



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



In the matter of: )  
)  
) ISCR Case No. 18-00360  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

01/08/2019

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 23, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 24, 2018, and requested a hearing before an administrative judge.

The case was assigned to other administrative judges on June 14, 2018, and September 12, 2018, and reassigned to me on December 10, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 15, 2018, scheduling the hearing for November 14, 2018. The hearing was rescheduled and heard on December 13, 2018. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection.

## Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. She has worked for her current employer since September 2016. She is a high school graduate. She is married with an adult child, a minor child, and an adult stepchild.<sup>1</sup>

Applicant has a history of financial problems, which include tax returns that were not filed on time, unpaid taxes, delinquent debts, and a Chapter 7 bankruptcy case. She attributes her financial problems primarily to her unemployment in 2008 and 2009, and her minor child's significant and persistent medical problems. Her child had multiple surgeries and procedures and requires recurring medical care. Even with insurance, Applicant's and her husband's annual out-of-pocket expenses for their child's medical care has been greater than \$10,000.<sup>2</sup>

Applicant and her husband filed a Chapter 13 bankruptcy case in 2012. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$300,651 in secured claims, which included a mortgage loan and two vehicle loans. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$4,055 in federal income taxes owed by Applicant's husband to the IRS for the 2004, 2007, and 2010 tax years. The petition listed debts totaling \$83,864 under Schedule F, Creditors Holding Unsecured Nonpriority Claims. Applicant and her husband realized that it would be difficult to maintain payments with her husband's sporadic income, and they converted the case to a Chapter 7 bankruptcy. Their dischargeable debts were discharged in 2012.<sup>3</sup>

Applicant incurred additional financial problems after the bankruptcy discharge. The SOR alleges 15 delinquent debts totaling about \$6,976. Six of the debts totaling \$1,724 are medical debts. Applicant admitted owing all of the delinquent debts except for the \$253 credit card debt alleged in SOR 1.k, which she asserted has been paid. Applicant stated that she paid a number of the debts alleged in the SOR. She submitted credit reports that show that some of the delinquent debts are no longer reported. She stated that she has been paying the smallest debts first, and then moving on to the largest debts.<sup>4</sup> Her assertions about the delinquent debts are accepted.

The SOR also alleges that Applicant did not file her state and federal income tax returns for tax years 2014 and 2016; that she owes the IRS \$5,941 for tax year 2013 and \$1,313 for 2015; and that she owes her state \$1,795 for tax year 2013 and \$1,913 for 2015. Applicant admitted all of the tax allegations. She stated that she usually prepared her and her husband's tax returns, and she panicked when she was preparing

---

<sup>1</sup> Tr. at 31, 56; GE 1; AE A.

<sup>2</sup> Tr. at 21-23; Applicant's response to SOR; GE 1, 5; AE A.

<sup>3</sup> Tr. at 23-25; Applicant's response to SOR; GE 1, 2, 5.

<sup>4</sup> Tr. at 17, 44-50, 56; Applicant's response to SOR; GE 3-5; AE B, C.

their 2014 returns because they owed so much. She stated that “then life took over and [she] forgot about the taxes.”<sup>5</sup>

Applicant and her husband retained a tax professional to prepare their income tax returns. Their 2016 state and federal income tax returns were filed in November 2018. The returns indicated their adjusted gross income was \$138,018, and they owed the IRS \$4,538 and the state \$1,059. Those amounts do not include interest and penalties. They did not pay the IRS and the state when the tax returns were filed. She stated that the tax professional is working on the 2014 federal and state income tax returns, but they have not yet been filed.<sup>6</sup>

IRS tax transcripts show that as of March 2018, Applicant and her husband owed the IRS \$5,941, which includes interest and penalties, for tax year 2013. As of December 2018, they owed the IRS \$4,320 for tax year 2015. They were due a \$378 federal refund for tax year 2017, but that amount was withheld and applied to their tax liability for tax year 2010. Applicant testified that the taxes owed to the state for 2013 and 2015 were paid through a refund from tax year 2017, but she did not submit any supporting documentation.<sup>7</sup>

Applicant stated that once all the tax returns are filed, she and her husband will enter a payment plan with the IRS to pay their back taxes. She also plans to pay her state taxes. Her current job pays well, and she has the financial ability to pay her taxes and other debts. She received financial counseling as a requirement of her bankruptcy.<sup>8</sup>

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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.

---

<sup>5</sup> Tr. at 17, 27, 33; Applicant’s response to SOR; GE 1, 5.

<sup>6</sup> Tr. at 18-20, 40-41; Applicant’s response to SOR; GE 5; AE D-H. The SOR did not allege that Applicant owed taxes for tax year 2016. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant’s overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

<sup>7</sup> Tr. at 33-40; Applicant’s response to SOR; GE 5; AE F.

<sup>8</sup> Tr. at 21, 26-28, 32, 38, 45, 53, 56; Applicant’s response to SOR; GE 5; AE A.

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(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 national security eligibility will be resolved in favor of the national security."

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**

The security concern for financial considerations is set out in AG ¶ 18:

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.

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, including a bankruptcy case, unpaid taxes, unfiled income tax returns, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, 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.

Applicant attributed her financial problems primarily to her unemployment in 2008 and 2009, and her minor child's significant and persistent medical problems. Bankruptcy was a legitimate means to address the overwhelming financial problems that resulted from those conditions. She has been paying the non-tax debts, and I believe she will continue to address those debts. The bankruptcy and non-tax debts are mitigated. However, she still has not filed her 2014 federal and state income tax returns, and she owes the IRS more than \$14,000 and her state at least \$1,000.

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).

Applicant stated that she intends to file her tax returns and pay her taxes. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). AG ¶ 20(g) is applicable to the allegations that Applicant did not file her 2016 state and federal income tax returns. That mitigating condition is given less weight because of the timing of when the returns were filed and because she did not pay the taxes owed for 2016 when she filed the returns.

There is insufficient evidence for a determination that Applicant's tax problems will be resolved within a reasonable period. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's unfiled tax returns and unpaid taxes are not mitigated.

### **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(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), 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **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.p:	For Applicant
Subparagraphs 1.q-1.v:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge