



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



In the matter of:)
))
[Name Redacted])) ISCR Case No. 23-01393
))
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/24/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant failed to resolve several delinquent accounts and failed to file her federal and state income tax returns for tax years 2021 and 2022. The security concerns raised under Guideline F, Financial Considerations, are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 10, 2022, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP). (Government Exhibit (GE) 1) On August 2, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted or denied. Specifically, the SOR set

forth security concerns arising under Guideline F, Financial Considerations. On August 14, 2023, Applicant responded to the SOR and requested a hearing before an administrative judge. On September 19, 2023, Department Counsel was ready to proceed. The case was assigned to me on April 2, 2024. The hearing was originally scheduled for May 23, 2024, but was continued because Applicant was deployed overseas for several months. On October 9, 2024, DOHA issued a notice of hearing, setting the hearing for November 19, 2024. The hearing was held as scheduled via video-teleconference.

During the hearing, Department Counsel offered five exhibits, Government Exhibits (GE) 1 - 5, which were admitted without objection. Applicant offered three exhibits which were admitted as Applicant Exhibits (AE) A - C, without objection. The record was held open until December 6, 2024, to allow Applicant the opportunity to submit additional exhibits. She did not submit additional exhibits. On December 2, 2024, DOHA received a transcript (Tr.) of the hearing. The record closed on December 6, 2024.

Some details were excluded from this decision to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Procedural Issue

During the hearing, Department Counsel moved to amend the SOR to conform with the evidence, in accordance with Directive ¶ E3.1.17, by adding tax year 2022 to SOR ¶ 1.s and SOR ¶ 1.t as follows:

1.t You failed to file federal income tax returns for the tax years 2021 and 2022. As of the date of this Statement of Reasons, the tax returns remain unfiled.

1.u You failed to file state income tax returns for the tax years 2021 and 2022. As of the date of this Statement of Reasons, the tax returns remain unfiled.

There being no objection from Applicant, the motion to amend was granted.
(Tr. 57-58)

Findings of Fact

In Applicant's SOR response, she admits all of the SOR allegations. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 33-year-old employee of a defense contractor seeking to obtain a security clearance. She has worked for her current employer since October 2022. This is her first time applying for a security clearance. She has no military service. She has a high school diploma and some college credits. In June 2022, she was laid off from her previous job and was unemployed between June 2022 to October 2022. She is single and has no children. (Tr. 14, 34; GE 1)

Applicant submitted an electronic questionnaire for investigations processing on October 10, 2022. A subsequent background investigation revealed that she had approximately 19 delinquent debts totaling approximately \$26,954. The debts included one automobile repossession, 12 medical debts, and six consumer debts. Applicant also failed to file her federal and state income tax returns for tax years 2021 and 2022 and owed a \$200 state property tax debt.

The SOR debts include: a charged-off automobile loan account with an approximate balance of \$18,777 (SOR ¶ 1.a: GE 5 at 2; GE 6 at 2); a delinquent medical account placed for collection with an approximate balance of \$870 (SOR ¶ 1.b: GE 5 at 2); an \$865 credit card account placed for collection (SOR ¶ 1.c: GE 5 at 2); a \$719 charged-off account (SOR ¶ 1.d: GE 3 at 3; GE 4 at 4; GE 5 at 3); a \$545 delinquent insurance account placed for collection (SOR ¶ 1.e: GE 3 at 4; GE 4 at 4; GE 5 at 3); a \$338 delinquent cell phone account placed for collection (SOR ¶ 1.f: GE 5 at 3; GE 6 at 1); and a \$252 delinquent insurance account placed for collection (SOR ¶ 1.g: GE 3 at 5; GE 4 at 6; GE 5 at 3).

Additional delinquent accounts include: a delinquent medical account placed for collection with an approximate balance of \$815 (SOR ¶ 1.h: GE 3 at 2; GE 4 at 3); a \$781 delinquent medical account that was placed for collection (SOR ¶ 1.i: GE 3 at 2; GE 4 at 3); a \$606 delinquent medical account that was placed for collection (SOR ¶ 1.j: GE 3 at 3; GE 4 at 4); a \$471 delinquent medical account that was placed for collection (SOR ¶ 1.k: GE 3 at 4; GE 4 at 5); a \$429 delinquent medical account that was placed for collection (SOR ¶ 1.l: GE 3 at 4; GE 4 at 5); a \$411 delinquent medical account that was placed for collection (SOR ¶ 1.m: GE 3 at 4; GE 4 at 5); and a \$338 delinquent cell phone account that was placed for collection (SOR ¶ 1.n: GE 3 at 5; GE 4 at 6).

Additional delinquent accounts include: ; a \$273 delinquent medical account that was placed for collection (SOR ¶ 1.o: GE 3 at 5; GE 4 at 6); a \$222 delinquent medical account that was placed for collection (SOR ¶ 1.p: GE 3 at 6; GE 4 at 6); a \$144 delinquent medical account that was placed for collection (SOR ¶ 1.q: GE 3 at 6; GE 4 at 7); a \$53 delinquent medical account that was placed for collection (SOR ¶ 1.r: GE 3 at 6; GE 4 at 7); and a \$45 delinquent medical account that was placed for collection (SOR ¶ 1.s: GE 3 at 6; GE 4 at 7)

Applicant failed to file federal income tax returns for tax years 2021 and 2022 (SOR ¶ 1.t: Tr. 33-36; GE 2 at 2-3; GE 3 at 13-14); she failed to file state income tax returns for tax years 2021 and 2022 (SOR ¶ 1.u: Tr. 33-36, 45-46, 49; GE 2 at 2-3); and she owes \$200 for unpaid state property taxes. (SOR ¶ 1.v: Tr. 37-39; GE 2 at 3).

Applicant encountered financial problems when she was laid off from a previous employer in June 2022. She was unable to pay her bills. She moved in with her parents to save money. She was unemployed until she was hired by her current employer. Her job involves her going out to sea on a ship for various periods. The deployments range from 60 days, 90 days, 120 days, etc. It is not unusual for the deployments to last longer than originally planned. Upon her return from deployment, Applicant is not paid until she is hired for another contract with a ship that is deploying. On average, she earns

approximately \$6,000 a month while on deployment. She was hired by her current employer in August 2022 but did not deploy on her first ship until May 2023. She was unemployed between August 2022 and May 2023. (Tr. 30, 42-44, 59)

Applicant testified that 13 of the 15 accounts alleged in the SOR are resolved. She retained a credit repair firm who disputed all of the debts listed on her credit report. As a result, 13 debts were removed from her credit report. Applicant admits that she did not make any payments towards any of the debts that were removed from her credit report. She testified that she did not have to pay them because they were charged off. (Tr 14-19; AE C at 2) It is likely they were removed because the Fair Credit Reporting Act (FCRA) requires debts to be removed from credit reports after seven years.

After the credit repair firm disputed Applicant's debts, three delinquent accounts remained outstanding, which are the debts alleged in SOR ¶¶ 1.f, 1.g, and 1.n. SOR ¶¶ 1.f and 1.n both allege a \$338 delinquent cell phone account with the same cell phone company. These accounts appear to be duplicates. I find SOR ¶ 1.n for Applicant. The remaining \$338 alleged in SOR ¶ 1.f remains unresolved. (AE B at 3-4) The remaining delinquent account was the \$252 delinquent insurance account placed for collection alleged as SOR ¶ 1.g. It remains unresolved as well. (AE B at 3-4)

As of the close of the record, Applicant had not filed her federal and state income tax returns for tax years 2021 and 2022, which were alleged in SOR ¶¶ 1.t and 1.u. She claims that her previous employer did not provide her W-2 for tax year 2021. She provided a copy of the Internal Revenue Service (IRS) transcripts for tax year 2021. It indicated that she had not filed her 2021 federal income tax return as of April 19, 2023. She was due a \$2,800 refund for that tax year. She claimed she was working on obtaining documents so she could file her federal and state income tax returns for 2021. During the hearing, she admitted that she did not file her federal and state income tax returns for tax year 2022. She mistakenly believed that she did not have to file income tax returns if she worked less than six months during the year. (Tr. 33-36) She intended to file the federal and state income tax returns for tax years 2021 and 2022 at some point in the future. The record was held open to allow her to submit proof that she filed her federal and state income tax returns for tax years 2021 and 2022. She did not submit any documentation after the hearing.

Applicant owes \$200 for unpaid state property taxes. (SOR ¶ 1.v) This debt was related to her automobile. She voluntarily turned the car back into the dealer because she could not afford the payments when she was unemployed. In her October 2022 e-QIP application, in response to Section 26- Financial Record -Taxes, she indicated that she is making payments on the property tax debt and it will be resolved in November 2022. In her response to the SOR on August 14, 2023, she indicated the debt remained unpaid and that she would pay the debt within the next month. (Tr. 47-48) During the hearing, she testified that she did not pay the property tax debt because she was disputing some of the charge because she did not own the automobile for the full year. She said the state notified her of the amount that she owes for property tax and that she would pay it the following week. (Tr. 37-38) Applicant did not provide proof after the hearing that that she paid this debt.

Applicant testified that she could not make payments towards her delinquent debts because she had to deal with other financial obligations. When she was laid off in 2022, she moved in with a family member to save money and returned her car to the dealer because she could not afford to make payments. She saved money so she could afford to rent an apartment and purchase a car. One week before the hearing, she purchased a used car for \$21,000. Her monthly car payment with insurance will be \$612. She is currently not making payments towards the charged-off car loan. Her rent is \$1,550. She paid several months of the rent in advance in anticipation of future deployments. She was scheduled to deploy in January 2025. The relatives she stayed with charged her \$500 a month for rent. She paid them back first. She had approximately \$5,000 in checking at the time of the hearing. She has no savings. She claims she follows a budget but did not provide a copy of her budget after the hearing. (Tr. 29, 31-32, 41-42, 54-57)

Applicant has student loans that were in deferment at the time of the hearing. The deferment ends in late December 2024, which will result in her having to make payments towards her student loans. (Tr. 52-53)

Whole-Person Evidence

During her six-month deployment, Applicant's manager indicated it was an extremely demanding tour which involved two separate missions. He indicated it was one of the most challenging activations that he has participated in. Every day was a new challenge and he said Applicant remained steadfast and performed her duties in a professional manner. She has a strong work ethic and is well liked by the crew. (AE A)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable. AG ¶ 19(f) applies to her failure to file federal and state income tax returns for tax years 2021 and 2022 and her failure to pay a \$200 personal property tax debt owed to her state.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply. Applicant has made no attempts to make payments towards any of the delinquent accounts alleged in the SOR. She ignored filing her 2021 and 2022 federal and state income tax returns for years. Applicant's failure to take steps to resolve her delinquent debts raise questions about her reliability, trustworthiness and judgment.

Circumstances beyond Applicant's control contributed to her financial issues. She incurred a lot of the delinquent medical accounts because she had no health insurance. She was unexpectedly laid off in 2022 for a period of several months. AG ¶ 20(b) partially applies. However, it is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. She neglected to file her federal and state income tax returns for tax years 2021 and 2022. If she had timely filed her federal income tax return for tax year 2021, she would have received a \$2,800 refund which she could have applied to her other delinquent debts. She did not attempt to pay any of the alleged debts. Many of the debts were under \$300. The state property tax owed is only \$200 and has been delinquent for years. While she intends to pay some of the debts in the future, she did not come up with a plan to settle the remaining delinquent debts. She did not act responsibly under the circumstances.

While Applicant testified that her credit repair firm is educating her about managing her financial issues, she provided insufficient information on what sort of counseling she received. While Applicant intends to pay her debts, there is no clear indication that the problem is being resolved or under control. If Applicant meets with a financial counselor from a legitimate and credible source, such as a non-profit counseling service, and follows their advice, she may be capable of resolving his delinquent accounts. AG ¶ 20(c) does not apply.

AG ¶ 20(d) does not apply. While several debts were removed from Applicant's credit reports, it was not the result of Applicant making good-faith payments towards resolving her delinquent accounts. The debts appear to have been deleted from her credit report due to the passage of time. Passively waiting for debts to be removed from a credit report after seven years as required under the FCRA is not considered a good-faith basis to resolved one's debts.

AG ¶ 20(e) does not apply. In her response to the SOR, Applicant admitted all of the debts alleged in the SOR. She really had no basis to dispute any of the accounts alleged in the SOR..

AG ¶ 20(g) does not apply. Applicant neglected to file her Federal and state income tax returns for tax years 2021 and 2022 for several years. The tax returns remained

unfiled at the close of the record. She also failed to pay off the \$200 state personal property tax debt that she has owed for several years. Her tax issues remain unresolved.

The DOHA Appeal Board has held that failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

Overall, Applicant did not meet her burden of proof to mitigate the concerns raised under financial considerations.

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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

I considered Applicant's employment history with her current employer. I considered her period of unemployment between 2021 and 2022. While circumstances beyond her control contributed to Applicant's financial problems, she had no plan in place to resolve her delinquent debts other than to passively wait seven years until her debts are removed from her credit reports as required by the FCRA. Even more important, she failed to file her federal and state income tax returns in 2021 and 2022. She has had several years to file her returns. She also failed to pay a \$200 state personal property tax debt. Applicant needs more time to get her financial situation in order. She did not take sufficient action before the hearing to demonstrate that she was attempting to resolve her

delinquent debts as well as resolve her federal and state tax issues for tax years 2021 and 2022. The security concerns raised under Financial Considerations are not mitigated.

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.n: For Applicant

Subparagraphs 1.a – 1:m, 1.o -1.v Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge