



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



In the matter of:)
)
) ISCR Case No. 15-07645
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2017

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 June 6, 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 October 10, 2016, and October 11, 2016, and requested a hearing before an administrative judge.

The case was assigned to me on May 12, 2017. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2017, scheduling the hearing for June 29, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified, but she did not submit documentary evidence. DOHA received the hearing transcript (Tr.) on July 10, 2017.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. She has worked for her current employer since October 2012. She attended college for a period without earning a degree. She is single with three adult children.¹

Applicant has a history of financial and tax problems. She had business problems and filed Chapter 13 bankruptcy cases in 2001 and 2002. The cases were dismissed in 2002 and 2003.²

Applicant's mother passed away without life insurance in 2010. Applicant spent about \$10,000 on her mother's funeral expenses. Her mother's death also affected her emotionally, and she was out of work for several months while she grieved and recovered. She also helped two of her children financially while they attended college.³

Applicant fell behind on her mortgage loan payments. She filed a Chapter 13 bankruptcy case in 2011 as a means of protecting her home from foreclosure and to obtain a mortgage loan modification. The case was dismissed in 2011 and refiled in 2012. Applicant received the mortgage loan modification. The second case was dismissed in 2013.⁴

Applicant filed her 2006 and 2008 federal income tax returns a year or more late. She admitted owing the IRS for multiple tax years, including 2006, 2008, 2009, and 2010. She stated that she had payment plans with the IRS, her income tax refunds were withheld, and the taxes owed for the oldest years have been paid. As of the date of the hearing, she had not filed her 2015 and 2016 federal income tax returns. She estimated that she owed \$7,000 to the IRS in 2016 when she established a \$250 to \$350 payment plan. She stopped the payment plan after a few months because she had medical expenses. She planned to file her 2015 and 2016 tax returns by October 2017.⁵

The SOR alleges Applicant's multiple Chapter 13 bankruptcy cases (SOR ¶¶ 1.a-1.e); that she did not file her 2006 and 2008 federal income tax returns as required (SOR ¶ 1.f); that she owed the IRS for tax years 2009, 2010, and 2013 (SOR ¶¶ 1.g-1.i); three medical debts totaling \$137 (SOR ¶¶ 1.l-1.n); \$5,115 owed for the deficiency on an auto loan after the car was repossessed (SOR ¶ 1.k); a \$4,488 defaulted student

¹ Tr. at 20-21, 45; GE 1, 2.

² Tr. at 19-20; Applicant's response to SOR; GE 2, 6-8.

³ Tr. at 16, 22-24; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 16-17; Applicant's response to SOR; GE 2, 9, 10.

⁵ Tr. at 30-37; Applicant's response to SOR; GE 2. The SOR alleged that Applicant did not file federal income tax returns for tax years 2006 and 2008, and that she owed for tax years 2009, 2010, and 2013. 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.

loan (SOR ¶ 1.q); two duplicate \$579 debts (SOR ¶¶ 1.o and 1.r); a \$100 city parking debt (SOR ¶ 1.s); and two miscellaneous delinquent debts totaling \$653 (SOR ¶¶ 1.j and 1.p).

Applicant is paying her student loan, and it is current. She denied knowledge of the three medical debts and the city parking debt. None of the debts are listed on the two most recent credit reports. She questioned the legitimacy of the \$451 “payday” loan alleged in SOR ¶ 1.j. She admitted to having loans with the company in the past, but she believed they were all paid. This debt is listed on all three credit reports. The remaining non-tax delinquent debts are established through Applicant’s admissions and credit reports.⁶

Applicant stated that her finances are better. She received financial counseling as a requirement of her bankruptcy case. She stated that all her current responsibilities are paid on time. Her mortgage loan is current, and her car loan is almost paid off.⁷

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.

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.”

⁶ Tr. at 37-44; Applicant’s response to SOR; GE 2-5.

⁷ Tr. at 20, 46-47, 51.

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 multiple bankruptcy petitions, late tax returns, unpaid taxes, a defaulted student loan, a repossessed vehicle, and other delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.o and 1.r allege duplicate accounts. SOR ¶ 1.r is concluded for Applicant.

SOR ¶¶ 1.g and 1.h allege that Applicant owes a specific amount to the IRS for tax years 2009 and 2010. The Government established through Applicant's admissions that she owed the IRS for tax years 2009 and 2010, but the amount owed was not established. The amounts owed in those allegations are found for Applicant. The remaining language that Applicant owed the IRS for those tax years remains. The Government did not establish that Applicant owes the IRS for tax year 2013 as alleged in SOR ¶ 1.b. That allegation is concluded for Applicant.

The three medical debts that total less than \$140 (SOR ¶¶ 1.l through 1.n) do not generate security concerns. SOR ¶¶ 1.l through 1.n are concluded for Applicant.

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 stated the Chapter 13 bankruptcy cases in 2001 and 2002 resulted from business problems. Those cases have no current security significance and are mitigated. She attributed her recent financial problems to paying her mother's funeral expenses and her unemployment while she grieved and recovered. She filed a Chapter 13 bankruptcy case in 2011 as a means of protecting her home from foreclosure and to obtain a mortgage loan modification. She received the mortgage loan modification, and the case was dismissed. Applicant's Chapter 13 cases do not have any independent security significance outside of her delinquent debts, which are already alleged. Her bankruptcy cases are mitigated.

Applicant's tax issues predate her mother's death and are ongoing. She filed her 2006 and 2008 federal income tax returns late, and she owes the IRS several thousand dollars. Her 2006 and 2008 late filings would be mitigated if she had learned from the experience, which she has not because her 2015 tax return has not been filed. 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).

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 or that she made a good-faith effort to pay her debts. His financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(g) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. AG ¶¶ 20(d) and 20(e) are only applicable to the student loan, which is being paid, and the disputed city parking debt. 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.

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.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraphs 1.l-1.n:	For Applicant
Subparagraphs 1.o-1.p:	Against Applicant
Subparagraphs 1.q-1.s:	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