer on her credit record as of 2015, which could indicate but does not conclusively establish that the debt was paid. Debts may be deleted from credit records because of the passage of time, collection is no longer being pursued, or for other reasons than payment. The Government's concerns about Applicant's financial judgment are established by her noncompliance with her income tax filing obligation for several years and by the medical and consumer credit delinquencies. Disqualifying condition AG ¶ 19(a), "inability or unwillingness to pay debts," applies in that her failure to take prompt action to investigate and pay the delinquent accounts on her credit record raises doubts about her willingness to address her legitimate obligations. AG ¶ 19(c), "a history of not meeting financial obligations," applies because of her record of delinquent medical and consumer credit accounts. Her noncompliance with her income tax filing obligations triggers AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

Mitigating condition AG ¶ 20(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 has some applicability in that the credit card debts in SOR ¶ 1.i and ¶ 1.j are from 2011 and 2010. The consumer credit debt in SOR ¶ 1.h and most of the medical debts are from 2012. These debts were not incurred recently. However, AG ¶ 20(a) does not mitigate her delay in resolving the debts or in filing her delinquent income tax returns.

Applicant has partially attributed her noncompliance with her income tax filing obligation and her inattention to some of her financial accounts to stress at work and being too exhausted when she got home at night. While she was apparently hospitalized overnight in September 2012 for chest pains and placed on blood-pressure medication in

October 2013, her health issues were not serious enough to prevent her from attending to her work obligations to the best of her ability. Moreover, she transferred to a less stressful position in 2014, and yet did not file her income tax returns for 2013 and 2014 by their respective due dates. She blamed a large volume of mail for bills being missed and her own disorganization for the delay in gathering the information required to file her income tax returns. These are not factors outside of her control that could implicate AG ¶ 20(b), which provides:

(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.

Applicant paid the delinquencies in SOR ¶¶ 1.b-1.1.j in December 2015. The Appeal Board has held that an applicant who begins to resolve debts only after being placed on notice in the SOR that his or her clearance was in jeopardy may have made these payments because his or her clearance was threatened. See ISCR Case No. 14-05476 at 4-5 (App. Bd. Mar. 25, 2016), citing ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015). Applicant had been on notice since her subject interview in October 2012 that the DOD was concerned about the adverse information on her credit report. She had ample resources to pay her debts. Applicant demonstrated little of the good faith required for mitigation under AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." However, Applicant has taken, albeit very belatedly, some important steps to ensure that future bills are paid on time. She obtained financial counseling in June 2016 and arranged for automatic payments on her one open credit card account. If she is pursued for the medical debt in SOR ¶ 1.k, she has the income and willingness to resolve it. Her financial situation is stable. Her medical and consumer credit delinquencies are not condoned, but such financial issues are not likely to reoccur. AG ¶ 20(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," applies.

Concerning income tax issues specifically, the Appeal Board has long held that the failure to file tax returns suggests a problem with complying with well-established government rules and systems. See *e.g.*, ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016); ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). Applicant indicated during her interview that she planned to file her income tax return for 2011 as soon as possible because she realized it was important to do so, even if she did not owe any taxes. Her failure to take prompt action to file her 2011 return and to file timely returns for three more years raises considerable doubts as to whether the Government can rely on her representations. Applicant shows some reform under AG ¶ 20(c) in that she filed her delinquent tax returns in January 2016, and she filed her tax return for 2015 on time. Yet, Applicant appears unwilling or unable to accept full responsibility for her repeated, knowing noncompliance with her tax filing obligations when she continues to blame her disorganization with paperwork or her having "nothing left to give at the end of the day when [she] got home." See Tr. 47-48. The financial considerations concerns articulated in AG ¶ 19(g) are not fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁴ The analysis under Guideline F is incorporated 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 a well-educated engineer, known for being detail-oriented at work, and has held a security clearance for most of her career. She can reasonably be expected to be aware of the filing deadline for her returns and to comply with her income tax filing obligation, irrespective of whether she expected refunds. Stressful work demands had been alleviated by the change in her work position in early 2014, and yet Applicant did not file her income tax return for 2013 when it was due. She did not file her income tax return for tax year 2014 when it was due. Applicant knew as of October 2012 that the DOD was concerned about her late return for tax year 2011 and about collection accounts on her credit record, and yet she did not make resolving them a priority.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant's work contributions to her employer weigh in her favor. Nonetheless, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons noted above, I conclude that it is not clearly consistent with the national interest to continue her security clearance eligibility.

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-1.k:	For Applicant

⁴ The factors under AG ¶ 2(a) are as follows:

(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.

Conclusion

In light of all of the circumstances, 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.

Elizabeth M. Matchinski
Administrative Judge