



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



In the matter of:)
)
) ISCR Case No. 14-03451
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On September 2, 2014, the Department of Defense (DOD) issued 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; Department of Defense 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.

On October 21, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015. I convened the hearing as scheduled on March 9, 2015. The

Government offered exhibits (GE) 1 through 5. GE 1, 2, 4, and 5 were admitted into evidence without objection. Applicant objected to GE 3, the summary of her personal subject interview. Her objection was sustained and GE 3 was not admitted. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open until March 20, 2015, to allow Applicant to submit additional documents, which she did. They were marked as AE D through I, and they were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on March 13, 2015.

Findings of Fact

Applicant failed to admit or deny the allegations in SOR ¶¶ 1.a and 1.b, except to provide explanations. Therefore, I will treat the allegations as if she denied them. She admitted the remaining allegations in the SOR. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. She was married from 2002 until December 2010. She has one child age 19. She served in the Air Force from 1983 to 1989 and was honorably discharged. She earned an associate's degree in 1989, and a second one in 1995. She has been employed with his present employer, a federal contractor, since 2003 and she has held a security clearance since then.²

Credit reports support Applicant owed the debts alleged in the SOR. In October 2010, Applicant consulted an attorney about filing bankruptcy. She stated she paid the required fee to initiate the bankruptcy but was struggling with whether it was a good idea to pursue it. She attended the mandatory credit counseling, but did not file bankruptcy until October 2014, after receiving the SOR. She believes all of the debts in the SOR were discharged in bankruptcy on January 30, 2015. The delinquent debts in SOR ¶¶ 1.c through 1.cc, excluding ¶ 1.u, total approximately \$61,333. Applicant's Summary of Schedules reflects \$89,451 in unsecured nonpriority claims that were discharged. A \$23,969 delinquent student loan (SOR ¶ 1.u) and a state income tax debt of \$5,000 were not discharged. Her delinquent debts date from at least 2007.³

Applicant attributed her financial problems to her marriage. She testified she purchased two houses without financial assistance from her husband. She stated she became aware her husband had a gambling problem in 2002. He would not contribute financially to the household. She began having financial problems in 2004. She purchased a house in her name in 2004. He husband was unable to contribute financially because he had bad credit. He wanted his name on the deed of a house, so she purchased another house in 2006. She used equity in the first house to buy the

¹ Hearing exhibit I is Department Counsel's email memorandum.

² Tr. 9, 30-33, 84-85.

³ Tr. 34-35, 40-45, 71 74; GE 2, 4, 5; AE A.

second house and also to pay his delinquent bills. One home was used as a rental property, and she experienced financial difficulties when the tenants did not pay their rent. Both houses were foreclosed in 2010. The 2006 house was sold and there was no deficiency. SOR ¶ 1.w (\$21,995) was the equity loan for the 2004 house.⁴

Applicant testified that she obtained the student loan alleged in SOR ¶ 1.u (\$23,969) in 1993 and consolidated it with others in 2005. She stated she began making payments on it six months after she graduated and stopped paying it when she was unemployed or underemployed. She stated she contacted the creditor to have the loan placed in a hardship status. She indicated that in the past 14 years she has made payments on the loan and had only missed three payments before it was placed in default status. She did not provide documents to show she had been making payments in the past or the current balance owed. She stated she paid \$500 a month from December 2012 to May 2013 to rehabilitate the loan, but did not provide documents to support these payments. After the hearing, she provided documents to show her student loan is in forbearance and payments will begin in the next 10 to 40 days. She was not yet provided with the monthly payment amount but was confident she could pay it.⁵

Applicant failed to timely file her federal income tax returns for tax years 2009, 2010, 2011, and 2012. She and her husband lived together until January 2010. They filed their tax returns separately and used different tax preparers. In 2010, Applicant agreed to have her husband's tax preparer complete her tax returns for tax year 2009. She believed he had filed her 2009 tax return. At some point, she contacted the preparer and learned he filed an extension, but did not file the return. She stated she was told she owed him money for the preparation. She did not have the money to pay him. She indicated she was aware she likely owed about \$3,000 for tax year 2009. She stated: "I didn't file in 2010, 2011, and 2012 on time because I knew that I owed for 2009. And I wanted to pay that first. But after the fact I realized that wasn't the right thing to do."⁶

Applicant testified that for tax years 2010, 2011 and 2012 she believed she would be getting a refund so she was not in a hurry to file them. She indicated that she did not believe there was a problem if she did not owe money. She indicated she had increased her withholdings so she would receive a refund. She filed her 2009 federal income tax return on June 17, 2013; tax year 2010 was filed on May 6, 2013; tax year 2011 was filed on May 13, 2013; and tax year 2012 was filed on May 27, 2013. It does not appear Applicant owes any outstanding federal taxes.⁷

⁴ Tr. 34-35, 62-71; GE 2, 4; AE G, H, I.

⁵ Tr. 45-61; GE 2, 4.

⁶ Tr. 37-38.

⁷ Tr. 38-40, 82-92; AE C.

Applicant disclosed on her security clearance application (SCA), in March 2013 that she failed to file her 2009 federal tax returns, but anticipated refunds for 2010, 2011, and 2012. She did not disclose her failure to timely file federal income tax returns for 2010, 2011, and 2012. She disclosed in the SCA that she and her husband were going to file jointly for tax year 2009 and they would not receive a refund. She stated "Just recently I was going thr[ough] my papers to account for past files and when I didn't see 2009." She disclosed she then learned the 2009 tax returns were not filed. She indicated when her husband moved out of the house in 2010 he took their files, and she trusted him that the 2009 tax returns were filed. She further noted in the SCA that after discovering the 2009 tax returns were not filed, she contacted the Internal Revenue Service to verify the 2009 tax returns were not filed. She stated that she was told that since she was receiving a refund for 2010 and 2011 that the amount would be applied to what she owed.⁸

Applicant's bankruptcy documents reflect she owes state income taxes for 2010, 2011, and 2012. Applicant testified that she believed she owed approximately \$3,300 for state income taxes from tax years 2010 and 2012. Documents provided after the hearing support the balance owed is \$3,422. She stated that she thought her federal and state income tax returns were filed together, so she was unaware until 2013 that she owed state income tax. She is attempting to negotiate a payment plan for the state taxes. She anticipated a federal income tax refund of about \$4,000 for 2014 that she would use to pay her delinquent state income taxes.⁹

Applicant indicated she has a budget and has about \$1,000 remaining at the end of the month. She did not provide a personal financial statement. She has been voluntarily off work to care for her mother for two months. She received an "incentive check" of \$2,000 from her employer and has used that to pay bills. She did not pay her rent for August, September, and October 2014, because she was caring for her mother and sister. She stated she made arrangements with the landlord to pay what she is able. She now lives with her aunt. She earned approximately \$70,000 in 2014. She helps care for her disabled sister and her mother. She does not have any savings. She withdrew money from her employer's pension plan.¹⁰

Policies

⁸ Tr. 36-39, 86-94, 102-105; GE 1.

⁹ Tr. 94-103; AE D, E, F. I have not considered Applicant's failure to file and pay her state income taxes for disqualifying purposes, but will consider it as permitted. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered. They are: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence of the whole-person analysis under Directive 6.3.

¹⁰ Tr. 75-81, 100, 107, 110-112.

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.

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three 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 had \$89,451 of debt discharged in bankruptcy in January 2015. She failed to timely file her 2009, 2010, 2011, and 2012 federal income taxes. I find there is sufficient evidence to raise 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, 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.

Applicant attributed her financial problems to her divorce and husband's gambling. Her delinquent debts date from at least 2007. She recently resolved most of her delinquent debts in January 2015 through Chapter 7 bankruptcy. Her student loan is in forbearance and she expects payments to be due soon. Although she attributed her problems to her husband, she failed to take action on any of her delinquent debts after her 2010 divorce until they were discharged in bankruptcy in 2015. She failed to timely file her federal income tax returns for 2009, 2010, 2011, and 2012. Her explanation for her failure to follow through on the 2009 tax return may have some credibility due to her divorce, but she testified she was aware of the problem when the preparer demanded payment. Although she may have had an extension, she never followed through to ensure it was filed. She did not have a reasonable explanation for failing to timely file returns in subsequent years. She was aware she owed federal taxes for 2009. Believing she would receive a refund in 2010, 2011 and 2012 does not absolve her of her responsibility to file these returns on time. In 2013 when she filed her tax returns, refunds were applied to the owed amount for 2009. AG ¶ 20(a) is not established because she only recently had her debts discharged through bankruptcy. In addition, she does not have a track record to show she is handling her finances responsibly. Therefore, I cannot conclude that financial instability is unlikely to recur. Her repeated failure to timely file her federal income tax returns cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant was aware her husband was gambling and not contributing financially to the household. Despite this knowledge she agreed in 2006 to purchase a second house so he could have his name on the deed. She took out an equity loan to purchase the second house. That loan was not repaid. Her husband's gambling was beyond her control. She relied on her husband's friend to prepare and file her federal income tax returns for 2009. Following through with filing her tax returns was within her control. Her willingness to take on new debt knowing her husband was irresponsible was within her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She completed paperwork to file bankruptcy in 2010, but did not proceed with it until late 2014. She became aware that her 2009 federal income tax returns were not timely filed when the preparer demanded payment. Despite the extension, she did not take appropriate action to ensure she had complied with filing for 2009. She did not have a reasonable explanation for her failure to timely file for tax years 2010, 2011, and 2012. AG ¶ 20(b) partially applies.

Applicant's discharge of \$89,451 of delinquent debt in 2015 does not constitute a good-faith effort to resolve her delinquent debts. She testified that she was making payments on her student loans and only missed three payments when the debt went into default status. She provided evidence the student loans are now in a forbearance status and will be due in the next 10 to 40 days. She did not provide documentary evidence of her past loan payments and when the loan was placed in forbearance and removed from default status. She also has delinquent state income taxes. She failed to

provide a reasonable explanation as to why she failed to pay her state income taxes. Applicant has not established a track record to show she is acting financially responsibly. Applicant has not presented sufficient evidence to conclude there are clear indications her financial problems are under control and resolved. AG ¶¶ 20(c) and 20(d) 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 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 those guidelines, but some warrant additional comment.

Applicant is 51 years old. She earned two associate degrees and served honorably in the armed forces. She helps care for her disabled sister and her mother. She experienced financial problems due to her husband's gambling and a divorce. She did not address her delinquent debts until she filed bankruptcy in late 2014, and her delinquent debts were discharged in January 2015. Applicant failed to timely file her 2009, 2010, 2011 and 2012 federal income tax returns. Although the circumstances surrounding the filing of her 2009 return may not have been entirely her fault, she was aware that there was a problem, but failed to follow through on resolving it. She was aware she owed approximately \$3,000 for her 2009 taxes. Although she may have believed she would get a refund in subsequent years she had no way of knowing if it would cover the 2009 taxes until she actually filed. After her bankruptcy she had a clean financial slate, except that she still has not resolved her state income tax debt and her student loan payments are about to be due. She has not established a track record of financial responsibility and has not met her burden of persuasion. 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 guideline.

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.cc:	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