



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01489
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/07/2018

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On June 8, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on July 3, 2018, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on August 8, 2018. The evidence

included in the FORM is identified as Items 5-9 (Items 1-4 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on August 16, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections, but she submitted exhibits (AE) A-C. AE A-C and Items 5-9 are admitted into evidence without objection. The case was assigned to me on November 2, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 40 years old. She has worked for a defense contractor since November 2016. Previously, she worked for federal contractors from August 2015 to March 2016 and from 2005 to May 2014. She experienced periods of unemployment from March 2016 to November 2016 and from May 2014 to August 2015. She is single, never married, and has no children. The record is silent concerning her education level.<sup>1</sup>

The SOR alleged Applicant's failure to timely file her 2012 through 2016 federal tax returns and her 2013 through 2015 state tax returns. It also alleged she owed approximately \$7,950 for unpaid federal taxes for years 2012 through 2014. Finally, the SOR alleged Applicant owed an unpaid medical debt in the amount of \$250. Applicant admitted in her February 2016 security clearance application (SCA) and her statement to a defense investigator in May 2017 that she failed to file her 2012 through 2016 federal returns. She admitted in her SCA that she failed to file her 2013 through 2015 state returns. She also admitted owing back federal taxes. Credit reports document the delinquent medical debt.<sup>2</sup>

Applicant explained that she began experiencing financial difficulties in 2012 when her roommate lost her job and Applicant had to cover her roommate's share of the rent. Her difficulties were exasperated when she experienced periods of unemployment at various times in 2014, 2015, and 2016. She did not file her tax returns or pay the tax owed because she did not have the money to do so.<sup>3</sup>

When she was interviewed by a defense investigator in November 2017, she indicated she was working with an accountant to get her tax returns filed. She provided documentation showing that she filed her 2012 through 2015 federal returns in May 2018. She also provided documentation that her 2016 federal return was prepared, but she failed to provide proof that it was filed. Applicant provided documentation showing

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<sup>1</sup> Items 5, 9.

<sup>2</sup> Items 4, 9.

<sup>3</sup> Item 9; AE A.

that in August 2018, the IRS accepted an installment payment plan from her whereby \$140 monthly will be withdrawn from her bank account to pay the taxes, penalty and interest that she owes. Applicant failed to produce evidence that any payments have been made to the IRS under the plan. She also failed to produce documentation addressing the filing of her 2013 through 2015 state tax returns. Applicant's tax issues remain unresolved.<sup>4</sup>

Applicant claims the medical debt is resolved and is awaiting paperwork to verify the debt is paid. She failed to provide any documentation disputing this debt or showing resolution by payment. This debt remains unresolved.<sup>5</sup>

Applicant provided some budget information when she answered the Government's interrogatories in May 2018. According to that information, she is left with approximately \$750 at the end of the month after paying all her expenses (this includes paying her \$140 monthly tax installment payment). There is no evidence of financial counseling.<sup>6</sup>

### **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 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(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.

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<sup>4</sup> AE A-B.

<sup>5</sup> AE A-C.

<sup>6</sup> Item 6.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an 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.

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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 delinquent federal tax debt that remains unpaid or unresolved because of her inability to pay it. She also failed to timely file her 2012 through 2016 federal returns and her 2013 through 2015 state returns as required. She has a delinquent medical debt that remains unresolved. I find all the above listed disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 failed to show sufficient efforts toward resolving her federal and state tax issues. Although it appears she filed her 2012 through 2015 federal returns in May

2018, shortly before the issuance of her SOR, and entered into a payment agreement with the IRS in August 2018, she failed to show that she made payments under the plan or that she has addressed her unfiled state returns for 2013 through 2015. Her inaction shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's periods of unemployment qualify as a condition beyond her control, however, she failed to show responsible action in addressing her federal and state tax issues as well as a delinquent medical debt. AG ¶ 20(b) is partially applicable.

Applicant's financial problems are not under control. There was no evidence of financial counseling. She receives some credit for establishing a payment plan with the IRS, even though there is no proof that payments have started. However, since it took her almost two years to contact the IRS and negotiate this plan, and because her state tax issues are unaddressed, good-faith efforts to pay or resolve her tax issues are lacking. AG ¶¶ 20(c), 20(d), and AG ¶ 20(g) partially apply. She failed to provide documentation supporting her dispute of SOR debt ¶ 1.f. AG ¶ 20(e) does not apply.

### **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 guideline 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 considered her periods of unemployment and her agreement with the IRS, but I also considered her lack of progress in resolving her tax debt and filing her tax returns. Applicant has not established a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance because of her financial

status. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

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Robert E. Coacher  
Administrative Judge