



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



In the matter of:)
)
) ISCR Case No. 17-02595
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant has unresolved financial problems, including unpaid taxes and delinquent debts. She falsified her security clearance application regarding her unfiled and unpaid federal taxes. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application on October 30, 2014. On August 10, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 decisions on or after June 8, 2017.

Applicant answered the SOR on September 6, 2017, and requested a decision on the record without a hearing. On October 13, 2017, complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant and received by her on October 25, 2017. 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 object to the Government's Items. Hence, Items 1 through 4 are admitted into evidence without objection. Applicant submitted a response and evidence in response to the FORM, which were collectively admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on February 12, 2018.

Findings of Fact¹

The SOR alleges failure to file and pay federal taxes, seven medical debts (SOR ¶¶ 1.a. through 1.i.), and one falsification on a security clearance questionnaire (SOR ¶ 2.a.). In Applicant's answer to the SOR, she denied all of the allegations with explanation. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 39 years old and since September 2016, has been employed by a defense contractor. She requires a security clearance for this employment. She has worked as a federal contractor since 2003, and was previously granted DOD clearances in May 2003 and May 2008. Applicant and her ex-husband divorced in 2000, after less than one year of marriage, and she has two children, ages 18 and 22. Applicant earned an associate's degree in 2002, and a bachelor's degree in 2010.

Guideline F

SOR ¶ 1.a. alleges failure to pay delinquent federal taxes in the amount of \$39,503.66 for tax years 2007, 2009, 2010, and 2011. SOR ¶ 1.b. alleges failure to file federal tax returns for tax years 2015 and 2016. SOR ¶¶ 1.c. through 1.i. are delinquent medical bills, totaling \$1,597.

In her answer to the SOR, Applicant provided documentation demonstrating tax years 2007² and 2009³ were resolved in April 2016 (Item 2 at 16-18 and 20-22). She also

¹ Applicant's personal information is extracted from her security application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

² Applicant filed her tax return for tax year 2007, in January 2011. In February 2011, Applicant made a \$2,000 payment toward tax year 2007. Six months later she set up an installment agreement and made six payments, totaling \$1,600. In October 2012, her installment agreement was cancelled. The IRS sent her a Notice of Intent to Levy in December 2012, and in August 2013, the IRS issued a notice of lien filing, and a lien was placed on her assets. On March 4, 2016, she made one more active payment toward tax year 2007, in the amount of \$436. The IRS transferred credits from tax years 2012 and 2015, in the amount of \$11,653.66, which resolved the tax debt in April 2016.

³ Applicant filed her tax return for tax year 2009, in September 2010, before the October 15, 2010 deadline. Between October 2010 and January 2013, Applicant made three payments totaling \$425.48 toward tax

provided documentation from the IRS indicating she owed \$27,317.18 for tax years 2010⁴ and 2011.⁵ Applicant claimed she was on a payment plan for this debt (Item 2 at 20). Finally, she provided documentation demonstrating she filed her 2015 and 2016 federal tax returns in August 2017 (Item 2 at 31 and 32).⁶ Her tax issues were the result of being employed part-time and full-time as a 1099 contractor and inconsistent income. Additionally, the IRS charged her twice for a 401k withdrawal in 2010 (Item 2 at 2).

In her response to the FORM, Applicant provided documentation demonstrating she is in a payment arrangement with the IRS. The October 18, 2017, letter from the IRS shows an outstanding balance of \$26,552.84. Her monthly payment amount is \$607, which was due on October 28, 2017. This letter reflects a last monthly payment of \$0. It is not clear which tax years are included in this payment arrangement (AX A).

In her Answer, Applicant denied all of the seven medical debts alleged in SOR ¶¶ 1.c. to 1.i., because they should have been submitted to her medical insurance company. Despite her denials, Applicant presented documentation that on August 30, 2017, she entered into a payment arrangement with Company A for SOR ¶ 1.d. in which she authorized a monthly automatic withdrawal of \$50 per month for seven months, totaling \$350 (Item 2 at 8). She also claimed to be in payment arrangements for SOR ¶¶ 1.c. and 1.e. through 1.g.⁷ Applicant denied SOR ¶ 1.h. on the grounds that she could not locate

year 2009. She was issued a Notice of Intent to Levy in May 2011, established an installment agreement in August 2011, made no payments, and was removed from the installment agreement in October 2012. The IRS issued her notice of lien filing in August 2013, July 2014, and July 2015. The IRS transferred credits from tax years 2008, 2012, 2013, and 2014, in the amount of \$13,243.29, which resolved the tax debt in April 2016.

⁴ Applicant filed her 2010 tax return on November 21, 2011, over a month after her due date of October 15, 2011. A notice was issued on November 21, 2011, and she entered into an installment agreement on December 10, 2011. She made no payments and was removed from the installment agreement on October 8, 2012. In January 2013, the IRS issued a Notice of Intent to Levy, and in August 2013, a lien was placed against her assets. A notice was issued again in July 2014 and July 2015. The IRS transferred credit from tax years 2015 and 2016, totaling \$4,185.05, but as of August 24, 2017, this year had an outstanding balance of \$15,316.91. The IRS documentation does not reflect any active payments made by Applicant (Item 2 at 23-24).

⁵ Applicant filed her 2011 tax return on May 28, 2012, over a month after her due date of April 15, 2012. A notice was issued on May 28, 2012, and she entered into an installment agreement on June 16, 2012. She made one \$400 payment, but was removed from the installment agreement on October 8, 2012. In December 2012, the IRS issued a Notice of Intent to Levy, and in August 2013, a lien was placed against her assets. A notice was issued again in July 2014 and July 2015. As of August 24, 2017, this year had an outstanding balance of \$14,409.54. The IRS documentation does not reflect any active payments made by Applicant (Item 2 at 26-27).

⁶ Applicant filed her federal tax returns late for tax years 2005, 2007, 2010, 2011, 2012, 2013, 2014, 2015, and 2016. Each of these returns were filed after either the April 15th deadline or if she had obtained an extension (2010, 2012, 2014 and 2015) after the October 15th extension deadline.

⁷ In her September 6, 2017, Answer to the SOR, Applicant claims she has made the following payment arrangements: SOR ¶ 1.c. \$25 per month; SOR ¶ 1.d. \$50 per month, this was the only debt included in the payment plan she entered into in August 2017; SOR ¶ 1.e. \$60 per month; SOR ¶ 1.f. \$20 per month; and, SOR ¶ 1.g. \$20 per month.

this debt and it was no longer appearing on her credit report. Finally, she claimed she paid SOR ¶ 1.i. In her response to the FORM, Applicant again asserted she is in payment plans for SOR ¶¶ 1.c. through 1.g.,⁸ and she has resolved SOR ¶ 1.h. through dispute and SOR ¶ 1.i. through payment (AX A at 1).

Guideline E

On October 30, 2014, Applicant signed a security clearance application (SCA) certifying that the statements made therein were “true, complete, and correct to the best of [her] knowledge and belief and [were] made in good faith,” (Item 3). In section 26 (Financial Record),⁹ Applicant disclosed she owed the IRS \$7,000 for tax year 2007. She claimed she had a payment arrangement with the IRS in the past, but payments were applied to a different tax year. As a result of this issue, she hired a CPA and this person filed her taxes through tax year 2013. At that time, Applicant was waiting for another payment agreement and expected her taxes would be resolved in the near future (Item 3 at 44-45). She did not disclose issues related to any other tax years.

In her Answer to the SOR, Applicant denied concealing material facts regarding her owed back taxes for tax years 2007, 2009, 2010, and 2011, and failure to file federal income tax returns for tax years 2012, and 2013. She asserted that she was unaware of these issues because she had always used a CPA service to complete and file her taxes. She claimed she provided the information to her CPA to file for 2012 and 2013, and was unaware he or she had not filed these years (Item 2 at 4).

In her response to the FORM, Applicant reiterated that she did not intentionally conceal her tax issues from the government. She stated she did not receive the various letters and notices sent by the IRS to her because she was working in City A and had a Post Office Box in City B (AX A at 2).

Policies

“[N]o one has a ‘right’ to a security clearance.”¹⁰ 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.”¹¹ The President has authorized the Secretary of Defense or his designee to

⁸ In her November 16, 2017 Response to the FORM Applicant claims the same payment arrangements as outlined under FN 7, except she is paying: SOR ¶ 1.f. \$35 per month and SOR ¶ 1.g. is included in the \$35 payment for SOR ¶ 1.f. (AX A).

⁹ The SOR alleges failure to file tax returns for tax years 2012 and 2013, and failure to pay for tax years 2007, 2009, 2010, and 2011.

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹ *Egan* at 527.

grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹²

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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 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.”¹³ 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.¹⁴ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁵ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁶ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁷ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁸

¹² EO 10865 § 2.

¹³ EO 10865 § 7.

¹⁴ See *Egan*, 484 U.S. at 531.

¹⁵ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁶ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁷ Directive ¶ E3.1.15.

¹⁸ 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.”¹⁹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁰

Analysis

Guideline F (Financial Considerations)

The concern under Guideline F (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

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.²¹

Applicant's admissions and her credit report establish three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), 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 security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

¹⁹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁰ *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

²¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

AG ¶ 20(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

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 consistently filed her federal tax returns late, including after the SOR was issued (Items 2 and 4). The debts alleged in SOR ¶¶ 1.c. through 1.e. were assigned for collection between 2013 and 2015. Thus, her financial problems are recent and recurrent.

AG ¶ 20(b) is not fully established. Despite her history of inconsistent income, Applicant did not meet her burden to establish that she acted responsibly to address her unfiled federal tax returns and unpaid debts in a timely manner.

AG ¶ 20(d) is not fully established. Applicant failed to provide documentation showing that she has been making timely and consistent payments toward her various payment plans for the debts alleged in SOR ¶¶ 1.a., and 1.c. through 1.i.

AG ¶ 20(e) is not established. While Applicant articulated a basis to dispute SOR ¶¶ 1.h. and 1.i, she did not provide documentary proof to substantiate her dispute or sufficient evidence of actions taken to resolve the debts.

AG ¶ 20(g) is not fully established. Applicant has set up a payment plan for at least some of her federal tax debt, but she has not provided documentary proof of timely and consistent payments. The documentation she submitted from the IRS, shows a history of establishing payment arrangements, but failure to make consistent payments. I credit Applicant with filing her 2015 and 2016 federal tax returns. However, she filed these returns only after the Government sent her the SOR.

I considered that Applicant is not required to be debt-free in order to qualify for a security clearance.²² However, she has not provided proof of payments on her current

²² ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given

federal tax debt. Nor has she submitted proof of payment or resolution for her seven delinquent medical debts. Applicant failed to file her federal tax returns for tax years 2015 and 2016, until August 2017, and she consistently filed previous tax returns after she was legally required to file. Moreover, she failed to provide sufficient evidence to establish that she acted responsibly to address her debt. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Guideline E (Personal Conduct)

The concern under this guideline 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.

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.²³ An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.²⁴

his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

²³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

²⁴ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant intentionally falsified materially relevant facts on her October 2014 Security Clearance Application, which establishes the following disqualifying condition under this guideline:

AG ¶ 16(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;

The security concerns raised under this guideline have not been mitigated by either of the following factors:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

Applicant's failure to report her entire federal tax debt and her failure to file for multiple tax years is security significant, especially in light of her familiarity with the clearance process. She has maintained a security clearance for a long period of time. Her explanations and excuses for failing to report these materially relevant facts on her SCA are not credible.

The IRS documentation submitted by Applicant demonstrates she was sent notices regarding her delinquent taxes prior to completing her August 2014 SCA. Given these facts, there is substantial evidence of an intent on the part of the Applicant to omit, conceal, and falsify security-significant facts from and on SCA. Serious doubts are raised about her current reliability, trustworthiness, and good judgment based not only upon her falsification of SCA but also her history of failing to file federal income tax returns in a timely manner and pay financial obligations.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by her failure to pay her delinquent debts and disclose these debts to the government. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national security interest of the United States to grant her eligibility for access to classified information.

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.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c. – 1.i.:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a.:	Against Applicant
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Conclusion

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

Caroline E. Heintzelman
Administrative Judge