



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



In the matter of:)
)
) ISCR Case No. 15-03300
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On November 2, 2015, 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 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 September 1, 2006.

Applicant answered the SOR on November 30, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 9, 2016. I convened the hearing as scheduled on March 3, 2016. The

Government offered exhibits (GE) 1 through 9, which were admitted into evidence without objection. In addition, the Government submitted a copy of the discovery letter sent to Applicant. It was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open until March 10, 2016, to allow Applicant to submit additional documents. She submitted documents that were marked AE C and D and they were admitted into evidence without objection. The record then closed.¹ DOHA received the hearing transcript (Tr.) on March 11, 2016.

Findings of Fact

Applicant admitted the allegations in the SOR ¶ 1.c, 1.e, 1.f, 1.i and 1.l. She disputed or denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. She earned her bachelor's degree in 2006 and a master's degree in 2015. She intends to pursue a doctorate degree. She is "trying to raise \$2,500 to begin the program" and intends on funding it with a loan and a work study program.² She has been married since 1989 and has two children, a son age 21 and a daughter age 18. Her son lives at home and attends college. She pays his tuition of \$1,700 twice a year. Her daughter is in high school and intends on going to college. Applicant has worked for her current employer, a federal contractor, since 2006. Before then she worked for a subcontractor from 2004 to 2006. She worked from 1997 to 2002 and was unemployed from 2002 to 2004. Her husband receives 30% disability pay from the Department of Veteran's Affairs. He has worked sporadically since 2003, but is not currently employed. He does not contribute financially to the family. Applicant testified that her husband is a "bit of a gambler" and he asks her for money.³ She will give him money but knows he uses it to gamble. She stated she does not know how to handle the situation.⁴

Applicant testified that she had a Federal tax lien from 2002 that she owed about \$14,000. This was due to her not having sufficient funds withheld from her income. She testified that the tax problem occurred in 2001 when she permitted her mother to claim Applicant's children on her taxes because the children were living with their grandmother for one year. Consequently, Applicant's tax burden increased. Later, Applicant claimed the children for exemptions and her husband also claimed the children. Applicant did not have sufficient money withheld from her income to cover her tax liability. This began in about 2001 and the amount of tax owed kept increasing. Her tax liability also increased because she was receiving pay raises. She explained she

¹ HE II is Department Counsel's email memorandum.

² Tr. 21.

³ Tr. 29.

⁴ Tr. 19-30.

had a payment plan with the Internal Revenue Service (IRS) so the payment for the lien was automatically withdrawn from her paycheck. The 2002 tax lien was released in 2010.⁵

The SOR alleges Applicant has two delinquent Federal tax liens (§§ 1.b - \$5,275 and 1.c - \$7,882) that were filed in 2008 and 2012. Applicant explained that she received a letter from the IRS regarding owing taxes. Applicant testified that she was required in 2010 to make a new payment plan with the IRS for other taxes owed. She stated that the IRS was involuntarily withholding her refunds and applying them to her tax liens. She did not set up a new payment plan with the IRS as directed. The only money she paid to the IRS for her Federal tax liens was any annual tax refunds she was entitled that were applied to the debt. She did not make any independent payments. She believed she now owes about \$8,000 to the IRS. She did not provide any supporting evidence that either tax lien is satisfied or that she has a payment plan.⁶

Regarding the state lien alleged in SOR § 1.a (\$606) filed in 2006, Applicant indicated it was satisfied through a tax refund that she was due and applied to the lien. She did not make an independent payment. She stated that through the years she has owed other amounts of state income taxes, but she waits until she is owed a refund and then has it applied to outstanding taxes. She provided a document that shows she has a zero balance owed to the state.⁷

Applicant was asked what she does if she owes taxes after she completes her state and federal income tax returns. She stated: "Most of the time I won't have any money to pay the entire amount."⁸ Instead she relies on future refunds to be applied to past due taxes. She was further asked if she waits to see what she notices she receives from the state or federal government regarding her taxes. She stated: "[w]ell basically, yes. That's what's happening although in my mind and in my heart I have intentions of paying it when I'm caught up. However, I never seem to get caught up. So, them taking the refund seems to be my best [way] out of them helping—me helping myself. So—I realize that's [] not perfect and it's not the way it should be done, but, that just the way."⁹

During a September 2011 interview with a government investigator as part of her background check, Applicant disclosed that she lived in one state and worked in a different state. She did not file state income taxes for the state where she worked, but did for the state where she lived. This occurred over a three year period from 1999 to 2002. She believed she owes approximately \$10,000 for taxes to the state where she worked. She indicated during the interview that she intended to contact the state and

⁵ Tr. 52-63. It appears Applicant and her husband filed their tax returns separately.

⁶ Tr. 59-65; GE 9. It is unknown what tax years the liens were for.

⁷ Tr. 65-66; GE 9; Attachment to Answer to SOR; AE B.

⁸ Tr. 66.

⁹ Tr.67.

make payment arrangements. At her hearing, she testified she believed she still owes the state. She did not provide further evidence as to any actions she may have taken to contact the state or resolve the matter.¹⁰

The judgment alleged in SOR ¶ 1.d (\$1,380) was for medical accounts delinquent since 2013. Applicant explained she did not have the funds to pay the account at the time. She testified that the debts in SOR ¶¶ 1.h (\$340), 1.j (\$338) and 1.k (\$313) are included in this judgment. The judgment was paid in May 2015.¹¹

The debt in SOR ¶ 1.e is for a past-due mortgage payment of \$1,708. Applicant purchased the house in 2013. Her mother gave her \$5,000 for the down payment. Her husband had a job in 2013. He also purchased a truck in 2013. When asked why she purchased a house when she had medical bills, she stated she wanted to get out of her mother-in-law's house where she was living. She did not think at the time her medical debts were reflected in her credit report. She explained that she got behind on her mortgage payment in March 2015 because her son lost his college tuition funding when he fell below the academic requirements, and she paid his tuition. Around the same time, she had the judgment entered against her that she had to pay. She did not have enough money to pay all of her bills. She testified that she entered a home saver program. She explained the program will pay her mortgage for up to two years. The length of the program depends on if Applicant's husband gets a job or her finances become stable. Applicant testified she is currently not making her mortgage payments (\$1,364), and at the end of the program the company will extend her loan. She also testified that she really did not understand how the program worked. She provided "Substitute Form 1098 annual statement for mortgage account for 2015" dated October 2015.¹² It appears Applicant's mortgage payments are current as of the date of the document.

Applicant fell behind three months in paying her car note and the vehicle was repossessed. (SOR ¶ 1.f - \$385) Because she was traveling with her company, she received additional money and used that money to catch up on her payments. She was able to bring the car note current and have the car returned.¹³

The debt in SOR ¶ 1.g (\$176) was for a title loan. She provided a document showing she made the payment. She still has a balance on the debt, but it is not delinquent.¹⁴

¹⁰ Tr. 67-71; GE 3. Potential delinquent taxes to the state where Applicant lived were not alleged and will not be considered for disqualifying purposes, but will be considered when analyzing credibility, mitigation, and the "whole person."

¹¹ Tr. 33-40; Answer to SOR.

¹² Tr. 40-52; AE A.

¹³ Tr. 41, 78-79; AE D.

¹⁴ Tr. 72-74 80; Attachment to Answer to SOR.

The debt in SOR ¶ 1.i (\$339) is a collection account for a delinquent cable bill from July 2015. Applicant paid the amount in December 2015.¹⁵ Applicant is unsure what the debt is for in SOR ¶ 1.l (\$1,747). She stated she tried to call the creditor. No other action was taken. It appears this may be a debt from a loan Applicant received from a tax preparer based on a refund she anticipated. Because the refund was involuntarily applied to her tax liens, she did not receive the refund. She had already spent the loan money and could not afford to repay it.¹⁶ Regarding the debt in SOR ¶ 1.m (\$103), Applicant indicated she contacted the creditor and was told the debt is paid. No documentary evidence was provided.¹⁷

The debts alleged in the SOR are supported by credit reports from August 2011, November 2012, and March 2015.¹⁸

Applicant testified that “I always had a problem with choosing what I need to pay and what [was] most important. And sometimes some things got left behind when other things popped up that was –you know, like choosing between a light bill and a medical bill, my light bill would win.”¹⁹ Applicant testified that she has a budget, but it is not written. She stated that at the end of the month she has between \$50 and \$200 remaining after paying her bills. She has not received financial counseling. She has some money in her retirement account, but has taken two loans from it, and has about \$2,000 to pay back. She also has a debt to a furniture company with a balance of about \$1,900. She last made a payment in July 2015. She opened the account in December 2014. She makes minimum payments on two credit cards with balances of \$500 and \$800. She purchased a new wedding ring set and watch (\$300) in around 2013 or 2014. She owes the jeweler \$1,300. She thought she could afford it at the time and “squeezed” out payments as long as they were small. She explained; “I just wanted a ring and I guess I just didn’t think about the consequences as time went on.”²⁰ She made \$60 payments until July 2015. She owns a 2007 Toyota (paid), a 2009 Mercedes Benz (owes \$13,000), and a 2013 Silverado that Applicant co-signed for her husband to purchase new for \$23,000 (monthly payment \$563).²¹

¹⁵ Tr. 80-82; AE C.

¹⁶ Tr. 77-78; GE 4.

¹⁷ Tr. 77-78.

¹⁸ GE 5, 6, and 7.

¹⁹ Tr. 39.

²⁰ Tr. 94-95.

²¹ Tr. 74-77, 83-95. Delinquent debts not alleged in the SOR will not be considered for disqualifying purposes, but will be considered when analyzing Applicant’s credibility, in mitigation and the whole-person.

Three character witnesses testified on Applicant's behalf. She was described as a good and honest person, who has had trouble with her finances and is working hard to make a living. They said that Applicant has worked hard to achieve her goals and has learned her lessons. She is reliable, dependable and responsible.²²

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. 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 and has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

²² Tr. 100-109.

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²³

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had numerous delinquent debts and tax liens dating from at least 2008 that were not paid or resolved. The above disqualifying conditions apply.

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

²³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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;

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

(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.

Applicant has delinquent debts and tax liens that remain unresolved. She repeatedly has failed to address her income tax responsibilities, despite being made aware of them for many years. Applicant's conduct is recent and ongoing. There is insufficient evidence to conclude that it is unlikely to recur. Her failure to voluntarily address some of her delinquent debts casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's husband is unemployed and she paid her son's tuition when he no longer was eligible for assistance. These circumstances may be conditions that were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. It does not appear Applicant has a solid understanding of her financial situation. She testified that her tax liens are being paid through the IRS's involuntary withholding tax refunds. She failed to set up a new payment plan with the IRS to resolve the liens, as directed. She failed to pay medical bills, which resulted in a judgment. When she was required to pay the judgment it affected her ability to pay other bills. She gives her husband money that she knows he uses to gamble. She has paid some past-due bills, but there is insufficient evidence to conclude Applicant acted responsibly in resolving her financial problems under the circumstances. AG ¶ 20(b) partially applies.

Applicant resolved the delinquent debts in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j and 1.k. She has not provided evidence to demonstrate that she has responsibly attempted to address her tax liens (SOR ¶¶ 1.b and 1.c). She did not provide sufficient evidence to resolve the debts in SOR ¶¶ 1.l or 1.m. Applicant's delinquent medical debts were resolved through a judgment. I have considered that the judgment is now paid, but this does not constitute a good-faith effort to pay the creditor. Applicant did not

provide a reasonable plan for resolving her remaining delinquent debts. AG ¶ 20(d) partially applies.

Applicant has not participated in financial or credit counseling. She is not paying her mortgage because she is in a program where the payment is being made for her. She testified she does not know how the program works. It is unclear how she will pay all of her bills when she becomes responsible for paying her mortgage. She has not addressed her tax liens. She does not have a plan or budget showing how she is going to pay all of her expenses and delinquent debts. There is insufficient evidence to conclude her financial problems are under control or are being resolved. AG ¶ 20(c) does not apply. Applicant did not provide evidence to dispute any of her delinquent debts. AG ¶ 20(e) has not been raised.

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 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.

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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old. She is highly educated and has been employed steadily since 2004. She has a long history of irresponsible conduct and attitude toward her obligation to pay her taxes when due and her tax liens. She managed to address some debts that were past-due, but this was done while she has not been responsible for her mortgage payment. She has other debts for jewelry and furniture that are delinquent. The evidence clearly demonstrates that Applicant is living beyond her means. Applicant did not provide sufficient evidence to show she has an established and reliable track record of being fiscally responsible. Overall, the record evidence

leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.k:	For Applicant
Subparagraphs 1.l-1.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge