



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 17-03742  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government:  
Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*  
09/18/2019

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, and mitigate the security concern stemming from her problematic state and federal income tax history. Accordingly, this case is decided for Applicant.

**Statement of the Case**

On December 6, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised a security concern under Guideline F, financial considerations.<sup>1</sup>

<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here.

Applicant answered the SOR on January 3, 2018, and requested a hearing to establish her eligibility for continued access to classified information.

I was assigned the case on July 20, 2018. On September 13, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing. The Government offered three exhibits, which were marked for identification as GE 1 through 3, and which were admitted without objection. Applicant offered three exhibits (AE), which were marked for identification as AE A through C, and were admitted without objection. The record was left open until September 27, 2018. Applicant timely submitted nine additional exhibits, which were marked for identification as AE D through L and were admitted without objection. The transcript of the hearing (Tr.) was received on September 24, 2018.

### **Findings of Fact**

Applicant is 58 years old, married (since 1982), with three adult children (a daughter age 39, and three sons ages 36, 33, and 24). Applicant is a high school graduate, and since November 2005, she has worked for federal contractors. From November 1983 until December 2004, she also worked for a federal contractor. (GE 1; Tr. 17.)

Under Guideline F, the December 6, 2017 SOR alleged that Applicant failed to file federal income tax returns for 2006 through 2010 and 2014 through 2016. The SOR also alleged that Applicant failed to pay federal income taxes for 2009 and 2010, and 2014 through 2016 for an aggregate of \$17,553. The SOR also alleged that Applicant failed to file state income taxes for 2014 through 2016. (SOR ¶¶ 1.a through 1.h.) Applicant denied the allegations and answered that all taxes alleged had been filed and paid. (Answer ¶¶ 1.a through 1.h.) Applicant also attached to her Answer a narrative, which she elaborated upon at the hearing. Also as part of the Answer, Applicant attached Answer Exhibit A (Answer Ex. A) (IRS transcripts for tax years 2009 through 2016), Answer Ex. B (IRS Installment Agreement dated June 11, 2017 and bank statements showing payments to the IRS in August through November 2017), and Answer Ex. C (checks showing payment of state income taxes for 2014 through 2016).

At the hearing Applicant testified about how she and her family came to have financial problems. In 2006, Applicant and her spouse were long-time residents in a western state (State No. 1), where her four children had been born. Applicant had recently taken a job with a federal contractor in November 2005. She felt that her employment position was secure. Applicant was making about \$65,000 per year. Applicant's spouse had a good paying job as a technical customer service representative for his employer, which sold security devices to commercial construction contractors. He was making about \$62,000 per year. (Tr. 17-19, 46-47; GE 1.)

In early 2006, Applicant had an opportunity to take a somewhat better paying job with her then current employer, but the position was located in the eastern United States (State No. 2). Applicant and her spouse did some research, and the economy in State

No. 2 looked favorable in the middle of 2006. In addition, her spouse had good contacts in State No. 2 through his then current employer. Applicant and her family moved from State No. 1 to State No. 2 in the late summer of 2006. They had just moved when the bottom started to drop out of the real estate market. It ultimately “dropped severely.” That downturn affected the construction industry all around. As a result, the employment opportunities for Applicant’s spouse in State No. 2 that were “absolutely secure” when they left State No. 1 “quickly became no positions whatsoever.” (Tr. 19-20; GE 1.)

It took Applicant’s spouse three months to find a job. He finally got a “much reduced position” as a customer service representative with a local general contractor. It was a “wonderful position, but it didn’t last long.” In February 2007, her spouse lost that job. Because her spouse voluntarily left his job in State No. 1 to accompany Applicant to her new position in State No. 2, he did not qualify for unemployment from State No. 1. Because Applicant’s spouse had worked less than three months in State No. 2, he did not qualify for unemployment from State No. 2. Applicant testified that “instantly their income dropped by one-half.” They were also shouldering about \$12,000 of moving expenses, because her former employer had been overcharged by the moving company but elected not to challenge it. So Applicant was unable to contest those charges. (Tr. 19-20, 48.)

Applicant’s spouse was unemployed or underemployed for three years and applied for hundreds of jobs. To try to make ends meet, her spouse twice did part-time work for a tax preparation firm during tax season. Finally, in about 2013 her spouse found a job with a local business owner. Her spouse took a “significant pay cut” from what he was making in State No. 1, but even though her spouse is underemployed in this job, it was very steady employment. His pay fluctuates; it was (and is) between \$28,000 and \$33,000 per year. Her spouse has now been employed in that job for about five years. (Tr. 21-22, 46.)

Applicant testified about her financial situation in the 2008 to 2013 timeframe. She and her spouse “looked hard” at what they could do to adjust to their much lowered standard of living. She said it was difficult to do much about their finances when one month her spouse would be employed and the next month unemployed. His unemployment benefit was about \$235 per week, which would cover only half of their rent. The period from 2008 to 2012 was particularly difficult. Applicant struggled to feed her youngest son and to keep the utilities on. On a couple of occasions, her utilities were terminated. In 2012, she and her spouse enrolled in a local university course in budgeting and money management. Because they could not afford the tuition, her daughter, who is in finance and accounting, gave it to them as a gift. It was a “pretty intense course” and lasted 12 weeks. That course changed their lives for the better. (Tr. 23-25, 86-87.)

By 2013, when her spouse found a full-time job, Applicant’s financial situation began to look better. At that time, she was working on staying current with their household bills. There was not much, however, Applicant could do to address back debt. As a result, she began looking at other employment positions. Applicant was hired almost immediately, in October 2013, by her current employer. The new position came with a

better salary and a hiring bonus. Applicant began, therefore, to focus on paying off outstanding consumer debt. She reasoned that outstanding delinquent consumer debt could have resulted in garnishments. By the end of 2013, she had brought all consumer accounts current. Applicant accomplished that by using her hiring bonus from her current employer and her severance pay from her last employer. (Tr. 27-31, 78-79.) With one exception, the record supports Applicant's claim that she resolved all her consumer debts. As of February 2016, the credit report shows no past due amounts or collection accounts; that same credit report shows one collection account reduced to a judgment for \$658 in June 2011, which was satisfied in January 2015. (GE 2.) Similarly, the credit report of September 2018 shows no past due amounts or collection accounts. All open accounts are current, and closed accounts report "paid satisfactorily." Applicant currently has no delinquent consumer debts. (AE C; Tr. 85, 92.)

By the end of 2013 or the beginning of 2014, Applicant and her spouse began looking to retain a tax attorney. She and her family had physically moved across the country. Some tax records had been lost. Applicant had moving expenses, some of which were paid by her then employer; some were not. Her spouse had been unemployed, and some taxes had been paid out of unemployment benefits; some had not. It was a complex tax situation. By mid-2014 Applicant had retained a tax attorney. His initial advice was not to file anything or pay anything to the IRS, until Applicant could get all documentation together. At that point, the attorney said they could then approach the IRS with a complete package to determine the sum owed and agree on a monthly payment plan. (Tr. 31-32.)

Applicant testified that matters got further complicated when she was the victim of "an identity hack" at the IRS in about 2015 as a result of which her IRS PIN was compromised. Therefore, without a current IRS PIN, Applicant could not make any filings. It took over a year to get a new PIN. At the same time, her tax attorney was working with the IRS to come up with an installment agreement. It was never Applicant's intent not to pay taxes owed. Applicant testified that she did not ask her attorney to negotiate a lower amount than what was due to the IRS. She believed that it was "rightfully [hers]" to pay the amount due. (Tr. 32-33, 88-89; AE B.)

As of December 2016, Applicant's tax attorney reported that Applicant was compliant for all years, and there were no missing returns, except for 2015. With that information, Applicant elected to have her attorney prepare the 2016 tax return and then "move forward with a financial based resolution" with the IRS. (AE E.) By the end of 2016 and early 2017, Applicant's attorney had everything he needed to work with the IRS to reach an installment agreement (all documents and a new PIN). It took some time. On June 11, 2017, Applicant and her spouse signed an installment agreement with the IRS, which called for a lump sum payment of \$775 and monthly payments thereafter of \$695. (Tr. 33, 59-60; AE D.) Applicant submitted documentation showing her adherence to that agreement. (Answer Ex. B (bank statements showing payments from August 2017 through December 2017); AE H; AE J (IRS documents showing payments made from August 2017 through September 2018).) The record shows that Applicant's federal returns were timely filed for 2011, 2012, and 2013. The record also shows that federal returns for 2009, 2010, and 2014 through 2016 were filed late but under the June 11,

2017 installment agreement and were accepted by the IRS. Federal income taxes were filed late due to Applicant's financial situation and her spouse's unemployment. Until recently, Applicant did not realize the difference between filing returns and paying taxes. She now knows that she should have filed her returns even if she did not have the ability to pay the taxes due. Applicant's federal and state returns for 2017 are now being prepared by her attorney, who still needs some supporting documents for certain business expenses. Applicant was unsure but hoped that her tax attorney filed for an extension for 2017. As to other back returns, if she was required to file, her attorney filed for her. For earlier years, if the record does not show a filing, it is because no filing was required. (Answer Ex. A; Tr. 47-48, 53-62.)

Applicant testified about her failure to file her returns and pay her State No. 2 income taxes for 2014, 2015, and 2016. She explained that she thought that her tax attorney would handle those filings as well as federal filings. She was wrong. When Applicant pulled her tax records to answer the SOR, she learned that she was late in filing and paying state tax returns for those three years. Applicant filed and paid those herself directly. The record shows that she owed \$141 and \$163 for years 2015 and 2016, respectively. The record includes Applicant's personal checks payable to State No. 2 dated January 3, 2018, for \$197.48 and \$218.53, for 2015 and 2016, respectively. The amount owed for 2014 is blocked by a copy of a check dated January 2, 2018, to State No. 2 for \$17.42. (Tr. 63-67; Answer Ex. C.)

Applicant testified about tuition for her children's education. She and her spouse did not pay tuition for all their children's education. Applicant and her spouse contributed what they could. They could not pay tuition for her oldest son. One son moved back home, so he got free room and board. He did, however, pay his tuition and fees. Applicant and her spouse needed to pay half of their youngest son's tuition, so he would qualify for federal loans and grants. That son paid the other half out of loans he took out. He attended a public university in State No. 2. (Tr. 44-45.)

Applicant testified about her current financial situation. Her spouse's pay fluctuates between \$28,000 and \$33,000 per year. Applicant makes about \$155,000 to \$160,000 per year. She does not see her income deviating any time in the future, although she and her spouse intend to buy a house as a tax shelter, now that they can afford that. Applicant's salary and her spouse's salary are their only sources of income. She does not have a savings account, and her current balance in her checking account is about \$3,400. Applicant's only retirement account is with her first defense contractor. She cannot access it before she reaches 62 ½ years of age. Applicant's spouse has no retirement or other benefits. Including her payment to the IRS, Applicant's monthly expenses are about \$4,200. She is financially current on all bills. (Tr. 45-46, 81-83, 93.)

Applicant testified that she recently took out an auto loan for a used car that she shares with one of her sons. It is now paid off. Her husband drives an older truck. They sold a motorcycle they bought thinking it would provide cheap transportation. They used the sale proceeds to pay down that loan. They have no new vehicles. As for federal and state income taxes, they are taking advantage of their daughter's expertise as a certified

auditor. Applicant plans to increase paycheck withholdings to set aside taxes during the year and to file returns on time. (Tr. 85-88.)

### **Law and Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” SEAD-4, Appendix A, ¶ 2(b). See also SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Discussion

### Guideline F, Financial Considerations

The SOR alleges that Applicant has a number of unfiled and unpaid state and federal income taxes, which purportedly raise a security concern under Guideline F. The financial considerations security concern is explained at AG ¶ 18, which in pertinent part, states:

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.

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt and other security-significant financial issues cast doubt upon a person's self-control, judgment, and other qualities essential to protecting classified information. (ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).)

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(f): failure to file. . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(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.

A security clearance adjudication is not a debt-collection process. Rather, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security obligations. (*See generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).) Here, Applicant's security clearance eligibility was called into question by her past state and federal income tax delinquencies. I conclude that disqualifying conditions AG ¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Applicant's tax problems arose from a perfect storm of circumstances. Applicant was employed in a well-paying job in State No. 1. Her husband was also employed in an equally well-paying job in that state. In early 2006, Applicant had an opportunity to take a somewhat better-paying job with the same employer but in a different state (State No. 2) requiring a significant geographic move. She and her husband did due diligence. They learned that the economy in State No. 2 looked favorable. Applicant's spouse, who worked in commercial construction and real estate, was confident that he could land a new position either with his current employer or with connections he had made through that employer. So, Applicant, her spouse and their four children moved to State No. 2 in the summer of 2006. So far, so good. ("The best-laid plans of mice and men [and women] often go awry." Paraphrase of a passage from 'To a Mouse' by Robert Burns.)

In late 2006 and early 2007, however, the now historic economic depression rocked the country. Although Applicant's employment did not suffer, her spouse's real estate and construction-dependent job opportunities were affected adversely. As a result, he was unemployed or underemployed for about three years. Applicant's household income was cut in half. The period from 2008 to 2012 was particularly difficult. Applicant and her spouse struggled to make ends meet. She and her spouse took a 12 week university course in budgeting and money management that changed their lives. By 2013, Applicant's spouse found a full-time job, albeit at a compensation level about half of what he was making when they left State No. 1. It was (and is), however, steady work.

Applicant now was staying current with her household bills, but she was unable to address back delinquencies. As a result, Applicant began looking at better paying employment opportunities. In the fall of 2013, she was hired by her current employer. Her new job was at a higher salary and came with a signing bonus. The improved salary coupled with the signing bonus and severance pay from her last employer allowed Applicant to begin to address delinquent accounts. To avoid garnishments, she planned to resolve back consumer debts first.



By the end of 2013 and the beginning of 2014, Applicant and her spouse had addressed their delinquent consumer debt and were staying current on household bills. Therefore, they were in a position to address deficiencies in filing their income tax returns and paying back income taxes. To that end, they retained an income tax attorney in mid-2014. The first advice Applicant received was to gather all relevant records so the attorney could assemble a package to submit to the IRS, so that the amount owed could be calculated. The next step was to approach the IRS to negotiate an installment agreement. The tax situation was complex because Applicant and her family had physically moved across the country to pursue a better salary with her then employer. Many of her tax records were with her former employer, and her spouse had been unemployed or underemployed with part-time jobs, which complicated the tax matter further. In addition, in about 2015 Applicant was the victim of an IRS "identity hack," which compromised her IRS PIN needed to file her income tax returns. It took some time for her to get a new PIN.

By the end of 2016 or early 2017, Applicant's attorney had compiled all of the documents needed to approach the IRS and negotiate an installment agreement. On June 11, 2017, Applicant and her spouse signed an installment agreement with the IRS calling for an upfront payment of \$775 followed by monthly payments of \$695. Applicant documented that she has adhered to that agreement through and including the date of this hearing. In the course of responding to the SOR, Applicant discovered that she had unfiled state income tax returns for 2014, 2015, and 2016. Applicant mistakenly believed that her tax attorney had taken care of those returns. When she learned that he had not, she herself filed those returns and paid any taxes due. Only the returns for 2017 remain to be filed, and they are being prepared by her tax attorney.

Applicant's tax delinquencies and deficiencies stretch from 2009 to as recently as 2016 before they began to be addressed in 2014 by Applicant and her tax attorney. Therefore, I cannot find that they are mitigated under AG ¶ 20(a).

Applicant's tax problems were triggered by the depression of 2006 and 2007, after Applicant had already taken a new position in State No. 2. Although her employment was not adversely affected, her spouse's real estate and construction-based employment was seriously adversely affected. He was unemployed or underemployed for about three years. The family income was cut in about half of what it had been in State No. 1. That nationwide economic depression was wholly beyond Applicant's control. The first prong of AG ¶ 20(b) applies. The next inquiry is whether Applicant acted responsibly under those adverse conditions.

In 2012, Applicant and her spouse enrolled in a budgeting and money management course offered by a local university. By 2013, Applicant's spouse had found full time employment, at a much lower salary than he was making in State No. 1, but it was steady. Although Applicant could then stay current with household expenses, she could not address delinquent debts. Therefore, she sought new employment and found a position that paid more and came with a signing bonus. Applicant used her augmented pay to address consumer debt to avoid garnishment.

Having resolved her delinquent consumer debt, Applicant retained a tax attorney in 2014 to address tax issues. That led to an installment agreement signed in June 2017. Applicant has faithfully adhered to that agreement. Only the 2017 tax returns need to be finalized by her tax attorney. An applicant is not required to show that every financial concern in the SOR has been resolved. Rather, an applicant is required to demonstrate that he or she has “established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” (ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). See *also* ISCR Case No. 14-00504 at 3 (Aug. 4, 2014).) Applicant’s plan in facing financial adversity was methodical and responsible. She has established a track record of following her plan. AG ¶¶ 20(b), (c), and (g) apply to mitigate the security concern under Guideline F.<sup>2</sup>

The record does not raise doubts about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. (AG ¶ 2(a)(1)-(9).) Accordingly, I conclude that Applicant met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **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 (Financial Considerations):	For Applicant
Subparagraphs 1.a-h:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

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Philip J. Katauskas  
Administrative Judge

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<sup>2</sup> Applicant completed her security clearance application in August 2014 and was interviewed in August 2015. The SOR was not issued until December 2017, after Applicant was already addressing her tax problems. There is nothing in the record suggesting that Applicant was motivated by the security clearance process to clean up her tax problems. See ISCR Case No. 10-05909 at 3-4 (App. Bd. Sep. 27, 2012) (Applicant paid his tax debts three months before the hearing). Applicant’s testimony, which I found credible, was that she began addressing consumer debt before tax liabilities to avoid garnishments.

