



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



In the matter of:

ISCR Case No. 17-01832

Applicant for Security Clearance

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

January 29, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. She failed to timely file and pay her state taxes, or resolve her delinquent consumer debts. National security eligibility for access to classified information is denied.

Statement of the Case

On June 6, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing 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 (AG) effective within the DOD on September 1, 2006.

Applicant submitted her Answer to the SOR on August 8, 2017, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel

submitted the Government's File of Relevant Material (FORM) on August 25, 2017. Applicant received it on September 14, 2017. The Government's evidence is identified as Items 1 through 7. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period she was afforded. Items 1 through 7 are admitted into the record.¹ The case was assigned to me on January 17, 2018.

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² 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 implemented 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. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Findings of Fact

Applicant admitted SOR allegations 1.a through 1.i, with explanations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 44 years old. She was divorced from her former husband in November 2016. She earned a bachelor's degree in 2010. She has worked for a federal contractor since April 2015. (Item 3.)

As alleged in SOR ¶ 1.a, Applicant failed to timely file her annual state tax returns as required for tax years 2005 through 2010, and 2013. She admitted this allegation in her Answer, and explained, "the behavior was not handled responsibl[y] as I handed my spouse this responsibility." She disclosed her failure to file these state income taxes on her December 17, 2015 security clearance application. She indicated on that application

¹ Item 4 would normally be inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 2, 2017. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. However, Item 4 will be admitted for the limited purpose of consideration of any exculpatory information therein.

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

that she “had no valid justifiable excuse” for her failure to file. She produced no evidence to show that she has taken any actions to file these income tax returns. (Item 3.)

As alleged in SOR ¶ 1.b, Applicant was indebted to her state of residence on a tax lien entered against her in the approximate amount of \$6,535. This lien was filed in November 2013. (Item 5 at 1.) Applicant claimed she “entered into a pay back program.” (Answer.) The record contains no proof of payments or release of the lien. It is unresolved.

As alleged in SOR ¶ 1.c, Applicant was indebted to her state of residence on a tax lien entered against her in the approximate amount of \$697. This lien was filed in January 2015. (Item 5 at 2.) Applicant attributed this debt to her divorce and “trying to reestablish myself and payback my debts.” (Answer.) It is unresolved.

As alleged in SOR ¶ 1.d, Applicant was indebted to her state of residence on a tax lien entered against her in the approximate amount of \$369. This lien was filed in May 2016. (Item 5 at 3.) Applicant attributed this debt to her 2016 divorce. (Answer.) It is unresolved.

As alleged in SOR ¶ 1.e, Applicant was indebted to her state of residence on a tax lien entered against her in the approximate amount of \$519. This lien was filed in October 2016. (Item 5 at 4.) Applicant attributed this debt to her 2016 divorce. (Answer.) It is unresolved.

As alleged in SOR ¶ 1.f, Applicant was indebted to her state of residence on a tax lien entered against her in the approximate amount of \$2,528. This lien was filed in March 2017. (Item 5 at 5.) Applicant attributed this debt to her 2016 divorce. (Answer.) It is unresolved.

As alleged in SOR ¶ 1.g, Applicant was indebted on a past-due auto loan in the amount of \$36,313. Applicant asserted “it has been caught up” in her August 2017 Answer. Her most recent credit report, dated April 27, 2017, reflected this debt as having been opened in July 2016. It became delinquent in March 2017. Applicant produced no documentation, other than her bare averment, to establish she is current on this debt. It is unresolved. (Item 7 at 1.)

As alleged in SOR ¶ 1.h, Applicant was delinquent in the amount of \$1,582 on a student loan totaling \$33,697. Her monthly payments on this debt were to be \$197, but she stopped making payments in approximately September 2016. This debt is listed as “180 days past due” on her April 27, 2017 credit report. She indicated in her Answer that she intended to consolidate this debt. It is unresolved. (Answer; Item 7 at 2.)

As alleged in SOR ¶ 1.i, Applicant was indebted to a cellular service provider in the amount of \$1,183. Applicant explained that she has a current account with this provider and “was not aware of this balance. It’s an oversight.” (Answer.) However, she failed to submit documentation of any action taken to resolve this debt. This debt is unresolved. (Item 7 at 2.)

As alleged in SOR ¶ 1.j, Applicant was indebted on a charged-off “note loan” in the approximate amount of \$670. In her Answer, Applicant explained, “I will set up payment arrangements.” However, she failed to produce documentation showing any payments. This debt is unresolved. (Item 7.)

As alleged in SOR ¶ 1.k, Applicant was indebted on a returned check in the amount of \$72. Applicant indicated that she “will send payment by end of month (September 2017.)” She failed to submit documentation to show she followed through on that promise. It is unresolved. (Answer; Item 7 at 2.)

As alleged in SOR ¶ 1.l, Applicant was indebted on a charged-off account. Applicant indicated she “will pay [this] debt.” However, she failed to produce any documentation of any action she has taken to resolve this account. It is unresolved. (Answer; Item 7.)

Applicant did not document any financial counseling or provide budget information from which to predict her future solvency. She offered no evidence to support findings concerning her character or trustworthiness, the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. It is notable however, that while her state taxes were accruing, she took trips to a tropical foreign nation in 2010 and 2013. (Item 3.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 failed to timely file state taxes, as required, from 2005 through 2010, and 2013. As a result, four state tax liens totaling \$10,648 were filed against her in 2015, 2016, and 2017. She also incurred six other delinquent accounts totaling more than \$5,000, which appear to remain unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 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 was unable to file or pay state taxes in 2005 through 2010, and 2013. As a result, four state tax liens totaling \$10,648 were filed against her. She failed to document proof of payments to her state taxation authority. Additionally, she has six other delinquent accounts that remain unresolved. Her debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed some of her financial problems to her 2016 divorce, but her financial problems began in 2005, when she failed to file and pay her state income taxes. That is a circumstance that was within her control and she failed to articulate a logical explanation for her failure to file them. Further, the record lacks documentation to show she reasonably and responsibly addressed her delinquencies. Mitigation under AG ¶ 20(b) is not established.

Applicant provided no documentation of financial counseling. There is insufficient evidence to conclude that she is making a good-faith effort to repay her creditors because she did not provide credible evidence of payments on her state tax liens or consumer debts. The evidence does not establish mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not provide evidence of a reasonable basis to dispute any of her alleged delinquencies. AG ¶ 20(e) does not apply.

Applicant provided no evidence of arrangements with the state taxation authority to resolve her tax debt, other than her statements to that effect. Documentation of compliance with those arrangements is necessary. AG ¶ 20(g) does not fully mitigate the Government's concern.

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 the 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is 44 years old and recently divorced. She has been employed with a defense contractor since 2015, but has done little to address her delinquent debts that have been accruing since 2006. Applicant has not provided sufficient evidence about her overall financial stability to conclude further tax problems or financial delinquencies are unlikely. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against 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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge