



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 18-00048 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Liam Apostal, Esq., Department Counsel  
 For Applicant: *Pro se*  
 06/25/2019

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Between 2012 and 2016, Applicant accumulated delinquent debt. Although she has resolved some of her delinquent debt, she still owes over \$30,000 in delinquent accounts, which mostly consists of outstanding federal and state income taxes. Applicant has failed to demonstrate that her finances are under control. Clearance is denied.

**Statement of the Case**

On January 26, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for

a determination whether to revoke her security clearance. Applicant timely answered the SOR and requested a hearing. (Hearing Exhibit (HE) 1). At the hearing, convened on February 27, 2019, I admitted Government's Exhibits (GE) 1 through 9, without objection. (Tr. 15, 17). Applicant did not offer any documents. The record remained open until April 19, 2019. Applicant timely submitted Applicant Exhibit (AE) A, which is admitted without objection. (HE 2). DOHA received the transcript (Tr.) on March 11, 2019.

On June 20, 2019, Applicant contacted Department Counsel to provide updated information about her employment. Although Department Counsel did not object to reopening the record for the consideration of new information, neither party presented good cause for doing so. Accordingly, this decision is based on the record as it stands. (HE III.)

### **Findings of Fact**

Applicant, 46, has worked as a project manager for federal contracting companies since 1999. She has been in her current position since May 2018. Applicant has previously held public trust eligibility and a security clearance issued by other federal agencies. She completed her most recent security clearance application in September 2014, disclosing four delinquent accounts and one account she was disputing with a creditor. The ensuing investigation revealed additional delinquent accounts. The SOR alleges that Applicant owes \$97,705 in delinquent debt, including \$3,496 and \$31,841 in outstanding state and federal income taxes, respectively. (GE 1 – 7; Tr. 23-24).

Applicant blames her financial problems on a series of events between 2012 and 2018. First, she experienced three periods of unemployment, totaling seven months. Second, Applicant was involved in a serious motorcycle accident in March 2015 that resulted in months of recovery during which she collected disability income at a fraction of her pay. In March 2016, she lost her job earning \$184,000. When she returned to work in May 2016, she did so earning \$120,000. Although, her income has increased over the years, she has not been able to secure a position at the pay she earned in 2016. In addition, Applicant serves as the financial pillar of her family. She is often called upon to help family members with unexpected expenses, as was the case in 2015, when she paid the burial and related expenses for two family members. Divorced in 2002, Applicant raised her two children, now adults, on her own without the benefit of child support. She continues to provide financial support to one of her children and her parents, totaling \$1,500 each month. (GE 1; Tr. 25-28, 30-32, 57-58, 60).

In her March 2018 answer to the SOR, Applicant provided documentation that in February 2018, she resolved the debts alleged in SOR ¶¶ 1.d – 1.i, and 1.l – 1.m, totaling \$3,350. She also established that she rehabilitated her mortgage (SOR ¶ 1.a, \$21,175), to current status, explaining that she refinanced the loan and added the past-due amount to the principal balance of the loan. However, at the hearing, Applicant admitted that she was one month behind on the refinanced mortgage loan. Applicant also credibility testified that she was unable to find the creditor alleged in SOR ¶ 1.n

(\$322). The delinquent debts alleged in SOR ¶¶ 1.b – 1.c, 1.j – 1.k, and 1.o, totaling almost \$73,000, remain unresolved. (Answer; Tr. 17-22, 34-37, 40-42, 44-46).

Applicant incurred the largest debt, SOR ¶ 1.b for \$27,401, when she was medically evacuated by helicopter under emergent circumstances to a hospital after her March 2015 motorcycle accident. Her insurance carrier declined to cover the related charges because the helicopter transport service, which Applicant did not choose, was out of network. Applicant claims that she has been making \$150 payments each month since November 2018. She did not provide any corroborating evidence of these payments. The debt alleged in SOR ¶ 1.d is the deficiency balance on an automobile loan Applicant co-signed for her son. Applicant claims that the outstanding balance is \$6,000, not \$10,000 as alleged. She did not provide documentation to corroborate this information. (Tr. 37-40).

The SOR debts alleged in SOR ¶¶ 1.j, 1.k, and 1.o are related to outstanding state and federal income taxes. Applicant blames her tax problems on the actions of the tax preparer she used at the time. In 2012, Applicant started her own business. She did not understand the tax requirements of being self-employed. Relying on her tax preparer's advice, Applicant did not pay income taxes as she earned income, resulting in a \$31,842 federal income tax obligation that she could not afford to pay. (Tr. 68-69).

Applicant testified that she began mailing payments toward the 2012 federal tax debt in November 2017 and that the IRS entered into an installment agreement with her in February 2018. She agreed to pay \$300 per month. In October 2018, the IRS cancelled the agreement for nonpayment. Applicant explained that she made her monthly payments as required, but sent them to the wrong address. The IRS returned the payments to her. After the hearing, Applicant negotiated a new installment agreement with the IRS, in which she agrees to pay \$315 for 71 months to resolve her tax liability. According to documentation provided by Applicant's state tax authority, she owes \$2,449 in unpaid state taxes. In December 2017, she established a monthly payment plan of \$115. She did not provide a history of payments for her outstanding tax liabilities or documentation confirming the new installment agreement with the IRS. (Answer; AE A; Tr. 43, 48-50, 67).

The record shows that Applicant failed to file her 2012 through 2014 federal income tax returns on time. According to the tax transcripts, she did not file for extensions. The 2012 and 2013 returns were filed in August 2014. She filed her 2014 federal income tax return in May 2015. In December 2017, Applicant received a letter from the IRS indicating that no returns were filed for the 2015 and 2016 tax years. It is unclear from the record when the returns were filed, but she did not owe any additional tax liabilities for either year. At hearing, Applicant testified that she had yet to file her federal and state income tax returns for 2017. She filed the outstanding state and federal income tax returns when she filed her 2018 returns in April 2019. She received refunds for both years, which will be applied to her outstanding tax balances. (Answer; GE 2; AE A; Tr. 42-44, 47).

Applicant currently earns \$150,000. She also does occasional odd jobs to earn additional money. In 2017, she sought financial counseling and made life style changes to reduce her delinquent debt. (Tr. 32-33, 63-65).

## **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 to be 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, administrative judges apply the guidelines 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(a), 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 national security eligibility will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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 EO 10865 provides that adverse 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

Failure to meet one's 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. (AG ¶ 18). The SOR alleges that Applicant owes \$97,705 in delinquent debt including \$31,841 federal income taxes and \$3,496 in state income taxes. The record is sufficient to establish the Government's *prima facie* case that Applicant has a history of not meeting her financial obligations and that she failed to timely file and pay her state and federal income tax returns, as required. (AG ¶¶ 19(c) and (f)).

The record contains some evidence in mitigation. Applicant has resolved the accounts alleged in SOR ¶¶ 1.d – 1.i, and 1.l – 1.m and provided a legitimate basis for disputing the debt alleged in SOR ¶ 1.n. (AG ¶¶ 16(d) and (e)). Although the debt alleged in SOR ¶ 1.b is large and remains unpaid, any potential security concerns are resolved in Applicant's favor because the debt is for emergency medical care that Applicant had no choice in selecting. She incurred this debt as the result of an insurance carrier's decision to deny her claim. However, the favorable evidence in the record is not enough to mitigate the concerns raised by Applicant's financial history.

Despite Applicant's testimony on the efforts she has taken to rehabilitate her finances, she failed to demonstrate that her finances are under control. She did not establish that her mortgage is current. The automobile loan deficiency balance alleged in SOR ¶ 1.c (\$10,120) remains unresolved and Applicant did not present a plan for repayment. Applicant's unresolved federal and state income tax liabilities, totaling over \$33,000, are of greater concern. She did not provide sufficient documentation to show that she has made arrangements with the appropriate tax authority or that she has complied with the agreements she testified are in place. Furthermore, Applicant has failed to timely file her income tax returns for six of the last seven years.

Based on the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. (See Directive ¶E3.1.15). An applicant is reasonably expected to provide corroborating documentation regarding her financial interests. Failure to produce corroborating information is relevant in deciding whether or not an applicant's claims should be accepted. Applicant's claims about the status of her outstanding tax liabilities and obligations are not supported by the record. She failed to meet her burden of production and persuasion to refute or mitigate the financial considerations allegations.

### **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, Financial Considerations:     | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.c., 1.j. – 1.k., 1.o: | Against Applicant |
| Subparagraphs 1.b, 1.d. – 1.i., 1.l – 1.n: | For Applicant     |

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's continued eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge