



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 18-01256
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/06/2019

**Decision**

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the security concerns raised by her delinquent taxes and other debts under Guideline F (Financial Considerations). Access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on November 22, 2016. On July 3, 2018, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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) implemented by DOD on June 8, 2017.

Applicant answered the SOR on August 4, 2018, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on November 1, 2018. On November 2, 2018, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 12, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. She received the FORM on December

4, 2018, and filed a Response within the allotted 30 days. The case was assigned to me on January 30, 2019.

### **Findings of Fact**

Under Guideline F, the SOR alleges that Applicant has 21 delinquent accounts totaling \$19,102, is indebted to the Federal Government for a 2011 tax lien of \$1,570 and for a 2010 tax lien of \$15,331, and that she failed to timely file her Federal tax returns for 2010, 2011, and 2016. The total alleged delinquent debt is \$36,003. Applicant admits 12 of the SOR debts totaling \$19,777, and to failing to timely file her tax returns. She denies all other allegations. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from April 2018 and March 2017, and discussed on her e-QIP, and in her responses to Interrogatories, which include the summary of her personal subject interview (PSI). (GX 6; GX 7; GX 4; GX 5.) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 42-year-old curriculum director currently working a civilian supporting a branch of the U.S. military. From 2014 until 2016, she was employed as a civilian for another branch of the U.S. military. She was granted her first security clearance at some point during that employment. She completed her bachelor's degree in 2007, and university-level certification in 2009. She married in 2006 and divorced in 2010. She has one adult daughter. (GX 4.)

In her Answer, Applicant states, without specificity, that she began having financial difficulties in 1999. However, Applicant identifies 2007 as a year that her ongoing financial problems arose. Applicant graduated from college, and was employed by a state agency as a social worker. Applicant was passionate about her work, but due to her compensation, she classifies the job as underemployment. That same year, Applicant unexpectedly gained custody of her friend's daughter, then 11 years old. Becoming a sudden parent of a young girl who was then experiencing emotional upheaval had a significant impact on Applicant's personal life. It also necessarily created additional strains on Applicant's already-stretched finances, including counseling-related costs and unanticipated medical costs. Applicant and her husband divorced in 2010, and Applicant has remained a single parent. (GX 3.)

From 2007 forward, Applicant struggled financially, with some periods being more difficult than others. Applicant also stated that that she has not always made the best financial decisions. (Response; GX 3.) In 2016, she was also personally and financially overwhelmed by having to care for her father during his terminal illness, which resulted in many hours of long-distance commuting and the associated costs, as well as causing her to leave graduate school before completing her coursework. (GX 3; GX 6.)

As a result of the onset of her financial difficulties, in 2007, Applicant was unable to timely pay her 2006 tax-year obligation. During her PSI in April 2017, Applicant stated that she owed the IRS approximately \$8,000, was repaying the debt annually by having her tax refund withheld and applied to her tax debts, and did not know when she would

satisfy the debt. She further stated that although she owed an outstanding balance, she had regularly filed her tax returns. (GX 5.)

Applicant provided a copy of a letter to the IRS from May 2017 in which she stated her intention to resolve any outstanding taxes, and requested information about the IRS's liens. However, the letter does not contain a mailing address, nor does it contain Applicant's Social Security number or other taxpayer identification information. In 2018, Applicant contacted the IRS and requested an installment agreement for unpaid taxes from 2008, 2009, 2012, and 2014. The IRS responded by letter, stating that it could not consider an installment agreement because it had not received Applicant's return for 2016. There is a handwritten notation by Applicant on the IRS's letter stating that the tax returns have been filed, but she did not provide any corroborating evidence. (GX 5.)

Applicant's May 23, 2018, IRS transcripts for tax years 2009 through 2017 show that Applicant owes \$15,983 in past-due taxes, interest, and penalties for tax years 2008, 2009, 2012, and 2014. The transcripts state that Applicant has not filed a return for 2010 or 2016, and there is simply no record relating to 2011 in the transcript. The transcript also shows that Applicant filed her 2017 return on May 7, 2018, and indicates that Applicant had a \$1,829 tax liability for 2017. (GX 5.) The 2010 \$15,331 (SOR ¶ 1.m) and the \$1,570 2011 (SOR ¶ 1.n) tax liens do not appear on the transcript, but remain unpaid as of April 2018. (GX 6.)

However, Applicant submitted pages 3 and 5 of a five-page document from the IRS to her regarding her 2016 tax return. Specifically, page 3 states that Applicant owes an additional \$3,217 for her 2016 taxes. The document states that Applicant is required to pay this amount by August 6, 2018, to avoid penalties and interest charges. The document lists a failure-to-file penalty of \$610 and shows that the IRS received the return on September 15, 2017. (GX 3.) There is no evidence that Applicant paid the \$3,217 of past-due taxes.

In her Answer, Applicant does not deny the tax liens alleged in SOR ¶¶ 1.m and 1.n, but does dispute owing the amounts alleged in the SOR. Applicant stated that she received a letter from the IRS showing a different balance owed, but not showing the liens. She further stated that she contacted the IRS requesting a current amount due on the liens.

In May 2008, Applicant made a \$10 payment each on the debts alleged in SOR ¶¶ 1.a, 1.h, 1.l, and 1.k. In her Answer, Applicant stated that she had received repayment options from the creditor for SOR ¶ 1.a in August 2018; that she was waiting to hear from the creditor for SOR ¶ 1.b about repayment options; that she was trying to find the original creditor for the collection accounts for SOR ¶¶ 1.h and 1.i with the intent of entering into repayment agreements; and that she was entering into a repayment agreement with the creditors for SOR ¶¶ 1.j, 1.k, 1.l, 1.o, and 1.r. There is no record evidence that Applicant entered any repayment agreements with any of these SOR creditors. Applicant admits SOR ¶¶ 1.c and 1.d and has not taken any action on these debts.

Applicant disputed the debts alleged in SOR ¶¶ 1.e, 1.f, 1.g, 1.p, 1.q, 1.s through 1.w with the three major credit reporting agencies. Applicant was told by a credit advisor to dispute the delinquent accounts in order to ascertain if the accounts were Applicant's and were accurately reported. (Response.) However, there is no record evidence that any of these debts were successfully disputed or removed from her credit reports.

Applicant has created and maintains a budget worksheet, and uses a credit-monitoring application on her cell phone. Her credit score has recently improved by 22 points. (GX 3.) Applicant's April 2018 CBR shows no recently delinquent accounts. (GX 6.) Applicant is active in her community, is a gubernatorial appointee, and has been officially recognized for her advocacy for the underserved. She is dedicated to her job and to supporting the United States. Her daughter has recently earned a master's degree. (GX 3.)

### **Policies**

"[N]o 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 applicants 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's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made "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, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3, (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[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**

The concern under this guideline 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 or sensitive information. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes three disqualifying conditions under this guideline: AG ¶ 19(b) (“unwillingness to satisfy debts regardless of the ability to do so”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(f) (“failure to file... or pay annual Federal... income tax as required.)

The following mitigating conditions are potentially applicable:

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(d): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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

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.

Applicant's ongoing financial difficulties arose in 2007, due to conditions largely beyond her control. Specifically, she was underemployed and became the guardian of an 11-year-old child with some emotional and health-related issues. Applicant fell behind on her financial obligations, and was unable to pay her 2006 taxes, which started a cycle of indebtedness to the IRS. The IRS entered tax liens against Applicant in 2010 and 2011. In 2018, Applicant contacted the IRS in an effort to enter an installment agreement for all back taxes due for tax years 2008 through 2017. The IRS denied her request because they had no record of her having filed her 2016 return. There is no documentary evidence that Applicant has filed all required returns, or that she has reached any type of agreement with the IRS. The known past-due taxes Applicant owes for tax years 2008 through 2015 total \$15,983. Applicant has not filed her 2010 and 2011 tax returns. The total tax liability for these years and for 2016 and 2017 is undetermined. Applicant has not satisfied the 2010 and 2011 liens totaling \$16,901. SOR ¶¶ 1.m, 1.n, and 1.x are not mitigated.

Applicant stated that she intended to enter repayment agreements with a number of her creditors. She made \$10 payments to four separate SOR creditors in May 2018. She also contacted several other creditors about repayment options, and, on the recommendation of a credit advisor, disputed 10 of the delinquent accounts. However, she has not taken any other action regarding the 21 delinquent SOR accounts which total approximately \$19,000. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999

WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). While Applicant may have had a reasonable basis to dispute the legitimacy of her delinquent accounts, there is no documented proof substantiating the basis of the dispute, nor is there any evidence that any of the delinquent accounts have been resolved through the dispute process. None of the mitigating conditions apply to SOR ¶¶ 1.a through 1.l and 1.o through 1.w.

Applicant's financial issues are recent, ongoing, and unresolved. Her failure to timely file and pay her taxes as required by law and her failure to take reasonable action to resolve her financial obligations raise concerns about Applicant's willingness to abide by rules and regulations, and raise questions about her reliability, trustworthiness, and good judgment. The financial considerations security concern is not mitigated

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2:

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2 were addressed under that guideline, but I have also considered the following:

Applicant has worked supporting the U.S. military for the past five years. She is dedicated to her job, her community, and her daughter. She is a recognized advocate for the underserved members of her community and a gubernatorial appointee. However, until she can get her finances under control, her delinquent taxes and other debts remain a concern.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent taxes and other debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly

consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.x:

Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess  
Administrative Judge