



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



In the matter of:)	
)	
)	ISCR Case No. 14-05408
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

06/23/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 10, 2014. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 5, 2014, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on December 22, 2014, and she answered it on January 2, 2015. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 7, 2015, and I received the case assignment on February 23, 2015. DOHA issued a Notice of Hearing on March 3, 2015, and I convened the hearing as scheduled on March 24, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits (AE) marked as AE A through AE F, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 1, 2015. I held the record open until April 13, 2015, for Applicant to submit additional matters. Applicant timely submitted AE G - AE M, which were received and admitted without objection. The record closed on April 13, 2015.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 10)

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 49 years old, works as executive assistant for a DOD contractor. She began her current position and employment in March 2014. Her manager describes her as a highly-functioning executive assistant, who displays honesty, integrity, dependability, and selflessness. Applicant demonstrates sound moral and ethical principles at work, and she is a diligent and dedicated employee. Her manager considers her an asset to the organization, but did not indicate any knowledge of the issues in the SOR.¹

Applicant graduated from college with a Bachelor of Arts in business communications. While in college, she worked part time. After college, she worked as an assistant manager in the retail industry. She left this position to return home to care for her grandfather. She returned to work in the investment industry, initially in mutual funds. She obtained a position with a large, national investment company. The company regularly promoted her and assigned her to positions of responsibility. She left this job in

¹GE 1; AE F; Tr. 30.

September 2003 because of health reasons. Her health issues prevented her from working full time for several years. She worked sporadically and part time until April 2008, when she obtained a permanent position. She worked for this employer until May 2013. She was unemployed from June 2013 until November 2013, when she obtained a position as a project assistant. She left this job in February 2014 when she accepted her current job.²

Applicant married in 1997. She and her husband separated in 2004, and they divorced in 2010. She currently lives with a man, who is her significant other. During her marriage, Applicant unsuccessfully underwent fertility treatments. The treatments caused her weight to balloon to 400 pounds. In 2002, she took a sabbatical from her investment job for bariatric surgery due to her weight. Complications developed from the surgery, which necessitated additional surgery, hospital stays, and emergency room treatments. Her employer initially placed her on short-term disability and later on long-term disability before ending their employment relationship in September 2003. Between 2003 and 2007, Applicant continued to experience residual problems from her bariatric surgery as well as dental issues, a broken ankle, and pneumonia. From 2008 forward, she continued with ongoing problems with dental issues, diverticulitis, asthma, muscular-skeletal injuries, severe pain, pancreatitis, hernias, and medication reactions. She takes prescription and over-the-counter drugs regularly.³

During her marriage, Applicant and her husband filed a Chapter 13 bankruptcy petition in August 2000. They complied with the terms of their payment plan, and the court discharged any remaining debts in November 2002. Applicant acknowledged that she and her former husband had financial problems during their marriage.⁴

Applicant's medical problems created significant medical expenses not covered by health insurance. Her sporadic employment created additional financial problems. She contacted a bankruptcy attorney in 2008. Once she saved enough money for attorney and filing fees, she filed a Chapter 7 bankruptcy petition in October 2009. From her conversations with her attorney, she thought her tax debts may be discharged in her bankruptcy. The debts listed in her bankruptcy petition included approximately \$40,000 in education loans, over \$20,000 in medical bills, approximately \$13,000 in federal and state income tax debts, and \$30,000 in other debts. As required under the bankruptcy law, Appellant took a financial and credit counseling course. The court discharged her debts on March 1, 2010. The discharge did not include her tax debts or her student loan debts. Her student loans are in deferred payment status.⁵

²GE 1; Tr. 25-28, 41-44, 57-58.

³GE 1; AE E; Tr. 29, 32-34.

⁴GE 2; Tr. 44-45.

⁵GE 3; GE 4; AE A; Tr. 38-39.

Prior to her marriage, Applicant filed her federal and state income tax returns every year. In the first few years of her marriage, Applicant and her former husband took their financial information to a major tax service. The tax service prepared their income tax returns, and Applicant and her former husband signed the income tax returns before filing them. By 2002, Applicant's health had become a serious problem. She thought her husband had contacted the tax preparer as they had done in the past and filed their returns for the tax years 2002, 2003, and 2004. At the hearing, she indicated that she never thought about the fact that she had not signed a tax return for these years as she was focused on her health issues. Since 2005, Applicant has timely filed her federal and state income tax returns each year. As she prepared her Chapter 7 bankruptcy petition, she learned that her former husband had not filed their income tax returns for the tax years 2003 and 2004 at issue. She was aware that the 2002 tax return had not been filed.⁶

Applicant provided letters and tax transcripts from the Internal Revenue Service (IRS) along with some federal income tax returns. For the federal income tax year 2002, the IRS prepared a substituted tax return, showing a taxable income of \$50,000 and a filing status of single for Applicant, which she thought constituted proper filing. She later learned that she needed to file a return for that year. She prepared and filed a 1040X in 2010, but the IRS did not have a record of her filing. The IRS tax transcripts do not show when this return was filed. In June 2010, the IRS notified Applicant by letter of its intent to file a tax lien for the 2002 taxes. On July 14, 2010, Applicant requested a due process hearing on the proposed levy. She also marked the boxes installment agreement and offer in compromise. While her appeal was pending, the IRS filed a lien on July 27, 2010 for the 2002 tax year in the amount of \$7,749.⁷

On May 5, 2010, the IRS mailed Applicant a letter requesting her to file her tax returns for the tax years 2003, 2004, and 2006. She responded on May 20, 2010, indicating that she thought the 2003 and 2004 tax returns had been filed, but could not find any documentation. She also advised that she thought these taxes had been discharged in her bankruptcy in March 2010 and that the 2006 tax return had been filed.⁸

The IRS tax transcripts for the tax year 2003 indicated that Applicant filed her tax return on July 19, 2010. She filed as married filing separately, and she showed a taxable income of \$15,000. The IRS filed a lien on her assets on August 13, 2010. As of July 2011, Applicant owed approximately \$3,327 in taxes, penalties, fees, and interest for this tax year⁹

⁶Response to the SOR; GE 1; Tr. 33-37, 54.

⁷AE B.

⁸AE B.

⁹AE B.

The IRS tax transcripts for the tax year 2004 indicated that Applicant filed her tax return on July 26, 2010. She filed as married filing separately, and she showed a taxable income of \$23,500. The IRS filed a lien on her assets on August 13, 2010. As of July 2011, Applicant owed approximately \$6,527 in taxes, penalties, fees, and interest for this tax year.¹⁰

Applicant received a second notice of intent to file a lien dated June 17, 2010. She again requested a due process hearing. She began email communication with an IRS tax examiner in September 2010. In December 2010, she submitted an offer in compromise for the tax years 2002, 2003, and 2004. By letter dated June 9, 2011, the IRS rejected her offer in compromise. She received a letter dated June 6, 2013, advising that her appeal of the tax collection for the tax year 2002 had been received. On July 30, 2013, the IRS notified her that it had received her request to withdraw her appeal.¹¹

Applicant received IRS wage and income transcripts for the tax years 2005 through 2010 as her tax transcripts were not available. The wage and income transcripts reflected that Applicant's yearly income for these years fluctuated between \$25,000 and \$42,000. Applicant also provided income tax return transcripts for the tax years 2011 through 2013. She timely submitted the returns to the IRS. Her 2011 tax return reflects an income of \$40,628, an investment distribution of \$5,800 and \$12,000 in gambling income. The tax return shows taxable income of approximately \$56,000, medical expenses of almost \$6,500, and a tax refund of \$947. Her 2012 tax return shows an income of \$41,000 and \$8,000 in gambling income. The return also shows medical bills of nearly \$11,000, a tax payment of \$128 with the return and a tax refund of \$449. Applicant's 2013 tax return indicates \$24,725 in income, \$10,200 in unemployment benefits, \$35,000 in a pension distribution, and almost \$20,000 in medical expenses. She received a refund of \$1,053. The ISR applied all three tax refunds to her 2002 tax debt, according to the tax transcripts. Applicant timely filed her 2014 income tax return, which reflected an income of \$34,848 and a tax refund of \$22.¹²

Applicant initiated contact with the IRS a second time in May 2014, seeking to develop a settlement plan for her tax debt. She offered to pay \$25 a month, and she sent a \$25 payment. Since May 2014, Applicant has made regular payments of at least \$25 a month to the IRS. After multiple letters advising that it had received her inquiry and were researching it, Applicant received a letter from the IRS dated March 31, 2015 (a week after the hearing). The IRS set up an installment agreement for the tax years 2002, 2003, and 2004 at the rate of \$25 a month beginning April 28, 2015. Applicant's budget indicates that she plans to pay \$50 a month on her debt.¹³

¹⁰AE B.

¹¹AE B.

¹²AE C; AE I.

¹³AE C; AE J; AE K.

In her response to the SOR, Applicant indicated that she had a previous payment plan with the IRS, but ceased making her payments when she was unemployed. She referenced this earlier payment plan at the hearing. The record lacks any documentation of this payment plan.¹⁴

Applicant currently earns \$3,231 a month in gross income, and she receives \$2,251 a month in net income. She provided a budget, which reflects her employment income and some additional income in March and April from her significant other and from income not spent in previous months. Her budget shows her expenses as housing, transportation, cable, medical food, storage, and medical expenses. Her budget includes \$50 a month to the IRS and \$40 a month for her state tax debt.¹⁵ She continues to pay credit cards and medical bills also. She made the final payment on one credit card just prior to the hearing and closed the account. She anticipates paying three other credit card debts in full by May 2015. Viewed in its entirety, her budget reflects that she has sufficient income to pay her bills as the amount of money spent on certain items fluctuates each month, leaving her with sufficient income to pay her living expenses and bills. In addition, she receives five paychecks in May, not her usual four, which eliminates any carryover deficits shown on her budget.¹⁶

Policies

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

¹⁴Response to SOR; Tr. 38.

¹⁵Her state tax repayment plan requires her to pay \$25 a month. She pays \$40 each month. AE I.

¹⁶AE G; AE M.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or 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 Executive Order 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant developed significant financial problems when health problems developed and she lost her full-time job. Her former husband failed to manage their finances when she was ill, and he failed to file their income tax returns for the tax years 2002 through 2004. These disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) has some applicability. Applicant relied upon her former husband to manage their household finances, which included filing their income tax returns. Unbeknownst to her, he did not file their income tax returns for the last three years of their marriage. They are now divorced. Since their separation more than 10 years ago, Applicant has filed her individual income tax returns each year as required.

For many years, Applicant was unable to work full time or continuously because of significant and multiple health issues. During this time, she separated from her husband, and they eventually divorced. When she did return to work, her reduced income was insufficient to meet all her high expenses. To gain control over her finances, she filed a Chapter 7 bankruptcy, a legally permissible and reasonable action given her circumstances. The discharge of her debts in bankruptcy eliminated her medical and credit card debts, but not her tax debts as hoped or her education loans, which are now in deferment based on her income and ability to pay. AG ¶ 20(b) is partially applicable.

Because she filed for bankruptcy, she took financial and credit counseling. Her current finances are tight, but under control. She has resolved several other credit debts and has sufficient income to pay her living expenses. AG ¶ 20(c) has partial applicability.

When Applicant received a notice from the IRS about its intent to file a lien, she timely requested an appeal of this action, which the IRS did not acknowledge for two years. She filed the 2003 and 2004 tax returns prior to the liens being filed. Given these timely filings, I find that she submitted the 2002 tax returns to the IRS, as requested, before the lien was actually filed. Shortly afterward, she started communicating with the IRS about a resolution of her tax debts. In December 2010, she submitted an offer in compromise to the IRS, which it rejected in July 2011. She took no additional action as she was waiting on the results of her appeal. In May 2014, she contacted the IRS again and offered to pay \$25 a month on her tax debt and submitted a \$25 payment as evidence of her good-faith intent to pay her debts. Although she did not hear from the IRS for almost a year, she continued to pay at least \$25 a month on her tax debt. The IRS recently agreed to her payment plan. AG ¶ 20(d) applies.¹⁷

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the

¹⁷Recently, the Appeal Board issued a decision denying an Applicant's security clearance after the Applicant repaid the IRS more than \$100,000 through a wage garnishment for taxes owed over a period of 10 years. In this case, the Appeal Board stated that "a person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." The Appeal Board noted that a person who has a history of failing to file [emphasis supplied] income tax returns does not demonstrate a high degree of judgment and reliability required for access to classified information, ISCR No. 12-05043 (App. Bd. Oct. 30, 2014), citing ISCR Case No. 98-0608 (App. Bd. Jun. 27, 2000). The Appeal Board was troubled by the fact that the Applicant did not file his tax returns and took no action to pay his taxes until his wages were garnished. The failure to file tax returns or to pay overdue taxes until garnishment action is taken significantly undercuts the strength of the Applicant's filing of his tax returns three years before his hearing. Two key factors emphasized by the Appeal Board are a failure to file tax returns and garnishment. Applicant filed her returns in 2010. The IRS has not garnished her wages, although it placed a personal lien for the taxes owed.

evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems arose from multiple factors beyond her control. As she regained her health and after her separation from her husband, she began slowly to address her financial problems. She did not ignore her debts, but made choices about how to resolve her debts, using bankruptcy as she was unable to resolve her debts on her income. When her taxes were not discharged in bankruptcy, she worked with the IRS to resolve her tax debts. After exhausting all her legal options with the IRS to reduce her tax debt, she made a good-faith offer to make monthly payments on her debt, which the IRS accepted. On her own, Applicant has always filed her federal and state income tax returns, including the last nine years. During the worst of her illness, her former husband, who was managing all the household finances, failed to file their federal and state income tax returns, something she later learned. She relied upon incorrect advise from her bankruptcy attorney about the possible discharge of her tax debts in bankruptcy. When her taxes remained and the IRS contacted her, she took steps to resolve her tax debts, which she is slowly paying. Her need to file her most recent bankruptcy filing was not the result of overspending, but arose from extensive medical bills and low income. In viewing all the evidence in this record, Applicant has shown that she will protect sensitive and classified information.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is granted.

MARY E. HENRY
Administrative Judge