



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08649
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: Sterling L. DeRamus, Esq.

11/13/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by her financial situation. She also did not mitigate concerns raised by her dishonesty during the security clearance process. Notably, Applicant deliberately falsified her security clearance application by failing to report over \$50,000 in judgments and liens for unpaid federal income taxes. Clearance is denied.

Statement of the Case

On June 10, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations and personal conduct guidelines. Applicant answered the SOR and requested a hearing.

The hearing was originally scheduled for May 25, 2017. At Applicant's request, the hearing was rescheduled for July 27, 2017, to allow her time to gather documents, prepare for the hearing, and retain counsel. The hearing was held on the later date. (Appellate Exhibits I – III.)

At the hearing, Applicant and her spouse testified. Department Counsel offered Exhibits 1 – 8. Applicant offered Exhibits A – G and Attachments A – C, which were

originally submitted with her Answer. (Appellate Exhibits IV and V.) Without objection, I granted Applicant's request to keep the record open to allow her to submit additional evidence post-hearing. She timely submitted Exhibits H – M. (Appellate Exhibit VI.) All exhibits were admitted into the record without objection. The hearing transcript was received on August 4, 2017, and the record closed on August 18, 2017.

On August 30, 2017, and September 1, 2017, Applicant submitted additional evidence for the record. Without objection, these additional matters were admitted as Exhibits N and O. (Appellate Exhibit VII.)

Findings of Fact

Applicant, 47, is married with two children. For the past 20-plus years, she has been employed full time as a federal contractor, primarily working for U.S. Government (USG) Agency A. She has held a security clearance in connection with this job.¹

In addition to her full-time job, Applicant has worked part-time for other federal contractors. From 2008 to 2012, Applicant worked part-time as a security escort. She was terminated by her employer after her building access was restricted by USG Agency B due to "credit issues."² Since 2014, a different federal contractor has employed Applicant as security escort. Both, Applicant's full-time and part-time positions, require that she remain eligible for a security clearance.³

Applicant's financial problems go back several years. She attributes her financial problems to being the sole or primary breadwinner in her family, as her husband has experienced long periods of unemployment. He has been with his current employer for the past four years, earning between \$50,000 and \$60,000 annually.⁴

Applicant's federal income tax return for 2008 reflects an adjusted gross income (AGI) of over \$180,000, with \$70,000 of that income coming from a 401(k) distribution. Applicant used the money from the early 401(k) withdrawal to pay debts, including delinquencies she had accrued. She did not realize the tax consequences from the early withdrawal from her retirement account, and owes over \$20,000 in past-due federal taxes for the 2008 tax year.⁵ No documentary evidence was provided reflecting what, if any, steps Applicant has taken to resolve her 2008 federal tax debt.

Applicant's 2009 and 2010 federal income tax returns reflect an adjusted gross income (AGI) of \$85,700 and \$79,000, respectively. The returns also reflect that Applicant

¹ Transcript (Tr.) 15-20; Exhibit (Exh.) 1.

² Exh. 2 at 1-2.

³ Tr. 16-17.

⁴ Tr. 18-19, 56-62.

⁵ Tr. 41-43, 46-47, 52-53; Exh. D.

did not deduct a sufficient amount from her salary to pay her taxes and owed \$9,200 for 2009 and \$6,850 for 2010.

Applicant's 2014 tax return reflects that she and her husband had a combined AGI of \$95,500. Her husband is classified as an independent contractor at his job and did not make quarterly estimated tax payments or set aside a sufficient amount to pay taxes. Applicant and her husband listed on their 2014 federal income tax return that they owed over \$10,000 in federal income taxes.

Applicant claims she did not have the money to pay her taxes, but in April 2014 she went on vacation to Mexico. As of August 2017, Applicant owes over \$30,000 in past-due federal income taxes for tax years 2009, 2010, and 2014. She also owes her state back taxes totaling over \$22,000.⁶

After the SOR was issued, Applicant entered into successive installment agreements with the IRS to pay \$422 every month to satisfy her \$30,000 federal tax debt for tax years 2009, 2010, and 2014. The first installment agreement reflects that Applicant was to start making the monthly installment payments in late September 2017, while the second agreement reflects that the payments were to begin in late October 2017. Applicant similarly entered into an agreement with her state to pay \$468 a month for 60 months to resolve her delinquent state taxes. The first of Applicant's \$468 payments to the state was due in April 2017.⁷

Applicant did not submit documentation to confirm she made any of the required tax payments, either to the IRS or state tax authority. She did, however, submit documentation reflecting that a month after her security clearance hearing, she signed paperwork to have the federal tax payments automatically deducted from her salary. She also authorized her employer to deduct the state tax payments from her pay. Her employer and program manager are willing to monitor her compliance with the tax agreements and if she ever stopped the automatic payroll deductions, her employment would be terminated and the appropriate Government security agency would be notified.⁸

Applicant's unpaid federal and state tax debts total over \$70,000. They are secured through judgments and liens entered against Applicant in February 2012.⁹ They are referenced at SOR 1.d – 1.f.

In July 2014, Applicant submitted a security clearance application. In the section 26, Applicant was asked a number of questions about her financial record. Specifically, Applicant was asked whether she had any delinquent accounts, including delinquent federal debt. She was also asked about judgements and liens placed against her property

⁶ Tr. 32-41, 47-49, 56-59; Exh. 1 at 31; Exh. A, C, E, F, G, O.

⁷ Exh. A, C, O, I.

⁸ Exh. K, N, O.

⁹ Exh. 6 – 8. The record is silent as to whether Applicant reported this information to her facility security officer. She did not report the tax liens and judgments on her July 2014 security clearance application.

for failing to pay taxes. Applicant did not report the \$50,000 in judgments and liens filed against her in February 2012 by the IRS for failing to pay her federal income taxes. She also did not report a state tax lien for over \$15,000 that had also been filed against her in February 2012.¹⁰ Instead, Applicant reported consumer-related debt that she had already resolved and a previous state tax lien for \$6,500 that she was paying.¹¹

Applicant testified that she did not deliberately fail to report her federal tax debts on the security clearance application, because, in approximately 2009, the IRS had placed them in a non-collectible status. Applicant also noted that she was distracted at the time dealing with her brother's health issues and other personal family matters. She claims that her omission of the federal tax debts was simply a mistake.¹² In response to Department Counsel's questions, Applicant relayed that her wages were previously garnished to satisfy past-due federal taxes.¹³ Applicant's deliberate failure to disclose her federal tax debts and past failures to pay her income taxes are alleged at SOR 2.a and 1.g, respectively.

In approximately March 2016, Applicant was asked in an interrogatory about the status of the \$6,500 state tax lien that she reported on her security clearance application. She was also asked about a \$16,000 collection account for a car that Applicant had co-signed for a nephew and had been repossessed in approximately 2010. Applicant stated in her interrogatory response that she either paid or was paying these debts. She satisfied the \$6,500 state tax lien, and settled and paid the \$16,000 car debt and another collection account.¹⁴ These three debts are referenced at SOR 1.a – 1.c.

Applicant was also asked in the interrogatory about "any additional delinquent debts that you owe, to include any Federal or state tax debt."¹⁵ She did not report her back taxes totaling over \$70,000, nor the liens and judgments that had been filed against her in 2012 to secure the tax debts. A year after submitting her interrogatory response, which Applicant signed and swore to under oath as being true and correct to the best of her knowledge and belief, she entered into an installment agreement to resolve over \$22,000 in back taxes owed to her state. Two months later, she entered into the first of

¹⁰ The record is silent as to whether Applicant reported this information to her facility security officer or employer. She did not report the tax liens and judgments on her July 2014 security clearance application.

¹¹ Exh. 1. The SOR incorrectly alleges that Applicant did not disclose the \$6,500 state tax debt. The allegation was amended to strike this portion of SOR 2.a.

¹² Tr. 44-45, 49-52.

¹³ Tr. 50.

¹⁴ Tr. 24-32; Attachments A, B; Exh. 3; Exh. B. Applicant did not report the 2010 car repossession on her July 2014 security clearance application. She was specifically asked on the application to report such information. (Exhibit 1 at 43). Applicant's failure to report the repossession and the \$17,000 state tax lien entered against her in 2012 were not alleged in the SOR. This information will only be considered for the limited purpose of assessing mitigation, veracity, and conducting a whole-person review of the case.

¹⁵ Exh. 3 at 4.

her installment agreements with the IRS to resolve the \$30,000 in past-due federal taxes for tax years 2009, 2010, and 2014.¹⁶

As of the hearing, Applicant was in the process of refinancing her home and planned to take all the equity out of her home. She submitted documentation showing that she expected to receive about \$100,000 from the refinance. The lender is requiring her to use about \$70,000 of that total to pay off her consumer-related debt appearing on her credit report. Applicant promised to use the remaining \$30,000 to pay off or pay down her tax debts. The refinance was purportedly completed in mid-September 2017.¹⁷ No evidence was submitted showing that Applicant paid down or paid off any of her tax debts.

Applicant has refinanced her mortgage to pay off debts in the past. In 2005, she took out about \$40,000 in equity and used the money to satisfy debts she had at the time. In 2014, she was able to secure a refinance that allowed her to bring her mortgage account current.¹⁸

Applicant's refinance paperwork reflects that her monthly mortgage payments will increase from \$1,250 to over \$1,800 (including, taxes and insurance).¹⁹ A personal financial statement that Applicant submitted in March 2016 reflects that, after paying recurring monthly expenses and debts, her family had little over \$700 left over each month. The monthly expenses and debt payments listed on the PFS does not include the \$880 monthly installment payments, which Applicant recently agree to pay to resolve her longstanding tax debts. No bank savings are reported on the PFS.²⁰ No evidence of financial counseling was submitted.

Applicant submitted numerous reference letters, including from the president of her company. The collective opinion reflected in these letters is that Applicant is hard working, reliable, and trustworthy. She is active in her community through her church.²¹

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 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 National Security Adjudicative Guidelines (AG)

¹⁶ Exh. 3; A; C; O; I. Applicant's failure to report the federal and state tax debts in her interrogatory response was not alleged in the SOR and again will only be used for limited non-disqualifying purposes. See *infra* n. 14 and 22. Applicant's hearing was initially scheduled for May 25, 2017 – a month before she entered into the first installment agreement with the IRS to resolve her back taxes for 2009, 2010, and 2014.

¹⁷ Tr. 21-23, 43; Exh. J; Appellate Exhibit VI (counsel's August 18, 2017 email).

¹⁸ Tr. 43; Exh. J; Appellate Exhibit VI (counsel's August 18, 2017 email).

¹⁹ Tr. 21; Exhibit 2 at 2 (summary of April 27, 2015 security clearance interview).

²⁰ Exh. 3 at 8.

²¹ Exh. K – M.

implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.²²

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). *See also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

²² However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

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. 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 an 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.

Analysis

Guideline F, Financial Considerations

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. (AG ¶ 18.)

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information.²³

In assessing Applicant's case, I considered all pertinent disqualifying and mitigating conditions, including the following:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts . . . ;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;

AG ¶ 19(f): failure to . . . pay annual Federal, state, or local income tax as required;

AG ¶ 20(a): the behavior happened so long ago . . . 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;

²³ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

A security clearance adjudication is not a debt collection process. Instead, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security obligations.²⁴ Moreover, the resolution of past financial issues alone without evidence of true reform and rehabilitation is of limited probative value in the security clearance context.²⁵

Additionally, an applicant who fails to timely file or pay his or her taxes, a basic and fundamental financial obligation of all citizens, bears a heavy burden in mitigating the financial considerations security concern.²⁶ An administrative judge should closely examine the circumstances giving rise to an applicant's tax-related issues and his or her response to it. Furthermore, an applicant's claim of financial reform must be weighed against the overriding concerns about the individual's lack of judgment and history of not abiding by rules and regulations in failing to timely file or pay their taxes.²⁷

Here, Applicant presented some evidence in mitigation. Namely, she resolved some of the non-tax related consumer debt listed in the SOR and agreed to installment agreements to resolve some of her back taxes. Also, her financial situation was impacted by certain matters largely beyond her control. Specifically, her husband's unemployment and underemployment, as well as his failure to set aside a sufficient amount to pay his share of the 2014 taxes.

²⁴ See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

²⁵ Compare, ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (despite the presence of unresolved debt, notably, a second mortgage loan tied to a property that had been foreclosed, Board upheld grant because clear evidence of reform and rehabilitation), *with*, ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant's filing of overdue tax returns alone insufficient to mitigate security concerns, where no extenuating circumstances to explain the late tax filing or evidence of financial reform).

²⁶ See *generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues).

²⁷ ISCR Case No. 14-05794 (App. Bd. July 7, 2016); ISCR Case No. 14-00221 (App. Bd. June 29, 2016); ISCR Case No. 15-01031 (App. Bd. June 15, 2016); ISCR Case No. 12-09545 (App. Bd. Dec. 21, 2015).

However, Applicant did not meet her burden of proof and persuasion. She has repeatedly disregarded her obligation to pay her taxes. Instead, she has placed her personal priorities, including leisure travel, over her lawful obligation to pay her taxes. She continued to disregard her financial obligations even after losing one cleared contracting position in 2012 due to credit issues. She only took action to resolve her taxes after receiving the SOR. Her belated action to resolve her longstanding tax debt was not done in good faith and her financial situation is far from under control.

Applicant has received substantial cash infusions over the past few years and each time used the money to pay off a large amount of consumer debt that she had accrued. She did not use the additional funds to pay off or pay down her back taxes. Currently, Applicant owes over \$70,000 in past-due federal and state taxes. Her promise to now use the money from the refinance of her home to pay off some of her sizeable tax debt is insufficient to mitigate a track record of reckless spending and the heightened security concerns raised by her repeated failures to pay her taxes.

Accordingly, even though Applicant's employer is willing to monitor her compliance with her installment agreements, Applicant failed to show that similar financial issues will not recur. The choices Applicant has made that contributed to her current financial situation raise unmitigated questions about her judgment, reliability, and trustworthiness. In reaching this conclusion, I also considered Applicant's dishonesty about her financial situation during the security clearance process.

AG ¶¶ 19(a) – 19(c), 19(e), and 19(f) apply. AG ¶¶ 20(b) and 20(g) partially apply, but are insufficient, even when considered with the other favorable evidence, to outweigh the security concerns at issue. Financial considerations security concerns remain.

Guideline E, Personal Conduct

The security clearance process relies on the honesty and candor of all applicants. Dishonesty during the security clearance process raises a serious security concern, which is explained at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.²⁸

In assessing Applicant's case, I considered all applicable disqualifying and mitigating conditions, including the following:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement,

²⁸ See *also* SEAD-4, Appendix A, ¶ 2(i) ("the adjudicative process is predicated upon individuals providing relevant information pertaining to their background and character for use in investigating and adjudicating their national security eligibility. Any incident of intentional material falsification . . . raises questions about an individual's judgment, reliability, and trustworthiness.")

or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the . . . falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

Applicant deliberately failed to report her federal tax debts on her 2014 security clearance application. These federal tax debts, which totaled over \$50,000 at the time, were secured by liens and judgments that were entered against her just two years earlier. Instead of revealing this material adverse information, Applicant only disclosed those debts, including a previous relatively minor state tax lien, which she had already paid or was in the process of paying. This shows a calculated intent on her part to misrepresent her financial situation to the Government. Her testimony to the contrary was unconvincing. AG ¶ 16(a) applies.

After deliberating falsifying her security clearance application, Applicant continued to misrepresent and obfuscate her financial situation. Notably, she deliberately failed to reveal her state and federal tax debts totaling over \$70,000 in response to a recent financial interrogatory. She continues to deny her wrongdoing. None of the mitigating conditions apply. Applicant's lack of candor during the security clearance process raises serious questions and concerns about her continued suitability for a security clearance.

Whole-Person Concept

In addition to the specific adjudicative guidelines at issue, a judge must also take into account factors that are applicable to all cases. These factors are grouped together under the all-encompassing umbrella of the whole-person concept.²⁹ I hereby incorporate my above analysis and highlight some additional whole-person matters.

Applicant has worked as a cleared federal contractor for over 20 years. By all accounts, she is a good employee. However, this and the other favorable record evidence are insufficient to mitigate the heightened security concerns raised by Applicant's history of failing to pay her taxes and dishonesty during the security clearance process. Overall, the record evidence leaves me with serious doubts about Applicant's eligibility for continued access to classified information.³⁰

²⁹ See AG ¶ 2. See also SEAD-4, ¶ E.4; Directive, ¶ 6.3.

³⁰ In light of the post-hearing evidence, I considered the exceptions listed in SEAD-4, Appendix C. See SEAD-4, ¶ E.3 and AG ¶ 2(h). However, in light of the serious security concerns raised by Applicant's conduct and circumstances, none of these exceptions are warranted.

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 (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Subparagraphs 1.d – 1.g: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

In light of the record evidence, it is not clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge