



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-04003
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns about her finances. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on January 14, 2016, and she elected to have the case decided on the written record in lieu of a hearing. On February 24, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on March 8, 2016. She was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. She did not provide a response. The case was assigned to me on January 25, 2017.

On February 16, 2017, I reopened the record to permit the parties to supplement the record. On February 28, 2017, Applicant provided a submission, and the record was closed on March 1, 2017.¹

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-7.² FORM Items 2 and 4-7 are admitted into evidence as Government Exhibits (GE) 2 and 4-7, without objection.

FORM Item 3 is an unauthenticated summary of an August 28, 2013 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that she could object to FORM Item 3 and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant raised no objections. Given the Government's advisement and Applicant's education and work experience, I find her waiver to be knowing and intelligent.³ Therefore, FORM Item 3 is admitted into evidence as GE 3.

Applicant's submission included a cover email and bankruptcy records. These documents are admitted as Applicant Exhibits (AE) A and B, without objection.

Findings of Fact

The SOR alleges two bankruptcies (SOR ¶¶ 1.a. and 1.b.) and Applicant's failure to pay her 2002 and 2003 state taxes (SOR ¶ 1.c.). Applicant admitted the bankruptcies and denied the tax debts.⁴ After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 50 years old. From 1990 to 2011, she served in the U.S. military, from which she was honorably discharged. She received a bachelor's degree in June

¹ This order and the accompanying email are admitted into the record as Administrative Exhibit (AX) I. Applicant's February 17, 2017 email and Department Counsel's March 1, 2017 email are admitted into the record as AX II and III, respectively.

² FORM Item 1 consists of the SOR and Applicant's response to the SOR. These documents are pleadings and are included in the record.

³ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.").

⁴ Response to SOR.

2011. She has been employed full time since August 2011, including with her current employer, a DOD contractor, since July 2012. She has been married since 1988, and she has three children – ages 20, 25, and 29.⁵

In September 1995, Applicant and her husband separated for about eight months, leaving Applicant as the sole household income. They reconciled in May 1996, and they filed Chapter 13 bankruptcy in August 1996. The dischargeable debts were discharged in 1999.⁶

Applicant and her husband have owned and operated multiple businesses since 2001. Applicant started her business in 2001, and it failed in 2011. Her husband's business opened in 2009 and closed in 2010. Applicant attributed her financial difficulties and January 2011 Chapter 13 bankruptcy filing to these business failures. The bankruptcy petition lists liabilities totaling \$514,767, including state tax debts for tax years 2002 and 2003 in the approximate amount of \$2,427.73. The April 2016 discharge order noted that some debts, including taxes, may not be discharged in bankruptcy. Applicant has not provided evidence to establish that her state taxes were discharged in bankruptcy, pursuant to 11 U.S.C. § 523. Without the final report of the bankruptcy trustee or equivalent records, there is no evidence demonstrating that the state tax debts were paid through the bankruptcy.⁷

Applicant denied owing taxes for State #1 for tax years 2002 and 2003 and claimed that she was living in State #2 at the time; however, her security clearance application reveals that she was in fact residing in State #1 from 2001 to 2005. She has not provided any documentation or further explanation as to why she is not liable for income taxes for State #1, particularly as she listed these delinquent taxes on her bankruptcy petition.⁸ There is no evidence of a plan to resolve these delinquent taxes.

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 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, administrative judges apply the guidelines 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

⁵ GE 2; Response to SOR.

⁶ Response to SOR.

⁷ Response to SOR; GE 7; AE B .

⁸ Response to SOR; GE 2; GE 7.

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.”

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 the 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 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 EO 10865 provides that adverse 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 under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's two bankruptcy filings and delinquent state taxes raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁹

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 demonstrated that both bankruptcies were discharged; however, she provided no evidence that she has resolved the state tax debts. More importantly, she did not provide any evidence to show that the circumstances leading to her recent bankruptcy are unlikely to recur or to show financial responsibility. Accordingly, AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances largely beyond her control and (2) Applicant acted responsibly under the circumstances.¹⁰ Because the business failures hindered

⁹ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

¹⁰ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

Applicant's ability to address her delinquent debts, they constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.¹¹ Applicant made payments in accordance with two bankruptcy plans, and both bankruptcies were discharged. Although she is not required to have satisfied all of her delinquent debts to demonstrate financial responsibility, there is no evidence that she has developed a plan to resolve the delinquent taxes or taken steps towards resolution. Given Applicant's two discharged bankruptcies, AG ¶ 20(b) partially applies.

There is neither record evidence of credit counseling nor record evidence, such as a monthly budget, to conclude that there are clear indications that Applicant's financial problems are under control. Given her recent bankruptcy, Applicant has failed to demonstrate that she is financially responsible. Therefore, AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹² Applicant provided documentation that her two bankruptcies were discharged following payments pursuant to a bankruptcy plan. She has not made good-faith efforts as to her delinquent tax debts. Thus, AG ¶ 20(d) only partially applies.

To the extent Applicant disputes the delinquent tax debts (SOR ¶ 1.c.), she has provided no documentation to substantiate her dispute. Her security clearance application states that she resided in State #1, and her bankruptcy petition lists her delinquent taxes owed to State #1. She has not established a reasonable basis for her claim that she is not liable for the alleged delinquent taxes. Thus, AG ¶ 20(e) does not apply.

Although there is no requirement that Applicant satisfy all of her delinquent debts, there is no evidence that she has developed and implemented a reasonable plan to resolve her delinquent taxes. Given her history of financial difficulties, Applicant has not demonstrated that she is financially responsible and able to meet her current monthly financial obligations. Thus, I find that financial considerations security concerns remain.

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):

¹¹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

¹² See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010)(Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment.).

(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 and the factors in AG ¶ 2(c) in this whole-person analysis.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent state taxes. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

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.b.:	For Applicant
Subparagraph 1.c.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge