



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



In the matter of:)
)
) ISCR Case No. 17-02313
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/19/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 3, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on September 28, 2017, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 18, 2018, scheduling the hearing for May 23, 2018. I convened the hearing as scheduled.

I appended to the record as Hearing Exhibits (HE) I and II the Government's discovery letter and exhibit list. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through H, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until June 20, 2018, for Applicant to submit additional documentation. Applicant timely provided additional evidence, which I marked as AE I through L and admitted in evidence without objection. I marked Department Counsel's email, in which she indicated no objection to Applicant's additional evidence, as HE III. DOHA received the hearing transcript (Tr.) on June 6, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. She is 45 years old. She graduated from high school in 1991, and she attended college sporadically in 2004 and 2006 but did not earn a degree. She married in 2001, divorced in 2015, and she has one minor child.¹

Applicant has worked for various defense contractors since age 24. She has worked for her current company since November 2014. She was first granted a DOD security clearance in 1998.²

The SOR alleges a \$24,596 judgment filed against Applicant in 2009 (SOR ¶ 1.a), six delinquent consumer debts totaling \$5,105 (SOR ¶¶ 1.b, 1.d, 1.g-1.i, 1.k), and four delinquent medical debts totaling \$860 (SOR ¶¶ 1.c, 1.e-1.f, 1.j). It also alleges \$23,164 in delinquent federal taxes for tax years 2005, 2006, and 2012 (SOR ¶¶ 1.l-1.n). Finally, it alleges that Applicant failed to timely file her federal income tax returns for tax years 2005 and 2007 through 2016, as well as her state income tax returns for tax years 2009 and 2014 (SOR ¶¶ 1.o-1.q). The debts are established by Applicant's admissions, credit reports from January 2015, March 2017, June 2017, September 2017, and May 2018, court records, and federal and state tax documentation. Applicant also disclosed some of her debts on her 2014 security clearance application (SCA) and discussed them in her 2017 response to interrogatories.³

Applicant attributes her delinquent debts, to include her taxes, and her untimely filing of her federal and state income tax returns, to the garnishment of her ex-husband's wages. It began around the same time as the birth of their child in 2006, and it continued up through 2012. She testified that the garnishment action reduced their household income from approximately \$140,000 to \$52,000 annually. She indicated that her ex-husband's wages were initially garnished by the Internal Revenue Service (IRS) at \$125 weekly, and once the IRS levy was lifted, his wages were garnished by the

¹ Response to the SOR; Tr. at 6-7, 9-10, 22-23, 27, 64; GE 1; AE F, I.

² Tr. at 5, 7, 64; GE 1, 2; AE F, I.

³ GE 1-5; AE E, F, G.

creditor in SOR ¶ 1.a, as further discussed below. In addition, she was unemployed from February to June 2010, May to June 2011, November to December 2012, and March to November 2014. She and her son were involved in a car accident in early 2011. She separated from her then-husband at around the end of 2012, and they divorced in 2015. She has not received any child support from her ex-husband. Finally, a lack of income during the periods in which she was employed contributed to her financial problems.⁴

SOR ¶ 1.a is for a \$24,596 judgment filed against Applicant in around 2009. The judgment is comprised of multiple loans and other obligations that both she and her ex-husband had with their credit union, to include the \$1,959 delinquent debt in SOR ¶ 1.k. She testified that after the garnishment of her ex-husband's wages began in 2006, she requested but the credit union denied a deferment of their loans. She believed the judgment was resolved through the garnishment action, and she did not learn that the judgment was still outstanding until the onset of the clearance process.⁵

Applicant intended to pay \$200 weekly towards the judgment, but she was unable to do so due to her lack of income. She made three payments of \$200 each, with her third payment occurring in early 2017. She then unsuccessfully attempted to settle the judgment. As of September 2017, the balance was \$11,252. She made two payments totaling \$800 in June 2018. She testified that she was still attempting to negotiate a settlement, she was also attempting to obtain money from her ex-husband through an ongoing child-support case, and she and her ex-husband were working with the creditor, to resolve to resolve the remainder of the judgment.⁶

SOR ¶ 1.b is for a \$2,444 charged-off debt for Applicant's car that was stolen in around October 2013. At the time it was stolen, she acknowledged that she may have owed around \$14,000 on the car loan, though the car was only worth \$4,000. She testified that her car insurance paid the creditor \$7,304, and her gap insurance paid the creditor \$1,900, which amounted to \$5,000 above the car's worth. As such, she disputed the outstanding balance of \$2,444, which she believed was for interest and penalties. The most recent credit report from May 2018 continues to report this debt. It reflects that the "[s]ubscriber reports dispute resolved = consumer disagrees." Applicant testified that she attempted to settle the balance but the creditor was only willing to do so for \$2,000, which she felt was unfair. She intended to continue to try to settle this debt.⁷

SOR ¶¶ 1.c, 1.e, 1.f, and 1.j are for four delinquent medical debts totaling \$860. SOR ¶¶ 1.c and 1.e are duplicate debts for a dentist visit. SOR ¶¶ 1.f and 1.j are for visits to the emergency room after the 2011 car accident. Applicant testified that she

⁴ Tr. at 22-66; GE 1, 2, 3; AE B, F, I.

⁵ Tr. at 27-31, 41-43; GE 1, 2, 3, 5; AE B, F, I.

⁶ Tr. at 27-31, 41-43; GE 1, 2, 3, 5; AE B, F, I.

⁷ Tr. at 31-34; GE 1, 2, 4, 5; AE E, F, I.

resolved her medical debts through the Cure My Credit counseling program, which she was in for one and a half years beginning in 2015, as well as through a settlement payment totaling \$5,200 from the 2011 car accident. She provided documentation to show that she resolved these debts.⁸

SOR ¶¶ 1.d and 1.g are for two Comcast accounts that were placed for collection for \$250 and \$152, respectively. Applicant testified that she paid SOR ¶ 1.d in late 2013 to early 2014, and she paid SOR ¶ 1.g through the Cure My Credit program. She testified that she had a Comcast account as of the date of the hearing, and that she could not have opened the account if she had not resolved any prior, delinquent balances. She provided documentation to show that she resolved her outstanding balances as of December 2016, and therefore resolved both of these debts.⁹

SOR ¶¶ 1.h and 1.i are for two parking tickets placed for collection for \$100 and \$200, respectively. Applicant testified that she paid both tickets through the Cure My Credit program. Documentation reflects that she paid them in June 2018.¹⁰

SOR ¶¶ 1.l, 1.m, and 1.n are for delinquent federal taxes in the amounts of \$9,686, \$6,739, and \$6,739 for tax years 2005, 2006, and 2012, respectively, totaling \$23,164. SOR ¶¶ 1.o and 1.p allege that Applicant failed to timely file her federal income tax returns for tax years 2005 and 2007 through 2016. In addition to her admissions to SOR ¶¶ 1.l through 1.p, tax documentation provided by Applicant reflects that she filed her federal income tax returns for tax periods 2005 and 2006 in June 2007; she filed her return for tax period 2008 in 2010; she filed her returns for tax periods 2010 and 2011 in May 2013; she filed her return for tax period 2012 in June 2013; and she filed her returns for tax periods 2009, 2013, 2014, 2015, and 2016 between June 2017 and May 2018. It also reflects that she timely filed her federal income tax return for tax period 2017. Despite the tax preparer's May 2018 indication that all of Applicant's federal and state income tax returns had been filed, Applicant did not provide documentation to show that she filed her federal income tax return for tax year 2007.¹¹

Applicant owed federal taxes totaling \$24,686 for tax years 2005, 2006, 2009, and 2012. She was due federal refunds totaling \$13,328 for tax years 2013 through 2017. She testified that as of the hearing date, she was told telephonically by an IRS representative that her outstanding federal tax balance was \$6,815, and she intended to make a payment arrangement with the IRS to pay this outstanding balance. She indicated that the initial amount of \$23,164 in federal taxes owed for tax years 2005, 2006, and 2012 were offset by refunds she received for other tax years and by payments she made to the IRS for two years beginning in 2007. She testified that she

⁸ Tr. at 34-42, 65-66; GE 1, 2, 4, 5; AE C, E, F, I.

⁹ Tr. at 36-39, 65-66; GE 2, 5; AE F, I.

¹⁰ Tr. at 39-40, 65-66; GE 1, 2, 5; AE F, I.

¹¹ Tr. at 43-62, 65-66; GE 1, 2; AE D, F, G, I, J, K.

was awaiting the IRS' computation of additional federal refunds she expected to receive. Once computed, she expected that the refunds would be applied to offset her outstanding \$6,815 balance, which would bring her remaining federal tax obligation to less than \$1,000.¹²

IRS documentation from June 2018 reflects that Applicant owed \$8,949 for tax year 2012. It reflects that her \$2,424 overpayment for tax year 2017 was applied to her federal tax owed for 2012, bringing her remaining balance for 2012 to \$4,530. It also reflects that overpayments of \$1,764 and \$2,610 were applied to her federal tax owed for 2005 in April 2016 and 2017. Applicant did not provide documentation to corroborate her claims that she resolved her outstanding federal taxes for tax years 2005, 2006, and 2009. She also did not provide documentation to show that she has a payment arrangement in place to resolve her remaining outstanding federal taxes for tax year 2012.¹³

SOR ¶ 1.q alleges that Applicant failed to timely file her state income tax returns for tax years 2009 and 2014. In addition to her admission to SOR ¶ 1.q, tax documentation provided by Applicant reflects that she filed her state income tax returns for tax periods 2009 and 2014 between June 2017 and May 2018. It also reflects that she filed her state income tax return for tax year 2005 in April 2007; she filed her return for tax period 2008 in 2010; she filed her return for tax period 2010 in 2013; she filed her returns for tax periods 2013, 2015, and 2016 between June 2017 and May 2018; and she timely filed her state income tax returns for 2006 and 2017. She testified that she filed her state income tax returns for 2011 and 2012 a number of years ago. The record did not contain evidence of her filed state income tax returns for tax years 2007, 2011, and 2012.¹⁴

Applicant owed a total of \$2,044 in state taxes for tax years 2005, 2006, 2008, and 2010. She was due state refunds totaling \$3,916 for tax years 2009, 2013, 2014, 2015, 2016, and 2017. Similar to her federal taxes, she expected that her state income tax refunds would offset any outstanding state taxes, and she was awaiting the computation of such refunds by the state tax authority. She provided documentation to show that her outstanding state tax liability as of June 2018 was \$2,803, such liability was for tax years 2008 and 2010, and she had an installment agreement of \$130 monthly to resolve it. She did not provide documentation to show that she made any payments in accordance with the agreement.¹⁵

¹² Tr. at 43-62, 65-66; GE 1, 2; AE D, F, G, I, J, K. Applicant owed \$9,686, \$7,322, \$939, and \$6,739 in federal taxes for tax years 2005, 2006, 2009, and 2012, respectively. She was due federal refunds of \$1,318, \$5,212, \$1,764, \$2,610, and \$2,424 for tax years 2013, 2014, 2015, 2016, and 2017, respectively.

¹³ Tr. at 43-62, 65-66; GE 1, 2; AE D, F, G, I, J, K.

¹⁴ Tr. at 43-62, 65-66; GE 1, 2; AE D, F, G, I, J, K.

¹⁵ Tr. at 43-62, 65-66; GE 1, 2; AE D, F, G, I, J, K. Applicant owed \$417, \$513, \$804, and \$310 in state taxes for tax years 2005, 2006, 2008, and 2010, respectively. She was due state refunds of \$347, \$862, \$984, \$374, \$622, and \$727 for tax years 2009, 2013, 2014, 2015, 2016, and 2017, respectively.

As of the hearing date, Applicant earned \$92,856 annually. As previously discussed, Applicant testified that she resolved some of her debts through the Cure My Credit program. She indicated that she was in the program for one and a half years beginning in 2015, during which time she made monthly payments of \$125. Her most recent credit report from May 2018 reports a collection item for \$1,900 that she indicated she did not recognize and intended to investigate. She otherwise does not have any other delinquent debts.¹⁶

Multiple character references, to include a number of coworkers as well as her director, described Applicant as a trustworthy and hardworking individual. They described her as a person of strong morals and ethics. Her director wrote, “I regularly received unsolicited praise from team members commending [Applicant’s] outstanding level of professionalism and follow-through.” She was noted for consistently surpassing all expectations.¹⁷

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.”

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

¹⁶ Tr. at 23-24, 38-39, 62-63; GE 2; AE F.

¹⁷ AE A, H, L.

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 was unable to pay her debts, to include her federal taxes. She also untimely filed her federal income tax returns for tax years 2005, 2008 through 2011, and 2013 and 2016, as well as her state income tax returns for tax years 2009 and 2014. She failed to provide documentation to corroborate her claim that she filed her federal income tax return for tax year 2007. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c) and 19(f) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. She took steps to resolve SOR ¶¶ 1.c through 1.j, in part through her enrollment in the Cure My Credit counseling program for one and a half years beginning in 2015. As such, AG ¶¶ 20(b) and 20(c) applies to these debts.

When Applicant discovered that the judgment and the debt in SOR ¶¶ 1.a and 1.k were still outstanding, she took steps to try to resolve them. Her ability to do so was impacted by her lack of income, and she only made sporadic payments totaling \$1,400 up through June 2018. She did not demonstrate that she had a payment arrangement in place to resolve the outstanding balance. In addition, while she disputed the debt in SOR ¶ 1.b, her recent credit report from May 2018 continues to report it as delinquent and reflects that the dispute was not resolved in her favor. While she testified that she unsuccessfully attempted to settle the debt, she did not provide proof of her attempts and she has not made any payments or payment arrangements to resolve it. As such,

AG ¶ 20(b) only partially applies and AG ¶¶ 20(c), 20(d), and 20(e) do not apply as to SOR ¶¶ 1.a, 1.b, and 1.k.

It is well established that failure to comply with tax laws suggests that an applicant has difficulty with abiding by government rules and regulations. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). It is also well established that the mere filing of past-due returns or resolution of delinquent tax debts does not compel a favorable security-clearance adjudication. ISCR Case No. 17-01907 (App. Bd. Mar. 7, 2018). The timing of corrective action is an important factor in determining whether security concerns raised by tax delinquencies are mitigated. Applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Applicant untimely filed her federal income tax returns for tax years 2005, 2008 through 2011, and 2013 through 2016. She untimely filed her state income tax returns for tax years 2009 and 2014. She did not provide documentation to corroborate her claim that she filed her federal income tax return for tax year 2007. She owed delinquent federal taxes totaling \$23,164 for tax years 2005, 2006, and 2012. She did not provide documentation to corroborate her claim that she resolved her outstanding federal taxes for tax years 2005 and 2006, and that she has a payment arrangement in place to resolve her remaining outstanding federal taxes for tax year 2012. As such, AG ¶ 20(g) applies to SOR ¶¶ 1.o and 1.q, but it only partially applies as to SOR ¶¶ 1.l, 1.m, 1.n, and 1.p.

While conditions beyond her control contributed to Applicant's delinquent federal taxes and her failure to timely file her relevant federal and state income tax returns, she did not act responsibly under her circumstances. She did not file her 2005 federal income tax return until 2007; she did not provide proof that she filed her 2007 federal income tax return; she did not file her 2008 federal income tax return until 2010; she did not file her 2010 and 2011 federal income tax returns until 2013; and she did not file her 2009, 2013, 2014, 2015, and 2016 returns until between June 2017 and May 2018. In addition, she did not file her 2009 and 2014 state income tax returns until between June 2017 and May 2018. As previously mentioned, she did not provide documentation to show that she resolved her outstanding federal taxes for tax years 2005 and 2006, or that she has a payment arrangement in place to resolve her remaining outstanding federal taxes for tax year 2012. AG ¶ 20(b) is not established as to SOR ¶¶ 1.l through 1.q.

Applicant's finances are not under control and there is insufficient evidence to conclude that her financial problems are unlikely to recur. She failed to timely file her relevant tax returns and resolve her delinquent federal taxes, for the reasons previously discussed. She also failed to show that she has made payments or has a payment arrangement to resolve the debts in SOR ¶¶ 1.a, 1.b, and 1.k. I find that such behavior did not happen so long ago, was not infrequent, and did not occur under such circumstances that are unlikely to recur. It continues to cast doubt on her current

reliability, trustworthiness, and judgment. AG ¶ 20(a) is not established as to SOR ¶¶ 1.a, 1.b, and 1.k through 1.q.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a - 1.b, 1.k - 1.q:	Against Applicant
Subparagraphs 1.c - 1.j:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge