



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



In the matter of:

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) ISCR Case No. 15-03973
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Applicant for Security Clearance

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2016

Decision

WHITE, David M., Administrative Judge:

Applicant incurred large Federal and state tax debts over the past six years, failed to file required tax returns over that time, and defaulted on a car loan, despite continuous employment. She demonstrated neither sufficient explanation for these debts, nor changes to avoid recurring financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on September 8, 2014.¹ On November 23, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*

¹Item 3.

²Item 1.

(February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on December 24, 2015, and requested that her case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on January 27, 2016. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on February 10, 2016, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant submitted no additional material in response to the FORM during the time provided, did not object to its consideration, and did not request additional time to respond. I received the case assignment on August 22, 2016.

On pages 2 and 3 of the FORM, Department Counsel stated that she was amending the SOR to change some details concerning the debt alleged in SOR ¶ 1.g, and to add two new allegations concerning a recently charged-off debt to a bank and two fraudulent checks purportedly written by Applicant in 2000. Department Counsel also stated that she was amending SOR ¶¶ 1.a through 1.c to correctly allege that these debts involved state vice Federal tax liens. Department Counsel asserted that she made these amendments to the SOR in order to conform to the record evidence, and pursuant to Directive ¶ E3.1.13.⁵

The Directive does not authorize a department counsel to modify or amend the SOR in this manner, which would deprive Applicant of her right to request a hearing on the new allegations in contravention of Directive ¶¶ 4.3.3 and E3.1.3. Directive ¶ E3.1.6 permits a department counsel to withdraw unsupported or unfounded SOR allegations after reviewing an applicant's answer. Directive ¶ E3.1.17 permits the administrative judge (not a department counsel) to amend an SOR at a hearing, on his or her own motion or upon motion by one of the parties, with some procedural safeguards. Accordingly, Department Counsel's purported amendments to the SOR are void and of no effect. Her comments in the FORM concerning these additional matters are irrelevant, and will not be considered for any purpose in reaching this decision.

³Item 2.

⁴Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is the summary of two interviews from the OPM Report of Investigation. It was neither attested to nor adopted by Applicant, and no witness authenticated the document. Accordingly, it is inadmissible per Directive ¶ E3.1.20 and will not be considered in determining Applicant's eligibility for a security clearance. There is no relevant information contained in Item 3 that would reasonably support mitigation of the financial issues alleged in the SOR, and any relevant adverse information concerning those allegations is cumulative with information contained in Items 2, 3, and 5 through 7.

⁵Directive E3.1.13 states, "As far in advance as practical, Department Counsel and the applicant shall serve one another with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge."

Findings of Fact

Applicant is 49 years old. She has worked for a defense contractor as a psychologist since May 2009, except for the period from October 2012 to March 2013 when she was briefly unemployed then worked full time for another company during a contract interruption. She earned a bachelor's degree in 1998 and a master's degree in 2001. She has never served in the military or held a security clearance. She has never married, and has two adult children.⁶

In her response to the SOR allegations, Applicant admitted SOR ¶¶ 1.a through 1.d, admitted in part and denied in part SOR ¶¶ 1.e and 1.f, and denied SOR ¶ 1.g. Her admissions are incorporated in the following findings.⁷

SOR ¶¶ 1.a through 1.c allege delinquent tax debts, for which liens in the amounts of \$5,142; \$1,745; and \$2,900, respectively, were entered against Applicant in 2012 and 2014. The SOR incorrectly alleges that these debts are owed to the Federal Government. The record credit reports show these to be state tax liens. Despite the fact that Applicant admitted each of these SOR allegations, corrected findings will be entered by exceptions and substitutions concerning these debts, which remain unresolved.⁸

SOR ¶¶ 1.d alleges Applicant's delinquent \$38,473 tax debt to the Federal Government, for which a lien was entered against her in 2014. She also admitted owing this debt, which was placed in a "not collectible status" in October 2014, with IRS collection action temporarily suspended due to her inability to make payments. The Federal tax lien remains in effect, and penalties and interest continue to accrue while collection action is suspended until such time as her financial situation improves. Applicant provided copies of 2009 through 2012 Federal income tax returns that were prepared for her by a commercial tax preparation company. These returns indicated that she had a total of \$581 of Federal income tax withholdings, made no estimated tax payments, and owed a total of \$48,842 in unpaid taxes for those four years.⁹

SOR ¶¶ 1.e and 1.f allege that Applicant failed to file her Federal and state income tax returns for tax years 2009 through 2012, as required, and that the returns remained unfiled as of November 23, 2015. She admitted both allegations, but claimed that her 2009 returns were filed in a timely manner and that the remaining returns were filed on February 21, 2014.¹⁰ She provided unsigned and undated copies of Federal

⁶Item 3.

⁷Item 2.

⁸Item 1; Item 2; Item 5; Item 6; Item 7.

⁹Item 2; Item 3; Item 5; Item 6.

¹⁰Item 2.

income tax returns for 2009 and 2012 that were prepared for her by the commercial company on April 2, 2010, and February 21, 2014, respectively. She also provided copies of Federal returns for 2010 and 2011, prepared by the same company on February 20, 2012, and April 11, 2012, respectively, which are marked, "For Info Only - Do not file."¹¹ There is no evidence to document when, or if, any of these Federal returns were filed, or that any of her state tax returns were filed for those years.

SOR ¶ 1.g alleges that Applicant is indebted to a creditor on an account that has been charged off, as reflected in Items 5 and 7, and remained delinquent as of November 23, 2015. She denied this allegation, and said that arrangements have been made with a debt collection agency to begin paying this debt on January 25, 2016. She provided a copy of a settlement agreement with that agency, dated December 22, 2015, which reflected a current balance for the debt of \$4,458 but contained no details concerning what payments are to be made. No evidence of any payments under this agreement was provided in response to the FORM.¹²

Applicant provided no evidence establishing her current income or household budget. She offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

¹¹Item 2 at 6 through 14.

¹²Item 2 at 3, 15; Item 5; Item 7. The credit reports indicate that this debt involved a car loan.

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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under three Guideline F DCs, as set forth in AG ¶ 19:

- (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 accrued more than \$48,000 in delinquent Federal and state income tax debt from 2009 through 2012, which remains unresolved. The IRS has temporarily suspended collection action against her after determining that she was unable to make payments. She failed to file Federal and state income tax returns as required during those years, and also defaulted on a car loan that remains in collections with a balance due exceeding \$4,400. These delinquencies arose despite her continuous employment during all but a month or two of that time, and she offered no evidence of ability or willingness to resolve them. Her pattern and history of financial irresponsibility raise security concerns under DCs 19(a), (c), and (g), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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 stated that her tax returns have now been filed, but provided insufficient evidence to document that claim. She provided no evidence of any payments toward, or an effective plan to resolve her delinquent debts that exceed \$50,000. She did not demonstrate that delinquent indebtedness is unlikely to recur, that the debts arose from unexpected conditions, or that her financial situation is under control. Department Counsel pointed out the absence of such updated information in the FORM. Applicant chose not to address those concerns by filing additional

information in response thereto. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the choices and conduct that caused the financial problems set forth in the SOR. Her delinquent debts arose over the past six years and she enjoyed continuous employment throughout all but a month or two of that period. She offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of her life to offset resulting security concerns. The potential for pressure, coercion, and duress from her financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant ¹³
Subparagraphs 1.d through 1.g:	Against Applicant

¹³Excepting the words, "the Federal Government," and substituting therefore the words, "a state government."

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge