



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04400

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On February 2, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 28, 2018, and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2018. I convened the hearing as scheduled on April 19, 2018. The Government offered

exhibits (GE) 1 through 4. There were no objections and the exhibits were admitted into evidence. Applicant did not offer any exhibits. The record was held open until May 3, 2018, to allow Applicant to submit additional documents. She provided one document that was marked Applicant Exhibit (AE) A, which was admitted without objection, and the record closed.¹ DOHA received the hearing transcript on April 27, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.b, and denied the allegation in 1.c. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. She earned a bachelor's degree in 2003. She is not married and has no children. She has worked on contracts as an independent contractor for a parent company since 2002. From 2003 to 2012, she worked several contracts in different states. She traveled to the work location during the week and flew home to another state for the weekend.²

Applicant took off from work for seven months in 2017 after her mother passed away. She lived off of her savings, her mother's life insurance proceeds, and credit cards. She explained her mother died unexpectedly, and she managed her mother's estate and helped her siblings during this time. She also was not emotionally ready to continue working. She provides some support to a 29-year-old younger sister who is in college and works part-time. She helps support another sister with three children. Her older sister had medical issues in July 2017, and stays in Applicant's house. Applicant testified that from 2015 to 2016, she provided care for her mother, and helped with medical bills that were not covered by Medicare.³

Applicant owes about \$30,000 in student loans that she testified are current. She purchased a house in 2003. She has two 2015 vehicles because when she commuted between states for work it was less expensive to own a second car rather than renting a vehicle. She rented a one-bedroom apartment in the second location where she worked. She received a stipend from her employer for her rent, but it did not cover what she paid.⁴

Applicant did not pay any estimated federal taxes or have taxes withheld from her income from 2005 to 2013. Some of these years she did not file returns, but did not know what years. She testified she filed her 2005 federal income tax return, but did not pay the taxes. She also stated that she owed federal income taxes for tax years 2003 and 2004, which were not paid timely, but were resolved, and are not included in her current tax

¹ Hearing Exhibit I is Government Counsel's email memorandum.

² Tr. 14-17.

³ Tr. 17-19, 51, 54-56.

⁴ Tr. 36-37, 54, 61-62.

debt. In approximately 2005 or 2006, she engaged a certified public accountant (CPA) to calculate her federal income taxes owed. It was estimated to be approximately \$50,000. It is unknown what tax years were included in the calculations. She stated that because she was an independent contractor the billing process was complicated and she was not doing it properly.⁵

Applicant stated that the CPA gave her a structured payment plan for what she should be paying in estimated taxes, and she became more educated on the process and paid some of the taxes she owed. She stated that she used the CPA to file her tax returns and calculate her federal income taxes each year. It is unknown what tax year returns were filed by her CPA. However, she did not pay the federal income taxes she owed. She did not think she paid any estimated taxes for those tax years. Her explanation was she did not have the money to pay. Applicant admitted that she did not pay estimated tax or federal income taxes owed from 2005 through 2013. Each year her CPA completed her federal income tax returns and filed them. The CPA was aware she was not paying her taxes. She hired a new CPA in 2012.⁶

In December 2013 and August 2014, the IRS filed tax liens of \$185,295 and \$2,880 respectively against Applicant's property. She testified that in 2014, she reached out to her CPA to resolve the tax issues. She estimated the current tax balance is over \$200,000.⁷

In January 2015, an agreement was made with the IRS to pay \$1,500 monthly. Applicant testified that she made the payments until the later part of 2016 and then stopped for two months. She said the monthly installment agreements increased in October 2016 to \$3,045. She did not provide documentary evidence of making payments.⁸

Applicant said her mother had knee replacement surgery in 2016, and she helped pay the co-pay and deductible. When Applicant stopped making installment payments, the IRS agreement went into default. She said she did not make any payments in 2017 and 2018. Applicant provided a copy of the IRS agreement, from December 2014, which includes tax years 2005, 2006, 2008, 2009, 2010, 2011, 2012, and 2013. She explained

⁵ Tr. 23-36; GE 2; Applicant's failure to file federal income tax returns was not alleged in the SOR. Her failure to pay her federal income taxes was also not alleged, except as it is reflected in the tax liens that were alleged. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but will be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

⁶ Tr. 23-37.

⁷ Tr. 38-40, 48-49; GE 2, 3, 4.

⁸ Tr. 40-44, 58.

she stopped making the installment payments because it was financially difficult. She did not tell her CPA until after she stopped the payments.⁹

Applicant testified that she filed her 2014 federal income tax returns as an independent contractor. She said that she paid a portion of what was owed for that year, but likely still owes a balance. She did not provide documentary evidence to support her statements. She stated she filed her 2015 federal income tax returns, but did not pay the taxes. She became a W-2 employee in 2015 and had federal income taxes withheld, but she believed she likely owes more taxes than what was withheld. She has not paid them. She had the option of becoming a W-2 employee earlier, but she thought she could earn more as an independent contractor. She filed her federal income tax returns for 2016 and 2017 and received refunds that were involuntarily applied to her delinquent federal taxes.¹⁰

Applicant explained that she neglected her tax obligations because of many family financial responsibilities. She said that she has been irresponsible by letting the tax debt increase and has created a mess. She said the tax lien on her house has hurt her. She does not have a budget. She has not had any financial counseling. Her credit cards are being paid timely.¹¹

Applicant disclosed on her April 2017 security clearance application that she took a vacation to Mexico in August 2014; a vacation to Dominican Republic in December 2015; and a trip to Mexico in September 2016 to attend a wedding. She explained a friend had free airfare passes, and they split the cost of a hotel. She described these as mini-vacations. She thinks about her IRS tax debt every day, but her job is stressful, and she needed a vacation.¹²

Applicant testified that when she began work as a consultant (independent contractor) she was irresponsible, illiterate to the complexity, and unknowledgeable about setting up a correct accounting system. She accepted responsibility and regretted her action. The recent events have shown her that she needs a system to keep her financial affairs in order. Her goal is to pay her federal income taxes. She stated she has made attempts to do so, and she is not irresponsible any more. She began working with her new CPA in 2016, but he was in an accident, and her account got shifted around the office, and it was difficult to communicate with him.¹³

In Applicant's post-hearing email, she stated she was unemployed from June 2012 to February 2013 and not earning an income. She did not explain if she lost her job or

⁹ Tr. 40-44, 50, 53, 59-60.

¹⁰ Tr. 44-47, 57-58.

¹¹ Tr. 50-52, 56.

¹² Tr. 62-64; GE 1.

¹³ Tr. 70-72.

chose to not work during this time. She explained this was the period when she began missing payments on the IRS payment plan. She stated when she resumed working she reinitiated payments on her IRS plan when she was informed by her CPA that she was already in default. Applicant did not provide documents to corroborate her post-hearing statements that she had been making payments to the IRS prior to her unemployment. That statement is inconsistent with her testimony and the documents from the IRS that show the installment agreement was to begin in January 2015.¹⁴

Applicant's post-hearing email states she contacted the IRS to discuss a new payment plan and other options to pay her federal taxes . She said she is committed to resolving her delinquent tax debt.¹⁵

The debt in SOR ¶ 1.c is for a delinquent credit card. Applicant testified that she was making monthly payments and then it became past due. In August 2017, the creditor demanded the entire balance be paid. Applicant had resumed work in May 2017 after taking off seven months. The balance on his debt was paid in full in December 2017. She provided documents to substantiate the payment.¹⁶

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹⁴ AE A.

¹⁵ AE A.

¹⁶ Tr. 19-22; Answer to SOR.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has two unresolved federal tax liens that were filed in 2013 and 2014. She also had a delinquent credit card. 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 financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant was aware that she had not paid estimated taxes or federal income taxes for numerous tax years. She hired a CPA in 2005 to file federal income tax returns. She failed to follow his instructions to pay her estimated taxes for numerous years and her tax debt began to increase. She provided insufficient corroborating evidence to show she is resolving her taxes. There is insufficient evidence to conclude that her behavior is unlikely to recur. Applicant's failure to pay taxes casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a seven-month period in 2017 when she did not work. She decided to take off work and use her savings to pay living costs after her mother passed away. She used that time to take care of her mother's estate. She also attributed her financial problems to helping several family members, including her mother. Voluntarily taking off work was within her control. Helping family members may have been beyond Applicant's control, but they occurred years after she failed to pay her federal income taxes. These factors did not affect her ability to comply with tax laws and obligations. The federal tax liens were entered in 2013 and 2014. She testified she did not pay her taxes for eight years. In 2015 she became a W-2 employee. Her sister's medical issue was in 2017. These matters may have impacted her ability to repay the taxes, but they were not the cause of the tax problem. There is minimal evidence that Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant paid the credit card debt in SOR ¶ 1.c. AG ¶ 20(d) only applies to this debt. There is no substantiated evidence that Applicant has an installment agreement or current arrangements with the IRS. She provided a copy of the past agreement with the IRS from 2015, but nothing to show payments on that plan. She did not provide documents from her CPA to show actions she has taken to resolve the tax liens. AG ¶¶ 20(c) and 20(g) do not apply.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a 48-year-old educated woman. She neglected to pay estimated taxes for many years as an independent contractor, even after her CPA became involved and instructed her to do so. The tax liability became overwhelming. Although she had family commitments and helped them financially, these obligations were not the cause of the problem. Despite being aware each year of her pending tax liability, she failed to act responsibly. She failed to provide corroboration of any payments she may have made or a current installment agreement with the IRS. The DOHA Appeal Board has held that:

Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).¹⁷

Applicant's history of non-compliance with a fundamental legal obligation to pay federal income taxes, which resulted in federal tax liens, raises serious concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge

¹⁷ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).