



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



In the matter of: )  
)  
) ISCR Case No. 18-01680  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*  
02/19/2019

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

On August 17, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on September 25, 2018. Applicant received the FORM on October 19, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and she provided a one-page email response to the FORM dated October 24, 2018, but no documents. The Government’s evidence, identified as Items 1 through 4, and the response, are admitted into evidence without objection. The case was assigned to me on January 17, 2019.

## Findings of Fact<sup>1</sup>

Applicant is 51 years old. She obtained her bachelor's degree in 2005 and she has been employed as a security professional by a federal contractor since June 2016. Applicant reported no military service or previous security clearance. She never married and reports no children. Applicant reported her failure to timely file federal and state income tax returns for tax year (TY) 2014, and her failure to pay taxes, in section 26 of her security clearance application (SCA).<sup>2</sup> She stated that she did not have the money and still doesn't. In her March 2018 personal subject interview (PSI), Applicant said she was afraid to file her income tax returns because she was barely getting by financially, and she didn't think she could pay the income taxes due. (Item 4)

SOR ¶¶ 1.a and 1.b allege Applicant failed to timely file federal and state income tax returns as required for TYs 2014 – 2016. In her September 7, 2018 answer to the SOR, Applicant admitted failing to file or pay the taxes as alleged. (Item 2) In her answers to interrogatories, Applicant asserted that the delinquent tax returns were filed, and all taxes paid, on May 7, 2018. (Item 4) However, she is awaiting a bill from the IRS for TY 2016 penalties and fees owing. No explanation was provided why she waited so long to file the income tax returns for TYs 2014 – 2016. The tax transcripts show that she filed the TY 2014 income tax return on July 16, 2018, and the TYs 2015 and 2016 returns on June 25, 2018.

In her Answer to the SOR, Applicant denied the allegations at SOR ¶¶ 1.c and 1.d that she is indebted to the federal government for delinquent taxes in the amount of \$215 for TY 2014, and to the state government for delinquent taxes from TYs 2014-2016. She attached cancelled checks to her answer confirming that all delinquent state and federal income taxes have been paid. This is corroborated by IRS tax transcripts that she attached to her answers to interrogatories. (Item 4) The tax transcripts indicate that Applicant had adjusted gross income (AGI) of \$12,088 in TY 2013; \$18,080 in TY 2014; \$21,576 in TY 2015; \$28,819 in TY 2016; and \$33,379 in TY 2017. She has zero balances remaining for each relevant TY, and although she may owe some modest penalties and fees, she has substantially complied with repaying her delinquent tax debts.

Applicant provided no evidence that she received financial counseling. She provided no budget showing income against expenses, or other documentation to show why she was unable to timely file federal and state income tax returns for TYs 2014 – 2016 as required, or why she feared that she couldn't afford to pay the taxes due. In the FORM, Department Counsel informed Applicant that it was important for her to provide

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's June 14, 2017 security clearance application (SCA) (Item 3), or her answers to interrogatories signed on July 24, 2018, verifying her personal security interview (PSI) on March 27, 2018. (Item 4)

<sup>2</sup> Item 3, at p. 29.

corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 3) She did not do so.

### **Policies**

This 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 Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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 recognize the complexities of human behavior, and 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 adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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. 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 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. 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 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 abuse, 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.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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’s failure to timely file TY 2014 - 2016 federal income tax returns and the delinquent taxes alleged in the SOR are confirmed by her credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying

conditions in AG ¶¶ 19(a), (b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>3</sup> Applicant has partially met that burden.

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 . . . , and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 earned modest AGI for the relevant TYs. Yet, she met the threshold income requiring that she file income tax returns. She offered no explanation or evidence why she could not file, even if she was unable to afford the resulting taxes. Although she produced cancelled checks and tax transcripts indicating that she filed the income tax returns in June and July of 2018, and she has paid all delinquent taxes, this was too little, too late. She has produced no relevant or responsive documentation either with her Answer to the SOR, or in response to the FORM, except for the cancelled checks made out to the U.S. Treasury Department and state department of revenue. She has not demonstrated that she acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. She admitted her failure to timely file the federal income tax returns for three years (2014-2016). Applicant did not provide enough details with documentary corroboration about her financial state and stressors around 2014 – 2016. The basis for her fear that she could not afford to pay income taxes, if she filed income tax returns as required, cannot be discerned from the record evidence.

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<sup>3</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

Aside from Applicant's tardy payment of overdue taxes, there is no documentary evidence that Applicant was unable to file income tax returns and pay her taxes when they were due. She did not describe financial counseling or provide her budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information.

### **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 those guidelines. Notably, Applicant did not explain her failure to timely file federal income tax returns. She has been employed most of her adult life. Most importantly, she has not addressed the specific allegations in the SOR. She has not met her burden of production. To her credit, she paid the past-due taxes alleged in SOR ¶¶ 1.c and 1.d, but that is only part of her problem. It is unclear why these income taxes became past due in the first place, and why she didn't file income tax returns on time.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. She has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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.b:	Against Applicant
Subparagraphs 1.c – 1.d:	For Applicant

### **Conclusion**

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

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Robert J. Kilmartin  
Administrative Judge