



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



In the matter of:

ISCR Case No. 17-00560

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

March 6, 2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant has a long history of unresolved tax debts and delinquent accounts. Additionally Applicant falsified her 2016 e-QIP. Resulting security concerns were not mitigated. Based upon a review of the pleadings, testimony, and exhibits, national security eligibility is denied.

History of Case

On January 27, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 11, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines F: Financial Considerations and E: Personal Conduct. 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 July 6, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 14, 2017. DOHA issued a Notice of Hearing on August 14, 2017, setting the hearing for September 28, 2017, per Applicant's request. The hearing proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 14 into evidence, and they were admitted without objection. Applicant testified and presented six Applicant Exhibits (AE), marked AE A through AE F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 13, 2017. The record was left open for the submission of additional documentation. On October 19, 2017, Applicant submitted exhibits, which I marked as AE G through M. Department Counsel had no objections to AE G through M, and they were admitted.

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 admitted the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 2.b. She denied SOR ¶¶ 1.d and 2.a. (Answer.) Applicant's admissions are incorporated in the findings below.

Applicant is 50 years old. She has been employed with a Government contractor for 15 years. She earned a bachelor's degree in 2012. She served in the Navy from 1986 to 1989, and received an honorable discharge. She achieved the rate of E-3. She has been divorced twice; in 1993 and 2006. She has three children, ages 27, 17, and 15. She also has custody of her 8-year-old granddaughter. She attributed her delinquent debt to her divorce and her ex-husband's failed contracting business. She also testified that, since her second divorce, she has had difficulties resolving her debts because she is a single mother on a limited income. (GE 1; Tr. 25-31, 49-50, 59.)

Applicant filed Chapter 13 bankruptcy in September 2016. She reported liabilities of \$129,970, with assets totaling less than \$23,497. Her debts listed in the Chapter 13 include a vehicle that was voluntarily repossessed; student loans; multiple collection accounts; delinquent credit card accounts; and tax debt. She chose to file Chapter 13 because she wanted to repay what she owed. She pays \$1,297 monthly to the trustee, who then distributes the funds to the creditors. Her payments began in May 2017 and

are scheduled to continue for five years. She is current on her payments to the trustee, but she admitted to missing one payment. (GE 8; GE 9; AE A; AE B; Tr. 43-46, 53-55, 88.)

Applicant's wages were garnished by her state taxation authority in May 2015 in the amount of \$7,449 for unpaid taxes from 2012 and 2013. Applicant testified that she did not recall the reason for the garnishment. She claimed, "I've always filed my taxes every year." (Tr. 35.) However, she was going to school at the time and "probably didn't have the funding to pay it all at once." (Tr. 35.) She believed she made payment arrangements, but fell behind on them, resulting in the involuntary garnishment. The garnishment order was terminated in March 2016, after Applicant's debt was fully resolved. Zero balances for tax years 2012 and 2013 are reflected in documentation from her state. (AE J.) However, it also reflects Applicant currently owes \$1,249.45 to her state's taxation authority for tax years 2015 and 2016. (AE C; AE J; AE L; Tr. 34-37.)

Applicant's wages were garnished by her local sheriff's department in 2009 in the amount of \$3,328. This was for a judgment against her, although Applicant was unable to identify the original creditor. The garnishment was fully resolved after repayment in July 2010, as established in a statement provided into evidence. (AE D; AE E; Tr. 38-41.)

Applicant is indebted to the Internal Revenue Service (IRS) in the amount of \$6,194 for tax years 2009, and 2012 through 2015. (AE M.) She provided account transcripts that showed she often filed her Federal tax returns late, but that each year had been filed. As of October 2017, she owed: \$1,998.83 for 2015; \$400.16 for 2014; \$1,345.55 for 2013; \$655.94 for 2012; and \$566 for 2009. (AE M.) Applicant explained that she usually owes taxes when she files her income tax returns. She made installment agreements with the IRS and would try to make payments when she could, but often missed those payments. (AE M; Tr. 87.) She has not sought advice from a tax professional on how to avoid this problem in the future. Her past-due taxes are included in her Chapter 13 plan. (GE 7; AE F; Tr. 41-43, 47.) Her documentation from the IRS reflects an additional debt of \$1,823.01 for tax year 2016. (AE K.)

Applicant testified she has participated in financial counseling twice. She completed an on-line financial course in September 2016 related to the bankruptcy petition requirements. (AE I; Tr. 62-63.) She had also completed another course "previously." (Tr. 62.) She intends to continue repaying her debts through the Chapter 13 bankruptcy. (Tr. 63.) She also intends to downsize, as her children grow up. (Tr. 66.) Her budget reflects she has little left over after her Chapter 13 payment and monthly bills are paid. (GE 7; Tr. 74-75.) She sometimes takes payday loans to help her make ends meet. (Tr. 86-87.)

On her January 27, 2016 e-QIP, Applicant responded "no" to the question in Section 26 - Financial Record, which asked if she had failed to file or pay Federal, state, or other taxes, as required by law. Applicant's answer was false. Additionally, she

denied having and failed to disclose any of her other delinquent debt on her e-QIP under Section 26. Applicant testified:

I was just going through my form, filling it out, and honestly as I was saying when we first opened, it's a lot for me right now and when I'm going through my form and I'm answering stuff, checking boxes, I either wasn't paying attention to the question or I was trying to just complete in a hurry is my honest answer. (Tr. 78.)

However, when she was interviewed in August 2016 by an agent of the Office of Personnel Management (OPM), she was given the opportunity to correct her e-QIP answers about her financial history, prior to being confronted about her delinquent debt. She did not disclose her debts to her investigator, before being confronted with the credit report that the agent shared with her. (Tr. 79.) She testified:

I knew that there was taxes, but I knew that I was taking care of my business, you know? That I was trying to find ways to pay whatever debts I had or any taxes. I've always been like on a payment plan, so I've never just not paid my taxes or not filed my taxes. So I was being honest. I've always filed and I've always paid. Maybe not up to date, but I paid, you know. (Tr. 80.)

Applicant presented one letter of recommendation from her supervisor. He noted that Applicant performs her job with integrity and conducts herself professionally. (AE G.) Applicant's performance reviews reflect she is a successful performer. (AE H.) She has completed web-based training courses required for her job. (AE H.)

Policies

When evaluating an applicant's 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 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 says 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 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; 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.

As alleged in the SOR, Applicant has a long history of not meeting her financial obligations. Her SOR-alleged debt extends as far back as 2009 and remains largely unresolved. While two of her delinquent accounts have been resolved involuntarily through garnishment, she has not resolved her Federal tax debt. Additionally, she has filed for Chapter 13 bankruptcy to resolve her Federal tax debt and other financial liabilities totaling 129,971. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted 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, 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; 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's financial problems are ongoing. She has a long history of delinquencies that continue to date. She has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed her recent delinquencies to her 2006 divorce and her status as a single mother. These may be circumstances beyond her control. However, she failed to establish that she acted reasonably or responsibly with respect to her debts in a timely manner while they were accruing. However, she has recently acted responsibly by filed for Chapter 13 bankruptcy, and has made payments under that plan. Partial mitigation under AG ¶ 20(b) has been established.

Applicant has completed the financial counseling required to file Chapter 13 bankruptcy and reported that she attended another course in the past. However, there are no clear indications that her financial counseling was effective or that her financial problems are being resolved or are under control. Her budget reflects she has little money left over after making her bankruptcy payments and paying her living expenses. Further, she continues to take pay-day loans to make ends meet when funds are short. While Applicant has successfully made payments on her Chapter 13 plan, she admitted to missing one payment. It is too soon to tell whether Applicant will be able to maintain the repayment plan for five years. Mitigation under AG ¶¶ 20(c) or (d) has not been established.

AG ¶ 20(g) is inapplicable to this case. Applicant failed to demonstrate compliance with any payment arrangements. Further, each year she continues to incur more tax debt. Until she changes her financial practices with respect to her income tax obligations, she will continue to have financial difficulties.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 information or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following to be applicable:

(a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware she was required to disclose her delinquent debt and unpaid tax obligations when she completed and certified the truth of her answers on her e-QIP. Her explanation to have rushed through the forms and missed the questions was not credible. She had completed the e-QIP for past clearances and knew she had to disclose financial delinquencies. There is sufficient evidence to raise this disqualifying condition under AG ¶ 16.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's personal conduct. I have considered the following potentially applicable mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

(d) the individual acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's efforts to correct her omissions were neither prompt nor done in good faith. She waited until she was confronted by the OPM agent with her credit report to disclose any of her delinquent debts. Applicant's omissions were deliberate attempts to conceal serious financial issues, and cast doubt on her reliability, trustworthiness, and good judgment. There is insufficient evidence to raise mitigation under AG ¶ 17(a).

Applicant failed to present evidence of mitigation under AG ¶¶ 17(c) or 17(d). She did not acknowledge intentionally deceiving the Government on her 2016 e-QIP, despite extensive knowledge of her delinquent taxes and other debts. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to occur. Further, she failed to take responsibility for her actions. She has not provided information in this record to show that she has met her burden of proof to mitigate her personal conduct.

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 to incur substantial debt and not repay it. She has not demonstrated a history of responsible action at this time. Her finances are not yet under control, despite beginning to manage her debts through the recent Chapter 13 bankruptcy petition. A determination cannot be made that financial problems are unlikely to continue and recur. Further, she was not forthright with the Government about her debts on her 2016 e-QIP. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against 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.

Jennifer Goldstein
Administrative Judge