



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



In the matter of:)
)
) ISCR Case No. 15-05060
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: Gabriel Pene, Esq.

09/08/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 19, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 31, 2016, and elected to have the case decided on the written record in lieu of a hearing. On April 25, 2016, Applicant changed her request to a hearing before an administrative judge.

The case was assigned to me on July 28, 2016. The hearing was scheduled and continued twice at Applicant's request. The hearing was convened as rescheduled on June 30, 2017. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted AE M, which was admitted without objection. The hearing transcript (Tr.) was received on July 11, 2017.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. She has worked for her current employer since 2005. She has a bachelor's degree, which was awarded in 1989. She also attended post-graduate school without earning another degree. She has been divorced since 2006. She has three children, ages 21, 18, and 15.¹

Applicant has a history of financial problems, including delinquent debts, unpaid taxes, a defaulted student loan, and a foreclosed home. She attributed her financial problems primarily to her divorce and raising three children as a single mother without significant child support from her ex-husband. She reported the foreclosure to her security officer in 2012. She reported her unpaid taxes, defaulted student loan, and foreclosure on her September 2014 Questionnaire for National Security Positions (SF 86).²

Applicant's tax problems go back at least to 2000. The IRS filed a \$30,432 tax lien against her in December 2013. She had additional taxes owed in several years because the IRS assessed additional taxes. She has had several installment agreements with the IRS. Her 2005 income tax refund was withheld and used to pay back taxes from 2000 and 2001. The IRS later reassessed her 2005 taxes and determined she owed an additional \$5,982. Her 2005 taxes were paid in 2009 by payments and withholding her refund for tax year 2008. Her 2006 income taxes were paid in 2013. She received a \$5,173 refund for tax year 2007. The IRS later reassessed her 2007 taxes and determined she owed an additional \$6,392. She paid the IRS \$450 per month from February 2014 through January 2015, except her October 2014 payment was dishonored. She made \$250 payments in March and April 2015. She has been paying \$250 per month since July 2015. Her 2007 income taxes were paid in 2016.³

Applicant did not file her 2009 income tax return until February 2011, but she was due a refund. She did not file her 2010 return until March 2013. Her 2010 taxes were paid in 2016. She did not file her 2011 income tax return until March 2013. Her \$250 monthly payments are going toward this tax year. The balance with interest and penalties as of August 2017 was \$4,551.⁴

¹ Tr. at 14, 17, 54-55; GE 1, 2.

² Tr. at 14-19, 30, 33-36; Applicant's response to SOR; GE 1-6. The SOR did not allege the foreclosure. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

³ Tr. at 14-16, 25-26, 39-40; Applicant's response to SOR; GE 1, 2, 4-6; AE H, M.

⁴ AE M.

Applicant owes \$10,862 with penalties and interest for tax year 2012. Her refund for tax year 2013 was transferred to pay her 2007 taxes. Her adjusted gross income for 2014 was \$158,853. Her \$666 refund for 2014 was transferred to pay her 2007 taxes.⁵

Applicant obtained a \$10,186 student loan at 9% interest in December 1993. She either did not pay the loan or made minimal payments for years. In April 2014, her wages were garnished to pay the loan, which had increased to \$48,061. The garnishment was lifted after several months as Applicant made voluntary payments. She was able to place the loan in forbearance. The loan is no longer considered in default, but it continued to accrue interest. The June 2016 credit report listed the balance on the loan as \$45,694. The balance had increased to \$50,812 on the June 2017 credit report. Applicant stated that she was scheduled to resume making payments in June 2017.⁶

The SOR alleges the federal tax lien (SOR ¶ 1.a); the defaulted student loan (SOR ¶ 1.b); a \$4,582 defaulted loan from the university she attended in 2010 and 2011 (SOR ¶ 1.d); seven medical debts totaling \$927 (SOR ¶¶ 1.e and 1.g-1.i); and two miscellaneous delinquent debts totaling \$489 (SOR ¶¶ 1.c and 1.f). Applicant paid, settled, or otherwise resolved all of the debts with the exception of her federal taxes and the defaulted student loan discussed above.⁷

Applicant stated that her finances are better. Her current annual salary is \$136,000. Her ex-husband has been paying child support for more than two years. She received assistance with her taxes, but no formal financial counseling. She was able to buy a house. She stated that all her present responsibilities are paid on time. She is current on her mortgage and car loan.⁸

Applicant submitted a performance appraisal and a letter from her former supervisor. The documents reflect that Applicant's job performance is excellent. She is praised for her reliability, dependability, trustworthiness, and honesty.⁹

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

⁵ AE M.

⁶ Tr. at 19-20, 36, 42-46; Applicant's response to SOR; GE 1-6; AE K.

⁷ Tr. at 20-24, 50-52; Applicant's response to SOR; GE 1, 4-6; AE A-G, I, J.

⁸ Tr. at 24-29, 48-49, 52-56; Applicant's response to SOR; GE 4-6.

⁹ AE K, L.

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 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 national security eligibility will be resolved in favor of the 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems including unpaid taxes and defaulted student loans. The evidence is sufficient to raise the above disqualifying conditions.

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed her financial problems primarily to her divorce and raising three children as a single mother without significant child support from her ex-husband. However, her two major issues, the defaulted student loan and her unpaid taxes, predate her separation and divorce. The remaining debts have been paid, settled, or otherwise resolved. Those debts are mitigated.

Compound interest has not been kind to Applicant. A \$10,186 student loan at 9% in December 1993 now has a balance of more than \$50,000 and increasing. Her unpaid taxes also come with interest and penalties. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See e.g. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant has been paying her taxes through installment agreements and withholding of her income tax refunds for several years. She also paid her student loan long enough to take it out of default before it went into forbearance status. Her tax debt has decreased, but her student loan has increased. She still owes the IRS more than \$15,000, and the balance on her student loan is more than \$50,000.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶¶ 20(b), 20(c), 20(d), and 20(g) are partially applicable, but they do not completely mitigate the judgment issues raised by Applicant's long-standing neglect of her student loan and her failure to comply with the tax laws. I find that financial considerations concerns remain despite the presence of some mitigation.

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(d):

(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 in my whole-person analysis. I also considered Applicant's favorable job performance, character evidence, and candor in reporting her financial problems to her security officer and in her SF 86. However, she shirked her tax responsibilities for years, and she allowed a \$10,186 student loan to grow to more than \$50,000.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.c-1.i:	For 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.

Edward W. Loughran
Administrative Judge