



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



In the matter of: )  
)  
) ISCR Case No. 18-01341  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/23/2019

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 18, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on June 18, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2018. I convened the hearing as scheduled on November 8, 2018. The Government offered

exhibits (GE) 1 through 4. Applicant did not offer any exhibits. There were no objections and the exhibits were admitted into evidence. The record was held open until November 26, 2018, to allow Applicant to submit documents. She provided documents that were marked Applicant Exhibits (AE) A through D, which were admitted without objection, and the record closed.<sup>1</sup> DOHA received the hearing transcript on November 26, 2018.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.f, and 1.l through 1.v, and denied the allegations in ¶¶ 1.g through 1.k. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. She earned an associate's degree in 1998. She married in 1988 and divorced in 1997. She remarried in 1998. She has children ages 23 and 19 years old. Both children live at home. She has been employed by a federal contractor since July 2017. She was laid off from a prior position in April 2017. She was unemployed for a month, accepted a job in May 2017, and then resigned and accepted her current position. She had to relocate to another state. She testified that she did not receive a paycheck for three months, and her husband was unemployed when they moved. Applicant testified that her salary was \$90,000 in 2014, and it has incrementally increased to her current salary of \$110,000, and her husband's current salary is \$50,000.<sup>2</sup>

The SOR debts are corroborated by Applicant's admissions, testimony, and credit reports from August 2017 and April 2018.<sup>3</sup>

Applicant testified that she has had financial difficulties in the past. Her husband had inconsistent employment and periods of unemployment. She said that since 2011, she has been more financially stable because her husband has been working. She said that prior to 2011, she was not earning as much money and was only paying for necessities.<sup>4</sup>

Applicant testified that she timely filed her state income tax returns from 2003 to 2012, but did not pay the taxes because she did not have enough money.<sup>5</sup> She said she believed she paid one year, but could not recall which year. She did not make arrangements at the time with the state taxing authority to pay her state income taxes.

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<sup>1</sup> Hearing Exhibit (HE) I is Government Counsel's discovery letter. HE II is the Government's email.

<sup>2</sup> Tr. 15-24, 48-49.

<sup>3</sup> GE 1, 2, 3, 4.

<sup>4</sup> Tr. 24-29.

<sup>5</sup> Applicant testified that she timely filed her federal income tax returns. There are no allegations concerning her federal income tax returns. I have not considered any derogatory evidence that was not alleged in the SOR for disqualifying purposes. I considered it when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

She said she attempted to adjust her withholdings, but it did not make a difference. She said in 2011, she attempted to make a payment arrangement and contacted an accountant to recalculate her taxes. She said the state tax authority advised her that upon paying the delinquent taxes, it would forgive the penalties. State tax liens are alleged in SOR ¶¶ 1.g (\$4,484-entered April 2014); 1.h (\$528-entered January 2014); 1.i (\$5,518-entered January 2014); 1.j (\$5,163-entered January 2013); and 1.k (\$2,969-entered November 2012).<sup>6</sup>

In February 2018, Applicant was interviewed by a government investigator. She disclosed that in 2014 she was notified by the state taxing authority that she owed a significant amount of taxes dating back to 2004. She did not agree with the amount owed and had her accountant recalculate it. She told the investigator that she made an offer to pay \$800 a month to the state, but it was denied. She said she sent emails, letters, and faxes to the taxing authority, but did not receive responses. She said she managed to get the penalties waived. She continued to dispute the amount she owed. She said she would continue to actively try to resolve the tax debt. She provided a letter from the state taxing authority from June 2015, which stated: "Penalties will be waived upon payment of tax and interest."<sup>7</sup>

In Applicant's answer to the SOR, she provided correspondence between her and the state taxing authority. She made a request in May 2018 for a waiver of penalties for tax years 2008 and 2009. She listed that her total tax liability for those years as \$11,092. The request did not offer a settlement amount or monthly payment. Applicant testified that she is still negotiating a payment arrangement with the taxing authority. She rejected an offer to make 12 monthly payments of \$1,000 to settle the tax liens because she was not in a position to pay that amount, so she is still in negotiations. She testified that she could not afford to make payments immediately because she has prioritized her daughter's schooling over paying her taxes. After her hearing, she provided an email dated November 26, 2018, to the state taxing authority for an offer in compromise to pay \$1,000 for 12 months beginning on January 15, 2019. No additional emails or correspondence was provided to confirm the agreement was accepted.<sup>8</sup>

Applicant admitted that the other debts alleged in the SOR were from 2005 to 2015. She had medical insurance and many of the delinquent accounts alleged are unpaid copayments. She said she did not have the money to pay the medical debts. She did not make payment arrangements when these bills were owed. The charged-off debt in SOR ¶ 1.a (\$6,422) is a personal loan Applicant obtained in 2014. She testified that she made payments until she moved in April 2017. She stopped making payments and defaulted on the loan. She testified she attempted to make a payment, but it was returned. Applicant testified that the charged-off debt in SOR ¶ 1.e (\$1,693) was a joint account she had with her father, who passed away in 2015. It was for a line of credit. She testified that she

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<sup>6</sup> Tr. 29-30, 36-39.

<sup>7</sup> Answer to the SOR; GE 4.

<sup>8</sup> Tr. 29-44; Answer to the SOR; AE C.

stopped paying the debt in July 2017. In May 2018, Applicant initiated a payment plan to make monthly payments of \$379 for the debts in SOR ¶¶ 1.a (\$6,422), 1.b (\$4,324), 1.c (\$2,459), 1.d (\$1,864), 1.e (\$1,693), and 1.f (\$772). She testified that she began making payments in June 2018. She provided proof of the agreement and an August 2018 payment.<sup>9</sup>

Applicant disputed many of the debts in her credit report. Many of the medical debts were deleted. She did not provide detailed information as to which debts alleged on the SOR were deleted. I have given her the benefit of the doubt and conclude those remaining medical debts in SOR ¶¶ 1.m through 1.v were deleted.<sup>10</sup>

The debt in SOR ¶ 1.l is owed to a college where Applicant enrolled for a course. She did not complete the course and agrees she owes the debt, but has not paid it.<sup>11</sup>

Applicant testified that she did not have a budget. In her post-hearing documents, she provided a budget worksheet that included her payment plan and an amount allotted to pay her state tax liens. She has not taken credit counseling. She testified that she lives paycheck to paycheck. She had a friend, who is an accountant, review her spending habits and found that she spends \$2,000 a month on food and that she goes to restaurants four times a week. She has \$900 in savings and no investments, other than a 401k pension with \$3,000-\$4,000 in it. She admitted that she has been neglectful with her finances, which were overwhelming.<sup>12</sup>

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.

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<sup>9</sup> Tr. 44-61; Answer to the SOR; AE B, C.

<sup>10</sup> Answer to SOR.

<sup>11</sup> Tr. 61-63; GE 3.

<sup>12</sup> Tr. 69-76; AE A.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 unresolved state tax liens and other delinquent debts that are not resolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 was aware that she had not paid state taxes for numerous years and owed state tax liens. She testified she attempted to resolve the tax debts in 2011, but her offer was rejected. The state taxing authority has agreed to waive the penalties owed, but not until she pays her delinquent liens. She has not started to make payments on the state tax liens. After receiving the SOR, she initiated a payment plan for some debts. In her background interview, she admitted she failed to pay many medical debts. She later disputed many of the medical debts, and they were removed from her credit report. Applicant has procrastinated for years in addressing her delinquent state taxes. There is insufficient evidence to conclude that her behavior is unlikely to recur. Applicant's failure to pay her tax liens for years casts doubt on her current reliability, trustworthiness, and good judgment, as does her failure to pay other delinquent debts she admitted she owes. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to her husband's periods of unemployment. She lost her job for a short period and then had to move when she got a new job. These matters may have impacted her ability to repay the state tax liens, but they were not the cause of the tax problem. Applicant's failure to timely pay her taxes over several years was the cause. She attempted to obtain an offer of compromise and is hopeful, but she has not made any payments towards the tax liens that were entered in 2012, 2013, and 2014. After receiving the SOR, she began a payment plan towards some of her debts, others remain unpaid. This does not constitute acting responsibly. AG ¶ 20(b) has limited application.

There is no evidence Applicant has received financial counseling and it is too early to conclude there are clear indications that her finances are under control. AG ¶ 20(c) does not apply. Applicant recently arranged a payment plan for some of her delinquent debts. AG ¶ 20(d) applies to SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e and 1.f.

Applicant disputed debts on her credit report. Although she failed to provide details about which medical debts were deleted, I conclude they are likely those in SOR ¶¶ 1.m through 1.v. AG ¶ 20(e) applies to those debts.

Applicant testified and provided emails that she was negotiating with the state taxing authority. She has not made any payments toward the tax liens. AG ¶ 20(g) has some application.

### **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), 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a 48-year-old woman. She neglected to pay state income taxes and has numerous tax liens that she has owed for at least four years. She did not take action to resolve other debts until after she received the SOR. Applicant does not have a stable financial track record nor a solid financial plan to resolve her debts. Despite being aware of the tax liens for years, they have not been a priority, and she has not paid them. The DOHA Appeal Board has held that:

Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).<sup>13</sup>

Applicant's history of non-compliance with a fundamental legal obligation to pay state income taxes, which resulted in state tax liens, along with her failure to timely and responsibly address other delinquent debts, raises serious concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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<sup>13</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).



## 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.f:	For Applicant
Subparagraphs 1.g-1.l:	Against Applicant
Subparagraph 1.m-1.v:	For Applicant

## Conclusion

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

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Carol G. Ricciardello  
Administrative Judge