



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



In the matter of:

ISCR Case No. 17-02400

Applicant for Security Clearance

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel

For Applicant: *Pro se*

May 23, 2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guidelines F, Financial Considerations and E, Personal Conduct. Her failure to timely file and pay Federal and state income taxes, along with her failure to disclose those delinquent taxes, remain of concern. National security eligibility for access to classified information is denied.

Statement of the Case

On August 1, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), effective June 8, 2017 (AG).

Applicant submitted her Answer to the SOR (Item 2) on August 24, 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 October 5, 2017. Applicant received it on October 10, 2017. The Government's evidence is identified as Items 1 through 5. 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 5 are admitted into the record.¹ The case was assigned to me on January 17, 2018.

Findings of Fact

Applicant is 49 years old. She married her second husband in 2008. She has two adult children and one adult stepchild. She has worked for her employer, a defense contractor, since March 2004. (Item 3.)

Applicant admitted SOR allegations 1.b through 1.g, with explanations. She denied SOR allegations 1.a, and 2.a.² After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

SOR ¶ 1.a alleged that Applicant was indebted to the Federal Government for delinquent taxes in the amount of \$9,242 for tax year 2006. Applicant denied this allegation because, "Tax year 2006 is a tax liability that belongs to my spouse and was incurred prior to our marriage in 2008." (Item 2.) She provided a one page document addressed solely to her husband from the IRS regarding a payment agreement for unpaid taxes from 2006, 2009, and 2010. However, Item 4 contains an Installment agreement covering tax periods 2006, 2009, and 2010, in which Applicant agreed to pay the federal taxes due for 2006. She signed the agreement and accepted liability. (Item 4.) She has not produced sufficient documentation to substantiate this debt is not her liability. This debt is unresolved.

SOR ¶ 1.b alleged that Applicant was indebted to the Federal Government for delinquent taxes in the approximate amount of \$53,517 for the 2009 tax year. SOR ¶ 1.c alleged that Applicant was indebted to the Federal Government for delinquent taxes in the approximate amount of \$26,244 for the 2010 tax year. Item 4 included an IRS account transcript for tax years 2009 and 2010, which showed that as of May 2017, Applicant owed these debts. She documented a July 2017 payment agreement between her

¹ Item 5 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 5 will be admitted for the limited purpose of consideration of any exculpatory information therein.

² With respect to allegation 2.a, Applicant wrote "admit" but clarified that she did not intentionally falsify her Answer. (Item 2.) Her clarifications are interpreted as a denial.

husband and the IRS for monthly payments of \$1,004, but no documentation of actual payments under this agreement were submitted. Further, IRS account transcripts from 2011 show that Applicant has had payment arrangements with the IRS in the past, but the agreements were not successfully maintained. These debts are unresolved. (Item 2; Item 4.)

SOR ¶ 1.d alleged that Applicant failed to timely file her 2009, 2010, 2011, and 2012 Federal income tax returns. Her tax transcripts for tax year 2009 show that a substitute return was prepared by the IRS in May 2012, after an inquiry for non-filing of her tax return was sent in November 2011. Item 4 also contained a 2009 IRS Form 1040 that was unsigned and undated. (Item 4.) Applicant's 2010 IRS account transcript documented that her 2010 income tax return was filed late, in September 2012. (Item 4.) Her 2011 IRS account transcript reflected that her 2011 tax return was filed late, in September 2012, and no extension on the filing date was recorded. (Item 4.)

SOR ¶ 1.e alleged that Applicant was indebted to state 1's taxation authority in the amount of \$9,092 for 2008. Applicant admitted this debt, but stated, "the amount owed for this year is and has been in dispute with the state." She also claimed to have a payment plan in place, but failed to provide documentation of actual payments on this debt. It remains unresolved. (Item 4; Item 2.)

SOR ¶ 1.f alleged that Applicant failed to timely file her 2007, 2008, and 2009 state 1 income tax returns. Documentation in Item 4 shows: a copy of a 2007 state 1 return that is undated; state 1 income tax returns for 2008 that were signed and dated April 23, 2014; and 2009 state 1 income tax returns that were prepared on September 13, 2011, but bear no signatures. Applicant admitted this allegation and stated, "All tax returns have been filed for these years." (Item 2; Item 4.)

SOR ¶ 1.g alleged that Applicant failed to timely file her 2007 and 2008 state 2 income tax returns. Copies of her state 2 income tax returns for 2007 that she submitted are unsigned and undated. Her 2008 state 2 income tax returns were signed and dated April 23, 2014. (Item 4.) Applicant admitted this allegation and stated, "All tax returns have been filed for these years." (Item 2; Item 4.)

In her Answer, Applicant claimed that "since 2013 all tax returns have been filed on time with no debt owed to the Federal Government or state for those years." (Item 2.) She provided no documentation to substantiate this claim.

SOR ¶ 2.a alleged that Applicant deliberately failed to disclose her failure to timely file and pay her Federal and state income taxes on her January 30, 2014 e-QIP. In section 26 of the e-QIP, she was asked, "In the past seven (7) years, have you failed to file or pay Federal, state or other taxes when required by law or ordinance?" She answered "No." She claimed "it was [her] interpretation that the question was asking if [she] had any unfiled taxes as of that date." She believed all taxes had been filed, so she answered no. Her claim is not credible. She knew she had failed to pay taxes for multiple years, and the evidence shows that her 2008 state 1 and state 2 tax returns were not signed until April

2014, which was after the January 2014 e-QIP was certified and submitted. Further, the IRS prepared substitute tax returns for tax year 2009. (Item 2; Item 3; Item 4.)

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 AG ¶ 2 describing 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.

"Failure to comply with Federal tax laws suggests that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information." See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

In the instant case, Applicant failed to file Federal tax returns in a timely manner. She failed to timely file her state 1 income tax returns from 2007 to 2009. She failed to timely file her state 2 income tax returns in 2007 and 2008. Additionally, she is indebted to the Federal Government for tax years 2006, 2009, and 2010. She is indebted to state 1 for tax year 2008. Her failure to comply with Federal and state tax laws raises questions about whether Applicant has demonstrated the high degree of judgment and reliability

that is required for granting an individual access to classified information. 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; 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 has presented some evidence to show her delinquent Federal and state tax returns have been filed. However, she remains indebted to the Federal Government for tax years 2006, 2009, and 2010; and to state 1 for tax year 2008. Her debts are ongoing. She failed to establish that AG ¶¶ 20(a) or 20(b) fully provide mitigation of the Government's concerns.

Applicant did not document any participation in financial counseling. She has not documented compliance with her payment arrangements with the IRS or state 1, nor fully established a track record of timely filing tax returns, as required by law. Mitigation under AG ¶¶ 20(c) and 20(g) has not been fully established.

Guideline E: Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in 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. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 denied intentionally falsifying her e-QIP. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.³

In this instance, it is apparent from Applicant's comments that she was aware of unpaid Federal and state tax obligations and should have also been aware of her state 1 and state 2 delinquent 2008 returns. She should have disclosed these facts to the Government. I find substantial evidence of an intent by Applicant to omit, conceal, or falsify these facts from and on her e-QIP. Therefore, security concerns under AG ¶ 16(a) are established.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

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

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above, none of them were established by the evidence. Applicant did not make prompt or good-faith efforts to correct her falsifications or concealments. She provided no information that indicates she was ill-advised in completing her e-QIP. Falsifying information is a serious offense, and Applicant has shown that similar lapses in judgment are likely to occur. Further, she failed to take responsibility for her actions. She has not provided sufficient information in this record to demonstrate 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 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 ignored her legal obligation to file and pay Federal and state income tax returns for multiple years, and falsified her e-QIP concerning these facts. She did not demonstrate rehabilitation, so recurrence is not unlikely and the potential for duress remains undiminished. 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 concerns under Guidelines F and E.

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
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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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