



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



In the matter of:

ISCR Case No. 16-01932

Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

06/18/2018

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$293,000 in delinquent debt over the past 20 years, most of which she has been unable or unwilling to repay. Resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is denied.

History of Case

On November 13, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 12, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on December 29, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 24, 2017. DOHA issued a Notice of Hearing on July 10, 2017, setting the hearing for July 25, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified but offered no documents into evidence. I granted Applicant's request to leave the record open until August 25, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on August 1, 2017. On August 23, 2017, Applicant submitted an exhibit containing five documents, which was marked Applicant Exhibit (AE) A and admitted without objection.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is employed as a receptionist by a U.S. defense contractor, and is applying for a security clearance in connection with that work. She admitted the allegations in SOR ¶¶ 1.b, 1.c, and 1.f. She denied the allegations in SOR ¶¶ 1.a, 1.d, and 1.e. (Answer.) Applicant's admissions are incorporated in the findings below.

Applicant is 50 years old. She and her ex-husband divorced in 2010, after 20 years of marriage. They have four adult children. She incurred substantial student loan debts while attending classes to become certified in court reporting from 1993 to 1998. She worked, part time, as a self-employed court reporter from 1998 until 2012. She has no military or Federal government service, and this is her first application for a security clearance. She has worked in her current position, as a subcontractor and direct employee, since October 2012. (GE 1; Tr. 30-33.)

As alleged in SOR ¶ 1.a, the U.S. Internal Revenue Service (IRS) entered a tax lien against Applicant in 2015 for an amount in excess of \$235,000. That this debt remains unpaid is not disputed. Applicant explained that the lien arose from about six years' worth of delinquent taxes that she and her ex-husband, a self-employed commercial fisherman, failed to pay during the late 1990s and early 2000s. She claimed that they had entered into an offer in compromise (OIC) agreement with the IRS sometime in 2007. The agreement required a lump-sum payment of some \$30,000 to

\$50,000, which they made, and that they timely file Federal returns and pay their taxes for the succeeding five years. Applicant provided a letter from her Certified Public Accountant (CPA) stating that she had promptly filed and paid her Federal taxes since she became his client in 2009. However, she claimed that her ex-husband had not complied with the OIC requirements to timely file and pay his taxes during those years, thereby defaulting on the OIC agreement and causing the IRS to file the lien in 2015. She provided no documentation corroborating that the OIC existed, or supporting her assertion that the IRS does not hold her responsible for this marital debt despite having filed the tax lien against her and confiscated her subsequent refunds. After researching the issue, her CPA provided the following advice to her on December 1, 2015:

I don't believe you can do much with the IRS, since you were married for the years the taxes are due. I believe you have recourse against [ex-husband]. You should consult an attorney and proceed from there. One other thought was that you could write a letter to the IRS stating the facts that you have filed and paid all the required returns and that at the time of your divorce the back taxes were covered under a current OIC. And since that time, due to his negligence/non filing the OIC has been rejected. This might keep them from coming after you to collect the liens.

Applicant offered no evidence that she either sought recourse against her ex-husband or corresponded with the IRS concerning the tax lien, as advised by her CPA. The lien remains on file and in effect, and since 2014, the IRS has been confiscating her annual income tax refunds to apply toward this tax debt. She reduced her tax withholding for 2016 to reduce her annual forfeited refund to around \$300, from around \$1,200 each for the 2014 and 2015 tax years. This substantial Federal income tax debt remains unresolved. (GE 4; GE 5; GE 6; AE A; Tr. 24-28, 40-47, 49-50.)

SOR ¶¶ 1.b and 1.c allege two delinquent Federal student loan accounts, which total more than \$58,000 and have been placed for collection. Applicant admitted these allegations, and said she entered into the loans to pay for her court-reporter schooling in the 1990s. The original loan amounts totaled \$54,701. Applicant testified that she had contacted the collection agent by telephone and the loans were placed in forbearance until sometime in early 2018. However, she also testified that her last payment toward these loans had been in 2007. This would preclude her having completed rehabilitation of those loans from their defaulted status, as required to obtain deferment or forbearance of required payments. In the absence of any documentary evidence supporting her claim that the loans are no longer in default, her explanation lacks credibility. These significant Federal debts remain unresolved. (GE 2; GE 4; GE 6; Tr. 29, 35-38.)

SOR ¶¶ 1.d and 1.e allege two delinquent credit card accounts, which Applicant denied on the basis that she had paid them. Record evidence supports her claim that she repaid the \$397 account (¶ 1.d) in February 2016 after it had been charged off by

the creditor.¹ However, all record documentary evidence contradicts Applicant's claim to have repaid the delinquent \$337 credit card account alleged in SOR ¶ 1.e. This account remains unresolved, and Applicant did not provide post-hearing evidence concerning its status as she said she would. (GE 2; GE 4; GE 6; Tr. 38-39; 50; AE A.)

Applicant admitted that in 2007 she fraudulently opened a credit card account and incurred about \$5,000 in charges under her former father-in-law's name, as alleged in SOR ¶ 1.f. She said that she did this because her ex-husband became upset and took control of their marital funds when she told him she wanted a divorce, and she needed the credit to feed their children. After being confronted by a police officer investigating the matter, she agreed to repay her in-laws the \$5,000 and no formal criminal charges were filed against her. She said that she would get a statement from her former in-laws confirming that they had been repaid, but did not submit such evidence. (GE 1; GE 6; Tr. 28-30, 39-40; AE A.)

Applicant provided no evidence of financial counseling, other than working with her CPA to file her post-2008 income tax returns. She submitted no budget documents or other evidence from which to meaningfully evaluate her current or future solvency. She submitted an August 2017 Transunion credit report showing three open credit card accounts in good standing and no delinquencies; however, her unresolved accounts discussed above were all reflected on Equifax and/or Experian credit reports. (AE A; GE 2; GE 4.)

Applicant submitted good-character letters from two friends who have known her well for many years. Each writer described her high opinions of Applicant's character, integrity, reliability, trustworthiness, motivation, and ability to properly deal with sensitive information. (AE A.) Applicant's testimony and demeanor during her hearing were sincere, open, and forthright.

Policies

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

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. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number

¹ Applicant told the investigator, during her January 27, 2016 subject interview, that she could not recall any specifics regarding this account, but would investigate and pay any delinquent amount. She opened the account in December 2012, had exceeded the \$300 account limit, and had last made a payment toward the delinquent balance in July 2014. (GE 2; GE 4; GE 6.)

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 establishes that an “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.”

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

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

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 personal 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.

AG ¶ 19 describes five conditions that could raise security concerns and may be disqualifying 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
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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 been employed in her current position since October 2012. She failed to document payments toward more than \$293,000 in delinquent debts she owes to the Federal government for unpaid income taxes and student loans. She recently repaid one charged-off \$397 credit card debt. However, she failed to provide the documentation she said would corroborate her claims to have repaid more than \$5,300 in other credit card debt, most of which she incurred by committing identity fraud. Applicant's serious financial issues date back over the past 20 years, and largely continue without an evident prospect of resolution. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, 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 continues to owe more than \$293,000 in unpaid Federal income tax and student loan debt, which she cannot afford to pay. Her credit card fraud occurred under unique circumstances involving her separation and divorce, and she is unlikely to resort to such behavior again. Only those concerns arising under SOR ¶ 1.f were mitigated under AG ¶ 20(a).

Most of Applicant's delinquent debt arose before her divorce, which was not a condition largely beyond her control since she initiated it. She failed to demonstrate responsible action to resolve either her income tax or her student loan delinquencies during the past six years of employment in her current position. Her only payments toward the large tax lien have been involuntary forfeitures of subsequent refunds, which she has taken steps to minimize in the future. Accordingly, she failed to establish mitigation under AG ¶¶ 20(b) or (g).

Applicant repaid the credit card debt alleged in SOR ¶ 1.d in February 2016, which remains part of her history of financial issues, but standing alone was substantially mitigated under AG ¶ 20(d). She provided no evidence of financial counseling, to indicate that her significant Federal indebtedness is being resolved, or to substantiate a reasonable basis to dispute her responsibility for her remaining delinquent debts. Accordingly, mitigation was not established under AG ¶¶ 20 (c) or (e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 a mature adult, who is accountable for her choices that resulted in substantial debt that she has been unable or unwilling to repay. She continues to owe more than \$293,000 in delinquent debt that she accumulated and failed to resolve over the past twenty years. Her friends provided strong character references. However, there is insufficient evidence of rehabilitation or compliance with debt-resolution agreements. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance.

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
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge