



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-02394
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application on May 28, 2015. On August 3, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on August 28, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 29, 2017, and the case was assigned to me on October 23, 2017. On

November 9, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 4, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until December 18, 2017, to enable her to submit additional documentary evidence. She timely submitted AX I through P. Department Counsel did not object to AX I through P but submitted comments, which are attached to the record as a hearing exhibit. DOHA received the transcript (Tr.) on December 12, 2017.

Findings of Fact¹

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.b-1.f, 1.k, and 1.l, and denied the allegations in SOR ¶¶ 1.a, 1.g-1.j, and 1.m. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old combat systems analyst employed by a defense contractor since March 2015. She served on active duty in the U.S. Navy from April 1990 to May 2010 and retired as a lieutenant. She was employed in the private sector after her retirement until she was laid off in June 2013. She was unemployed until December 2013. She was employed by another defense contractor from January 2014 until she began her current position. She testified that she has a 70% service-connected disability, and that 50% is for anxiety and depression, but she submitted no corroborating documents regarding her disability. (Tr. 31.) She held a security clearance and eligibility for access to sensitive compartmented information (SCI) while she was on active duty.

Applicant was married in August 1990 and divorced in July 1991. She married her current spouse in March 1993, and they have 17-year-old twins. She received a bachelor's degree in April 1998 and a master's degree in January 2003.

The SOR alleges 11 delinquent debts, including delinquent student loans and federal tax debts. The evidence concerning the allegations is summarized below.

SOR ¶ 1.a: Medical debt for \$50. Applicant denied this debt, asserting that it should have been paid by TRICARE. It was reflected in the July 2017 credit report. (GX 3 at 2.) Neither the credit report nor the SOR identifies the provider, the date the debt was incurred, the collection agency, or the person who received the services.² At the hearing, she testified that the debt was for ambulance services and that it was paid by TRICARE (Tr. 74.) After the hearing, she submitted documentation that TRICARE paid for medical services provided to her son in November 2016. (AX N; AX O.)

¹ Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

² This allegation does not comply with the specificity requirement of Directive ¶ E3.1.3, which requires that the SOR be "as detailed and comprehensive as the national security permits."

SOR ¶ 1.b: Delinquent military credit card charged off for \$3,902. This account was opened in November 2008, and it was reflected in a credit report from June 2015 as current with a balance of \$4,750. (GX 5 at 7.) A credit report from July 2017 reflected that the debt was past due for \$3,601. (GX 3 at 2.) Applicant admitted this debt and stated in her answer that it was being collected from her military retired pay. At the hearing, she testified that payments on the debt are no longer being taken from her retired pay, but that she was making payments and needs to pay about \$400 more before the account is rehabilitated. (Tr. 63-64.) She presented no documentation of payments or a payment agreement.

SOR ¶ 1.c: Credit-card account charged off for \$53. Applicant admitted having this account and thought it was paid, but apparently a final interest charge was not paid. She testified that she telephonically contacted the original creditor who could not accept payment because the debt was charged off. She has been unable to determine who, if anyone, currently owns the debt. (Tr. 64-65.) The most recent credit reports in the record do not reflect a collection agency for the debt. (GX 2 at 46; GX 3 at 4.)

SOR ¶¶ 1.d and 1.e: Student loans placed for collection of \$2,450 and \$547. Applicant admitted these debts. On December 11, 2017, a week after the hearing, Applicant enrolled in a rehabilitation program for both loans. She is required to make monthly \$601 payments for nine months to rehabilitate the loans. (AX P.)

SOR ¶ 1.f: Charge account charged off for \$669. Applicant admitted this debt but testified she is not financially able to pay it. (Tr. 66.) She presented no evidence of efforts to settle the debt or make partial payments.

SOR ¶ 1.g: Charge account charged off for \$59. Applicant testified that this debt was for dental care and that she paid it. (Tr. 67.) It was reflected in credit reports from November 2016 and July 2017. (GX 3 at 9; GX 4 at 3.) She submitted no documentation showing that it was paid.

SOR ¶ 1.h: Credit-card account charged off for \$1,510. In her answer to the SOR, Applicant stated that this debt was satisfied by a lien. A credit report from June 2015 reflects this debt as a paid collection. (GX 5 at 19.)

SOR ¶¶ 1.i-1.m: Failure to timely file federal income tax returns for 2012 through 2016 and federal income tax debts for tax years 2009, 2010, and 2011. Applicant was on active duty and serving overseas in 2008, and her husband remained in the United States. They purchased a home and used what they thought was a first-time homebuyer tax credit, not realizing that the credit was required to be repaid in three years. They received a refund of about \$9,000 for tax year 2008. (Tr. 41.) They used the refund for home improvements. When they filed their federal income tax return in 2010, they thought they owed about \$1,000, and they requested a payment plan, with the intention of paying the full amount owed before the end of the year. The IRS informed them that they owed \$8,000 and requested that their 2010 tax return be filed again.

They resubmitted the 2010 return without any changes. (Tr. 25-26.) The tax transcript for tax year 2009 reflects that they owed accrued interest of \$430 and that the return was filed in April 2010. (GX 2 at 62.) The tax transcript for tax year 2010 reflects that they owed \$13,777, and that the return was filed in April 2013. (GX 2 at 64; AX C at 2.) Applicant testified that they did not realize that they should have been making payments on the homebuyer credit in 2009 and 2010. (Tr. 43.)

Applicant testified that when they filed their 2011 return, they requested an installment payment agreement, but they were informed that they could not make a payment agreement until the taxes for 2010 were resolved. She also testified that they made an agreement to pay \$600 per month and started making payments. (Tr. 28.) The tax transcript for 2011 reflects a tax debt of \$13,978. It also reflects that the return was filed in July 2012, that a notice of intent to levy was issued in January 2013, and that an installment agreement was established in March 2013. (GX 2 at 66-67; AX C at 4.)

Applicant was laid off in June 2013 and was unable to make the \$600 payments. Her husband took an overseas job so that he could work overtime and generate additional income. (Tr. 28-29.) Applicant completed a class on financial management in December 2013. (Tr. 70.)

Applicant was hired by a defense contractor in December 2013. By this time, she and her husband were behind on their credit-card accounts and mortgage payments. In addition, the heating system in their home failed and was replaced at a cost of \$8,000, and their roof began to leak. (Tr. 29-30.) Applicant testified that she and her husband did not file their federal income tax returns for 2012 and 2013, because she knew the IRS would not accept their returns until the tax debts for 2010 and 2011 were resolved. She testified that they did not file returns for 2013 and 2014 because she knew that they did not owe taxes for those years and she was more concerned with resolving 2010 and 2011. (Tr. 29-31.)

In June 2017, Applicant and her husband filed their federal income tax returns for 2010, 2014, 2015, and 2016. (AX A; AX B.) There is no evidence in the record that Applicant received an extension of time to file the 2016 return. The tax transcripts reflect that they were entitled to a refund of \$23,637 for 2013 and a refund of \$8,794 for 2014 (AX C at 6, 8.) In August 2017, they were notified by the IRS that the refund for 2013 had been applied to their tax debt from previous years. (AX E at 6.)

In September 2017, the IRS informed Applicant and her husband that they owed \$13,174 for tax year 2016. (AX E at 1.) Applicant testified that the amount owed for 2016 was due to her husband's increased income due to overtime, her second part-time job, and an early withdrawal from her retirement account. (Tr. 50-51.) She stated that she has learned from her experience with the 2016 tax debt, and she has increased her tax withholding and now claims zero dependents. (AX J.)

Applicant's financial situation was further complicated when her pay was erroneously garnished for \$800 per month in September 2017 for state taxes. (AX G.)

The state claimed that she had not filed her return for 2010. Applicant hired a tax attorney, who was able to resolve the state tax issue in Applicant's favor. Applicant received a refund of the amount that was garnished.³ (Tr. 53-55; AX I.)

In November 2017, Applicant's tax attorney prepared a request for an installment agreement for her federal tax debt. Her attorney informed her that their 2012 federal return, which they thought had been submitted along with the other past-due returns, had not been received. The 2012 return reflected a refund of \$7,957. (AX F at 8.). Applicant submitted a tax transcript after the hearing, reflecting that the 2012 tax return was filed in June 2017. (AX L.)

The IRS Form 433-A, submitted in support of Applicant's request for an installment agreement, reflects that in November 2017, her gross monthly wages were \$18,349, her husband's wages were \$5,420, and her military retired pay was \$3,237 per month, for a total monthly income of \$27,006. Her family's total living expenses, including taxes, are \$14,759, leaving a net monthly remainder of \$12,247. The fair-market value of their home is \$278,000, and their equity in the home is \$88,100. They have a total of about \$2,443 in checking accounts and \$4,919 in retirement accounts. (AX F at 3-5.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

³ A state tax delinquency is not alleged in the SOR.

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

SOR ¶¶ 1.i and 1.m are identical, both alleging that Applicant failed to file federal income tax returns for tax years 2012 through 2016. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.m for Applicant.

Applicant's admissions, her testimony at the hearing, and the documentary evidence submitted at the hearing establish the following potentially disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's ignorance about the terms of the first-time homebuyer credit was not a condition beyond her control, because information regarding the repayment terms for the credit was readily available in IRS publications. A service-connected disability could qualify as a condition beyond her control, but she provided no documentation of her claimed disability and no evidence showing that it made her incapable of timely filing her tax returns or paying her debts. Her unemployment for six months and the erroneous tax garnishment imposed by the state were conditions beyond her control, but she has not acted responsibly regarding the unpaid consumer debts and the past-due federal income tax returns for 2012 through 2016. She acted responsibly by remaining in contact with the IRS regarding the tax debts for 2009, 2010, and 2011.

AG ¶ 20(c) is not established. Although Applicant testified that she received online financial counseling, she provided minimal information about the source of the counseling or its content, and she has not established "clear indications" that her financial situation is under control.

AG ¶ 20(d) is not fully established. The medical debt alleged in SOR ¶ 1.a and the credit-card debt in SOR ¶ 1.h are resolved. Applicant has made a good-faith effort to resolve the debt in SOR ¶ 1.c. She testified that she was making payments on the military credit-card debt alleged in SOR ¶ 1.b, but she submitted no documentation to support her testimony. After the hearing, she made an agreement to rehabilitate the delinquent student loans in SOR ¶¶ 1.d and 1.e, but she has not established a track record of compliance with the agreement. The federal tax debts for tax years 2009, 2010, and 2011, alleged in SOR ¶¶ 1.j-1.l, are resolved. The delinquent charge account alleged in SOR ¶ 1.f is not resolved. The debt alleged in SOR ¶ 1.g is not resolved, but the amount involved (\$59) makes it insignificant from a national security standpoint.⁴

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an

⁴ The federal tax debt for tax year 2016 is not alleged in the SOR and may not be an independent basis for denying an application for a security clearance. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the unresolved tax debt for 2016 for these limited purposes.

individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's response to the consumer debts has been dilatory and reactive rather than planned, but she has followed a cohesive plan for resolving her tax debts for the years alleged in the SOR.

AG ¶ 20(g) is partially established. Applicant has filed all her past-due returns and satisfied her tax obligations for 2009, 2010, and 2011, the years alleged in the SOR. She has not yet made any payments or negotiated an installment agreement for the tax debt for 2016, which is not alleged.

The fact that Applicant has filed her past-due returns "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). Furthermore, the establishment of some mitigating evidence does not compel a favorable security-clearance decision. ISCR Case No. 11-14784 (App. Bd. Jan. 17, 2014). Applicant's tax debt incurred by the homebuyer credit was the result of her ignorance of tax laws and not a disregard for her obligations. Similarly, her failure to have sufficient funds withheld from her pay and her tax liability for an early withdrawal of retirement funds were due to her ignorance of tax laws. However, she has offered no persuasive explanation for her failure to timely file her federal income tax returns for 2012 through 2016.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).⁵

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has a long record of service in the U.S. Navy and as an employee for defense contractors. She has held security clearances

⁵ The factors are: (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.

and SCI eligibility in the past, apparently without incident. She was candid and sincere at the hearing.

On the other hand, Applicant has not demonstrated the attention to her financial obligations that would be expected of a mature adult with her education and experience. She offered no excuse for not timely filing her 2013 and 2014 returns, except that she was focusing on the 2010 and 2011 returns. She offered no excuse or explanation for not timely filing her 2015 and 2016 returns. She did not reach a payment agreement for her delinquent student loans until after the hearing. Her request for an installment agreement for the \$13,000 federal tax debt for 2016 is unresolved. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent debts and failure to timely file her federal income tax returns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.m:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge