DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-02403
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2019

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Decision

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Between 2014 and December 2018, Applicant filed for bankruptcy protection three times. The most recent bankruptcy plan was confirmed in June 2019. She filed her 2015 and 2016 Federal income tax returns late and owes more than $100,000 in Federal income taxes. She provided false answers on her February 2018 Electronic Questionnaires for Investigations Processing (e-QIP). She has not mitigated the financial considerations or personal conduct security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On January 11, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her.

The DoD CAF acted under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On February 5, 2019, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 21, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on April 9, 2019.

Nine Government exhibits (Ex. 1 – 9) and three Applicant exhibits (Ex. A – C) were admitted into evidence without objection. Documents submitted by Applicant as attachments to her SOR answer were also considered. Applicant and her spouse testified, as reflected in a transcript (Tr.) received on April 18, 2019. The record was held open following the hearing to allow Applicant to submit additional documents. Five additional submissions were received and admitted into evidence, without objections, as Ex. D – H. Those documents were received between April 2019 and late June 2019

Findings of Fact

In Applicant's answer to the SOR, she admitted filing for bankruptcy protection three times, and admitted Federal income tax debts for tax years 2013, 2014, and 2016, but stated her tax returns for 2014, 2015, and 2016 had been filed. She asserted one credit report indicated the debts in SOR 1.i, SOR 1.j, SOR 1.k, and SOR 1.l were reported as paid in full with zero balances. Other credit reports do not show the debts as paid. She indicated the debts in SOR 1.h and SOR 1.m through SOR 1.r are included in her Chapter 13, Wage Earners' Plan bankruptcy. She stated she owes nothing on the judgment listed in SOR 1.s ($8,598), which involves the same creditor as the debt listed in SOR 1.h ($19,182). She did not explain why she no longer owed the delinquent obligations. She stated that in the current year, she anticipates she and her husband's gross income for 2019 will be more than $275,000. (SOR Response) After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 44-year-old engineer who has worked for a defense contractor since January 2018 and seeks to obtain a security clearance. (Ex. 2, Tr. 31, 44) She held a secret clearance while working for a defense contractor from 2003 to 2013. (Ex. 1, 2, Tr. 5) From April 2013 to January 2017 and from May 2017 to September 2017, she was unemployed. (Ex. 2) She has not served in the U.S. military. She is married, has a step-daughter age 25, and three children ages 9, 8, and 6. (Ex. 2) In May 2002, she obtained a master's degree in engineering. (Ex. 3, Tr. 13) Her annual salary is $145,000. (Tr. 61) Her husband currently has three jobs, one with an $185,000 annual salary and the other two positions paying between $15,000 and $45,000 annually. (Tr. 62) He also receives book royalties. Between 2014 and December 2018, Applicant and her husband filed for bankruptcy protection three times. (Ex. 5, 6, 7)

In 2008, Applicant purchased a house on the east coast and lived in the home until March 2014. (Tr. 114) At that time, the home was rented to a friend who live there until 2015. In 2015, Applicant and her spouse moved from the east coast to their current location. (Tr. 24) When Applicant asked her husband about the status of the home, he told her it had been sold. However, it had not been sold, but went to foreclosure. (Tr. 115) Her husband had used a power of attorney from Applicant in dealing with the house.

In 2013, when Applicant's maternity leave ended following the birth of her third child, she chose to take time off from her job with a defense contractor to take care of her three children. (Tr. 6, 35) Her oldest child was age four, and she had recently learned her second child has autism and learned her spouse also has autism. (Tr. 17, 34, 100) When she resigned, her annual salary was approximately $120,000. (Tr. 35) Shortly after Applicant had resigned from her job, her spouse was laid off from his job with a defense contractor when the contract he was working on ended. (Tr. 6) Applicant was not intimately involved with the family's finances. (Ex. 17) In their household, her husband handled the payment of bills. (Tr. 32) Whenever she asked her husband about their debts, she was told everything was "squared away,'" and when she asked about their tax returns, he stated "Yes, I'm on top of it. I sent it in." (Tr. 46) In her August 2018 interview, she stated she trusted her husband 100 percent and had no idea where their income was used. (Ex. 3)

From April 2012 through December 2016, during the time Applicant was at home with her children, their joint household income exceeded $300,000. (Ex. F, Tr. 63) Applicant's and her spouse's 2014 Federal income tax return was timely filed on March 3, 2015. (Ex. F) In February 2019, Applicant responded to the SOR and submitted copies of their 2015 and 2016 Federal tax returns dated October 2017, both of which would have been late filings. (SOR Response, Tr. 71) The tax transcripts show their 2015 Federal income tax return was filed in March 2018 and their 2016 Federal income tax return was filed February 2018. (Ex. G, Tr. 72) Applicant's husband asserted that, in the past, he had established payment plans with the Internal Revenue Service (IRS). The plans were not further explained in the record. (Tr. 74)

The copy of Applicant's 2016 Federal tax return submitted with her response to the SOR indicates wages of $340,475 and an adjusted gross income of $322,715 with $10,483 of Federal income tax withheld. The 2016 tax transcript stated the Federal income tax liability was $71,736 plus $2,165 interest charged for late payment. (Ex. G)

In October 2018, when Applicant submitted her response to written interrogatories, she submitted a copy of an unsigned and undated 2017 joint Federal tax return. (Ex 3) A tax transcript for tax year 2017 is not contained in the record. A May 10, 2019 letter from the IRS indicated a request for a 2017 transcript had been received, but the IRS could not process the request at that time. (Ex. F) The 2017 tax return she presented in response to the written interrogatories indicated $6,847 in wages and a business loss of $40,436, which was listed as wages paid an assistant. (Ex. 3) Information about this loss due to a paid assistant is not contained in the record. The return lists an adjusted gross income of $2,472, and $356 in Federal income tax withheld. (Ex. 3) The return also claims

$36,061 income listed on a 1099 MISC, not further explained. Based on the return they anticipated an $880 refund. (Ex. 3)

In the October 2017 bankruptcy filing, Applicant and her husband claimed monthly income of $12,061. (Ex. 5, page 35 of 43) She did not explain why the bankruptcy for listed $12,061 in monthly income but their joint Federal tax return lists a total income for the year of $6,847. During 2017, Applicant was unemployed from May 2017 to September 2017. During that year, a contract her husband had been working on ended, and he became involved with a number of start-up companies. (Tr. 97) Her husband received little compensation for his work with the start-up companies. (Tr. 97) As previously stated, her husband also receives royalties from a number of books he has written. (Tr. 99)

Applicant asserts she had difficulties receiving her mail at times. In February 2019, she was very surprised when she received the bills for her son's medical treatment. (Tr. 23) The company said they had sent invoices for $3,704 for medical treatment provided between May 2018 and October 2018. (Ex. B) Applicant claimed the invoices were never received. In March 2019, the company was paid $1,904 for services received. (Ex. B) She asserts a similar event occurred over a bill for pool service. She claims she never received a $1,380 invoice for pool services before being sued by the pool company for unpaid services. Once notified, the debt was paid in March 2019. (Ex. C) She has asserted that she had not received mail sent to her including Christmas cards. (Ex. C) Applicant obtained a post office box to alleviate the mail problem. (Tr. 108)

At the hearing, Applicant asserted for 2016 their household income was $340,000 with $10,000 being withheld to pay Federal income tax. (Tr. 9) This left a tax balance due of $60,000. In January 2019, Applicant and her spouse agreed to pay $495,590 through a Chapter 13, Wage Earners' Plan, with payments of approximately $8,200 per month. (Tr. 9, 28) The amount to be paid in the plan varied greatly depending on which bankruptcy documents are reviewed. The monthly payment also includes mortgage and vehicle payments in additional to payment on the Federal tax bill. Applicant anticipated she and her husband's household income for 2019 would total approximately $275,000. (Tr. 9)

On Applicant's 2009 e-QIP, she did not list any financial difficulties because at the time she was not experiencing any financial problems. (Ex. 1) In November 2017, an $8,598 civil judgment was entered against Applicant, which she did not list on her February 2018 e-QIP. (Ex. 2, 7) On the same e-QIP, she listed a Chapter 13 bankruptcy filed in October 2017, but failed to list her October 2014 bankruptcy filing. In the e-QIP, she stated, "I have no debt under my name and was cleared of all debt." (Ex. 2) She answered "no" when asked if she had failed to file or pay Federal, state, or other taxes, and she did not list any delinquencies involving routine accounts. She indicated "no" in February 2018, when asked about the non-filing of taxes even though she had attended the October 2017 bankruptcy debtors' meeting where the IRS debt of more than $100,000 was discussed. She asserted she believed all the debts had been satisfied.

In Applicant's October 2018 Response to Written Interrogatories, she indicated all her debts had been either addressed or were being addressed. (Ex. 3) She did not explain or provide documentation showing the debts were being addressed. At the time of her February 2018 e-QIP response, the 2017 bankruptcy had not yet been dismissed.

In October 2014, Applicant and her husband (debtors) jointly filed for bankruptcy protection under Chapter 13, the Wage Earner's Plan. The bankruptcy listed $42,327 in secured claims and $75,198 in unsecured claims, which totaled $117,526. (Ex. 4) The unsecured claims included some of the SOR delinquent obligations: SOR 1.j ($9,086), SOR 1.k ($8,237), SOR 1.n ($5,245), SOR 1.o ($1,583), and SOR 1.p ($767). (Ex. 4) At that time mortgage arrearages were $21,988 on a $275,254 mortgage. The house eventually went to foreclosure. No principal or interest were paid on the claims. In May 2015, the debtors were dismissed and in October 2015, the bankruptcy terminated. (Ex. 4) The debtor's requested a voluntary dismissal. When a Chapter 13 case is dismissed, the debts are not discharged. (Ex. 5)

In Applicant's June 2018 Enhanced Subject Interview, she indicated she had no knowledge that a bankruptcy had been filed in October 2014. (Ex. 3) During the interview, when asked about delinquent obligations on her credit report, she had no knowledge about the following delinquent obligations: SOR 1.i, $439; SOR 1.j, $9,086; SOR 1.k, $28,237; SOR1.n, $5,245; SOR 1.o, $1,583; SOR 1.p, $767; and SOR 1.r, $6,761. (Ex. 3) She indicated the $3,206 (SOR 1.l) automobile debt may have been for a car purchased for her step-daughter. (Ex. 3, Tr. 85) The vehicle was repossessed. (Ex. 9, Tr. 82) The last payment before repossession occurred in 2016. (Ex. 9, Tr. 84) She did not disclose any repossessions on her February 2018 e-QIP. (Ex. 2)

Applicant believes a $19,182 delinquent obligation (SOR 1.h) was unpaid or overdue rent owed an apartment complex. (Ex. 7, Tr. 39) She has not investigated the debt and only learned of it during the security clearance process. (Tr. 35) It was included in her 2017 bankruptcy filing. (Tr. 60) The debt in SOR 1.h ($19,182) and judgement in SOR 1.s ($8,598) are with the same corporation that owns apartment complexes throughout the country. However, the debt in SOR 1.h is for unpaid rent on a rental unit on the east coast and the debt in SOR 1.s is for an apartment in the state where Applicant currently resides. (Tr. 87) Their bankruptcy attorney has asked the corporation for an accounting of the two debts. (Tr. 87) No information was received concerning the results of the request for accounting.

Applicant had no knowledge about the $28,237 charged off debt (SOR 1.k). (Tr. 78) An automobile was purchased for $33,000 and $23,000 was charged-off to profits and losses. (Ex. 8, Tr. 79) The vehicle debt was never paid, but Applicant believes her credit report reflects a zero balance on the debt. (Tr. 80) Applicant asserts the $6,761 joint travel card debt (SOR 1.r) is included in the bankruptcy. (Tr. 86)

At the hearing, Applicant stated she did not find out about the 2014 filing until the second bankruptcy was filed in October 2017. (Ex. 3, Tr. 40) She did not explain how she failed to know about the joint filing. She testified when she found out about the 2014 filing,

she asserted she was very angry with her husband for filing under her name, without her knowledge, and asserted that she never having signed any paperwork. (Tr. 42) When she discovered the 2014 bankruptcy had been filed, she did not review the filing. (Tr. 43) During Applicant's June 2018 Enhanced Subject Interview, which was seven months after the October 2017 bankruptcy filing, she stated she had no knowledge of any such action being filed in 2014. (Ex. 3)

In October 2017, Applicant and her husband filed for bankruptcy protection under Chapter 13, Wage Earner's Plan. Applicant never contacted the bankruptcy attorney or verified the status of the bankruptcy after the initial filing. (Tr. 45) The bankruptcy listed assets of approximately $30,000, secured debt of approximately $35,000, and unsecured debt of $225,000. (Ex. 5, page 41) A $102,564 student loan debt was listed in the bankruptcy filing. (Ex. 5, pages 30 and 42) Their household's monthly income was approximately $12,000 with monthly expenses of $6,000. (Ex. 5 pages 35 and 36) The projected monthly Chapter 13 plan payment was $788. (Ex. 5) The plan listed no real estate and listed two vehicles valued at $35,000. Approximately $18,000 of the motor vehicle debt was unsecured. (Ex. 5, pages 16-18 of 43)

Applicant was surprised in March 2018, when her husband told her the bankruptcy filed in October 2017 was being dismissed. (Ex. 5, Tr. 52) She asked her husband how the debts ($225,091) had been dismissed in the six months, from October 2017 to March 2018. When informed the bankruptcy was dismissed, Applicant was under the erroneous impression that the process was over and they were then debt free. (Tr. 52) Her husband told her he had paid $500 a month for six months and the debts were dismissed. The dismissal was due to Applicant and her spouse failing to cooperate with the bankruptcy trustee as necessary to enable the trustee to perform the trustee's duties. (Ex. 3)

Applicant and her spouse object to the IRS's claim of a $179,774 tax delinquency. (Ex. 5) The IRS claimed a priority claim of $62,920 and an unsecured claim of $45,255. Applicant first saw, the history of the October 2017 bankruptcy filing documents (Ex. 5) at the hearing. (Tr. 47) Applicant's husband believes they owe the IRS $130,000. (Tr. 64) Applicant testified she knew in October 2017 there was a tax debt, but did not know the details of the debt even though they reviewed the bankruptcy filing, line by line, with their bankruptcy attorney. (Tr. 47) A representative from the IRS attended the debtors' conference. (Tr. 47) In a post-hearing submission, she asserted that her 2016 and 2017 tax returns were "being reviewed due to them [IRS] concluding we were the victims of ID Theft." (Ex. F) She did not make this claim at the hearing and provided no documentation from the IRS supporting her assertion of review by the IRS.

The IRS wage and income transcripts in evidence presented indicate Applicant's and her spouse's joint income between 2009 and 2018 was not lower than $129,000. (Ex. F) Joint income: in 2012 was $203,809; in 2013, $312,737; in 2014, $129,190; in 2015, $134,703; in 2018, $154,783; and for tax year 2016, an adjusted gross income of $322,715. (Ex. F, G) The tax transcript for tax year 2014 indicated $1,052 in Federal tax was owed. (Ex. F) In April 2018, the IRS sent Applicant and her spouse a Notice of Intent

to seize (levy) on their property and that $1,825 was immediately due for tax year 2014. (Ex. 3)

In 2015, Applicant and her spouse moved to a state that does not have a state individual income tax. No information was alleged or presented concerning any state income taxes owed at their previous state of residence. An IRS tax account transcript for tax year 2016 indicated $71,736 in Federal tax was owed and $10,483 had been withheld. (Ex. G) This left a balance due of $61,253 plus $2,165 interest on the late payment, for a total due of $63,418. (Ex. G) In May 2019, the IRS sent notification that Applicant and her spouse's $880 refund for tax year 2017 had been intercepted and applied to her 2013 tax debt. (Ex. G) This left a tax debt of $47,008 for tax year 2013. (Ex. G)

In December 2018, Applicant and her husband again filed for bankruptcy protection under Chapter 13. (Ex. 6, the document indicated it is 46 pages, but the record fails to contain 46 pages for this document). The bankruptcy listed a secured claim for a home valued at $575,000 with monthly mortgage payments of $5,702 and two secured claims for motor vehicles valued at $52,000. (Ex. C, Ex. 6, page 9 and 10 of 46) At the date of filing, Applicant's husband believed the mortgage was current, but did not explain how it was $28,000 delinquent in earlier filings and was current at the time of filing. They owed approximately $200 more on the home than the value of the house. The plan listed assets of $666,400 and liabilities of $648,076. (Ex. 6, page 34) Unsecured debt totaled $24,712. (Ex. 6, page 5 of 13) The amount of student loan debt is not listed in the 2018 bankruptcy documents. The fact that student loans are not normally dischargeable in bankruptcy may explain the reason the student loan debt is not listed in the latest bankruptcy filing.

Bankruptcy documents dated January 2019 reflect the projected monthly Chapter 13 plan payment started at $8,259 per month and will increased over the five years of the plan to $15,275 monthly. (Ex. C) Her husband stated the monthly payment is automatically deducted from his and his wife's pay. (Tr. 99) Applicant asserted that following the hearing, she would provide documentation showing timely payment of the monthly payment. (Tr. 117)

In June 2019, the bankruptcy plan was confirmed. The order confirming the Chapter 13 plan states the debtors (Applicant and her spouse) will pay $719,520 over a 60 month period starting in January 2019. (Ex. H) Monthly payments are to start at $8,260 monthly, to increase to $11,000 monthly in January 2020, increase to $12,500 monthly in January 2021, and then increase to $14,000 monthly in January 2022 until the 60-month plan is completed. (Ex. H) The majority of the monthly payment would go to the secured debts, which would include the $5,702 monthly mortgage payment, the car payments for the two cars, and the IRS debt. In February 2019, a wage directive information sheet directed Applicant's husband's employer to deduct $6,000 per month or $2,768 bi-weekly and the amount was to be paid to the bankruptcy trustee. (Ex. D) A similar directive to Applicant's employer directed that $2,260 monthly or $1,043 bi-weekly be withheld and paid to the trustee (Ex. D)

At the hearing, Applicant submitted bank statements showing payment to the bankruptcy trustee of approximately $260 each on January 28, 2019, February 5, 2019, February 19, 2019, March 1, 2019, March 18, 2019, and on April 1, 2019. (Ex. B) These six payments total $1,560. Following the hearing, Applicant submitted leave and earning statements from her employer for March, April, May, and June 2019 showing the deductions from her pay that were sent to the bankruptcy trustee (Ex. D, E, G) As of June 6, 2016, $7,301 had been deducted from Applicant's pay. No leave and earning documents were submitted showing deductions from her husband's pay, but a bankruptcy document showed her husband's employer had submitted five payments totaling $16,836 in January through March 2019, plus one payment by him, with all of the payments on his behalf totaling $36,438. (Ex. D) During the same period, Applicant's employer. The combined payments totaled $53,274. From February through May 2019, Applicant submitted cashier's checks to the trustee totaling $24,491. (Ex. D, E) From January 2019 through June 2019, Applicant has documented payments of $86,626 to the bankruptcy trustee from January 2019 through June 2019. (Ex. D, E, G)

In December 2018, Applicant's household's monthly income was $26,900 with monthly expenses of approximately $10,000. (Ex. 6, page 2 and 3 of 12) The projected monthly Chapter 13 plan payment started at $8,259 per month and increased over the course of the plan to $15,275 monthly. (Ex. 6, page 2 of 13) Their monthly home mortgage payment was $5,700 and the IRS monthly payment was $950 on an amount owed of $145,807. (Ex. 6, page 4 of 13, Ex. C) The IRS submitted a priority claim of $62,920 and an unsecured claim of $45,255. The record does not reconcile the discrepancy in the tax delinquency claimed by the IRS.

During their December 2018 bankruptcy filing, Applicant and her husband sought the services of a tax accountant. (Tr. 49) Her husband hired the tax accountant, and Applicant did not know the details of the hiring, actions taken by the tax accountant, or the results obtained. (Tr. 50) Bankruptcy documents also show the IRS was claiming Applicant and her husband owed a lesser amount of $120,303 in taxes. (Ex. E) That amount represents a secured claim of $43,076, an unsecured priority claim of $66,001, an unsecured claim for interest of $5,151, and an unsecured claim for tax penalty of $5,450. The difference in values claimed was not further delineated in the record.

In January 2019, the Applicant's and her spouse's Chapter 13 Plan listed $83,093 unsecured debt, which included all of the SOR charged-off and collection accounts except for the $9,986 charged-off bank debt (SOR 1.j). (Ex. C) The plan included: SOR 1.h and 1.s, $27,780; SOR 1.i, $439; SOR 1.k, $28,237; SOR 1.m, $922; SOR 1.n, $5,245; SOR 1.o, $1,583; SOR 1.p, $767; SOR 1.q, $669; and SOR 1.r, $6,761. (Ex. C)The unsecured claims also include a $3,459 hospital debt not listed as a debt of concern in the SOR. The June 11, 2019 Order Confirming the Chapter 13 plan lists the secured creditors by name, but does not specifically list the unsecured creditor by name. (Ex. H)

In March 2019, the bankruptcy court ordered Applicant and her spouse to complete an instructional course in personal financial management. She indicated that she had to take a four-hour credit counseling class for the bankruptcy. (Ex. 3)

Applicant has opened a separate checking account for her salary to which her husband does not have access. (Tr. 3, 50) They ended their joint accounts. They no longer have credit cards, only debit cards. (Tr. 50) She asserted that she is now "intimately involved in paying the bills and making sure that they're paid and that we get confirmation of payment received." (Tr. 102) To reduce expenses, they have dismissed their part-time nanny and a tutor. (Tr.121)

Character Evidence

Applicant submitted several Performance and Development Summaries showing her job assessment, her key strengths, and performance ratings. (Ex. A) For 2003 and 2012 she was rated as "Meets Requirements," for 2004, 2009, 2010, and 2011 her rating was "Exceeds Requirements," and for 2005, 2006, 2007, and 2008 she was rated as "Far Exceeds Requirements." Her 2018 rating was "Highly Effective Contribution." (Ex. A)

Applicant is a deputy team lead recently promoted to section manager, where she will be the direct supervisor of 12 to 15 engineers. (Ex. H) Her team lead, who has worked with Applicant for a year and a half, stated Applicant consistently delivers on her commitments without fail. (Ex. H) Their team of 40 individuals values accountability, transparency, integrity, and commitment. The team lead states Applicant exemplifies these values. (Ex. H)

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 must be considered 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 adjudication process is an examination of a sufficient period and a careful weight 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 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.

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 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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

> 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 . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed-upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant did not timely file her Federal income tax returns for tax years 2015 and 2016. Those returns were filed in 2018. Applicant acknowledged owing more than

$100,000 in Federal income tax. Guideline F security concerns are established when an individual fails to comply with her tax filing obligations. Disqualifying condition AG ¶ 19(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," applies.

Applicant's finances were such that she had to file with her spouse for bankruptcy protection in 2014, 2017, and 2018. The latest plan was filed in December 2018 and confirmed in June 2019. In November 2017, a civil judgment of $9,598 was entered against Applicant. Additionally, Applicant had five charged-off accounts totaling more than $66,000 and six collection accounts totaling more than $9,600. The delinquent obligations totaled more than $84,000. Disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations," also apply.

Security concerns having been raised, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005)). Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the financial considerations security concerns.

Applicant has the burden of establishing that matters in mitigation apply. One or more of the following conditions under AG ¶ 20 may 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 person 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 showed poor financial judgment in her handling of her personal credit, as evidenced by her outstanding consumer-credit delinquencies including five charged-off accounts, six collection accounts, and a civil court judgment totaling more than $84,000, and by owing with her spouse more than $100,000 in unpaid Federal income taxes.

Applicant failed to timely file her 2015 and 2016 Federal income tax returns in a timely manner. The returns were finally filed in February and March 2018. A willful failure to timely make (means completed and filed with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense (Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax). The failure to timely file federal tax returns has security implications because:

> Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at* evaluating an applicant's judgment and reliability. *Id*. A person 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. Aug. 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).

The Appeal Board ruled that "even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. *See* ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016).

Applicant has filed for Chapter 13 bankruptcy three times: in October 2014, October 2017, and December 2018. The most recent bankruptcy plan was confirmed in June 2019. Applicant's filing for bankruptcy does not preclude the administrative judge from making an adverse security clearance decision. The filing for bankruptcy protection does not preclude considerations of her overall history of financial problems, including evidence indicating that she had been less than diligent in addressing her longstanding financial problems. Moreover, security clearance decisions are not an exact science, but rather involve predictive judgments about a person's security eligibility based on

consideration of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance. *See, e.g.*, DISCR Case No. 87-1800 (February 14, 1989) at p. 3 n.2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the Examiner must consider the possible security implications of the history of financial debts and problems that led to the filing of bankruptcy. Furthermore, a discharge in bankruptcy does not, in itself, prove that an applicant has changed the financial habits that led to the debts discharged in bankruptcy or that his past financial difficulties are not likely to recur."). *Cf. Marshall v. District of Columbia Government*, 559 F.2d 726, 729-30 (D.C. Cir. 1977) (discharge in bankruptcy does not preclude city from considering whether past financial problems disqualify person for position as police officer).

There is no indication that any payments were made on any of the delinquent SOR obligations outside the bankruptcy proceedings. Five of the SOR delinquencies were listed in her October 2014 bankruptcy filing and remained unpaid four years later when those debts were included in her December 2018 bankruptcy filing. Applicant has acknowledged she was not involved with the family's finances. In their household, her husband handled paying the bills. When she questioned her husband about their debts, he said they were paid. She did not follow up and verify the debts were actually being timely paid.

The finances were not being properly handled. The tax returns were not being timely made and income taxes were not timely paid. Applicant was unaware that their previous home had gone to foreclosure. She stated she was unaware of that a 2014 Chapter 13, Wage Earner's Plan, had been filed, even though it was a joint filing that would require the signature of both parties. The power of attorney she gave her husband might provide an explanation for the loss of the house, but it does not explain how a joint bankruptcy filing could be made with the knowledge of each party to the bankruptcy. Routinely in bankruptcy proceedings the debtors must attend mandatory financial counseling, which Applicant acknowledged occurred for the most recent bankruptcy. If she had attended mandatory financial counseling for the 2014 filing, it would difficult to understand how she did not know the bankruptcy had been filed.

The number of delinquent obligations and her noncompliance with tax deadlines for her 2015 and 2016 tax returns are too numerous and too recent for mitigation under AG ¶ 20(a). The SOR alleges she failed to timely file her 2014 Federal tax return, however, the tax transcripts presented indicated the 2014 return was filed in March 2015, which was a timely filing.

For the mitigating factors in AG ¶ 20(b) to apply, the individual must establish that the conditions that resulted in the financial problem were largely beyond the person's control and the individual must have acted responsibly under the circumstances. In 2013,

Applicant chose to take time off from her job with a defense contractor to take care of her three children. This is not an event or condition largely beyond her control. However, her spouse was laid off his job with a defense contractor shortly after Applicant had resigned from her job, which was a factor beyond her control. There was a reduction in household income, but the tax transcripts indicate the lowest the household adjusted gross income (AGI), while Applicant was not working outside the home, was $129,190. The AGI for the years in questions were: 2013, ($312,737), 2014 ($129,190), 2015 ($134,703), 2016 ($322,715), and 2017 (no tax transcript). Her post-hearing assertion that she might have been the victim of identity theft regarding her taxes is too speculative to provide mitigation under AG ¶ 20(b). The medical treatment for her son, which totaled $3,704, is not sufficiently large enough to explain her financial problems. AG ¶ 20(b) does not apply.

In Applicant's favor, she has filed her delinquent income tax returns for tax years 2015 and 2016, but a tax bill of more than $100,000 remains. Even where delinquent tax returns have now been filed and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding prior behavior evidencing irresponsibility. *See e.g*., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). The Appeal Board has long held that the failure to file tax returns suggests a problem with complying with well-established government rules and systems. *See e.g*., ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016.) Failing to timely file tax returns shows poor judgment. AG ¶ 20(g) does not apply because while Applicant and her spouse have a payment arrangement with the bankruptcy court under which $950 monthly payments are being made to the IRS, the record indicates the tax is still being disputed by Applicant and her spouse. They have not established a sufficient track record of payments, either through the bankruptcy court or to the IRS directly to fully mitigate their substantial tax delinquency.

Applicant has attended court-ordered mandatory financial counseling as part of her bankruptcy filing. However, it is too soon to say there are clear indications that the problem is being resolved or is under control. AG ¶ 20(c) does not apply. Although Applicant has challenged the exact amount of the income tax debt, AG ¶ 20(e) does not apply because the record contains no documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue.

It would be premature to mitigate the financial considerations security concerns raised by Applicant's consumer delinquencies. Although a Chapter 13 bankruptcy filing is a legal means to address debts, and the plan has been recently confirmed, only six months of payments on a 60-month plan have been made. It is acknowledged the amount already paid is sizable, having paid more than $86,000. However, the total payment on the plan is more than $719,000, which is even more sizable.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:
>
> > (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
> >
> > (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable in this case:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The government has an interest in examining all relevant and material adverse information about an applicant before making a security clearance decision. The government relies on applicants to truthfully disclose adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about herself provides some indication of her willingness to report inadvertent violations or other concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information.

When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. The record evidence as a whole must be considered to determine an applicant's state of mind at the time of the omission. An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.

On Applicant's February 2018 e-QIP, she answered "no" when asked if she had failed to file or pay Federal, state, or other taxes when required by law or ordinance. Applicant signed her and her spouse's joint tax returns, so she knew their 2015 and 2016 Federal tax returns were not timely filed and that she owed Federal income taxes for tax years 2013, 2014, and 2016. Additionally, through her involvement in the October 2017 bankruptcy proceedings, she knew the IRS was demanding a sizable amount of delinquent taxes, more than $100,000. On the same e-QIP, Applicant she answered "no" when asked whether there had been any judgment entered against her, when a judgment had in fact been entered against her three months earlier in November 2017. AG ¶ 15(b), and AG ¶ 16(a) apply.

None of the mitigating factors apply. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," does not apply. The omissions or concealments were not caused by legal advice or by advice from a government representative or other person involved in making a recommendation relevant to a national security eligibility determination, so AG ¶ 17(b) does not apply.

AG ¶ 17(c) provides:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Falsifying a security questionnaire is not minor, it occurred less than a year and a half ago, it did not happen under unique circumstances, and it does cast doubt on Applicant's reliability, trustworthiness, or good judgment. The security concern has not been mitigated by the passage of time. AG ¶ 17(c) does not apply The mitigating conditions in AG ¶¶ 17(d), 17(e), 17(f), and 17 (g) also do not apply. Regarding AG ¶ 17(d), Applicant claims that she did not list any debts on her SF 86 because she believed they had been paid. The objective evidence clearly indicates otherwise. She and her spouse had filed for a Chapter 13 bankruptcy as recently as October 2017, in part to address their sizeable tax debts. Applicant did not provide a reasonable explanation for how $225,091 in debts would have been resolved in six months. AG ¶ 17(d) is not satisfied because she has yet to acknowledge her deliberate false statements.

AG ¶ 17(d) provides:

> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant claims that she did not list any debts on her SF 86 because she believed they had been paid. The objective evidence clearly indicates otherwise. She and her

spouse had filed for a Chapter 13 bankruptcy as recently as October 2017, in part to address their sizeable tax debts. Applicant did not provide a reasonable explanation for how $225,091 in debts would have been resolved in six months. AG ¶ 17(d) is not satisfied because she has yet to acknowledge her deliberate false statements. The remaining mitigating conditions (AG ¶¶ 17(e), 17(f), and 17(g) also do 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 common sense 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. The comments under Guidelines E and F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant is a 44-year-old engineer who has been employed by a defense contractor since January 2018. Applicant and her spouse have had to resort to Chapter 13 bankruptcy protection three times since 2014. Their current Chapter 13 repayment plan has been recently confirmed and they have made payments of more than $86,000 in accord with the plan. Six months of payments have been made on the 60-month repayment plan. The plan requires total payments of more than $700,000. Their two delinquent tax returns for tax years 2015 and 2016 were filed in 2018. The IRS is owed more than $100,000.

Applicant claims that she was uninvolved in her family's financial decisions to the point she was unaware their house had gone to foreclosure, that she filed a joint bankruptcy petition in 2014, and that a civil court judgment was entered against her in November 2017. She also denies knowing about the charged-off and collection accounts totaling more than $84,000. She now asserts she has her own checking account and actively reviews the household's finances making sure all the debts are timely paid. Her

involvement in monitoring the household's finances is a recent positive development, but it does not mitigate the judgment concerns raised by her lack of candor about her tax issues.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations and personal conduct security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision, even though, as previously stated, she has made sizable payment in accord with the repayment plan. Additionally, her evaluations showing her job assessments, her key strengths, and performance ratings state she is highly effective at her job. Her employer has such faith in her duty performance that she has recently been promoted to section manager with direct supervisor of 12 to 15 engineers. However, her favorable job performance is not enough to overcome the issues of security concern.

The decision to deny her a clearance at this time should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance in the future. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future she may well demonstrate persuasive evidence of her security worthiness. Favorable consideration would be given to additional months of compliance with the Chapter 13 repayment plan. However, a clearance at this time is not warranted.

The law, as set forth in *Egan,* Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (*See* AG ¶ 2(c)) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations and personal conduct 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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a - c:	Against Applicant
Subparagraphs 1.d:	Against Applicant, except for tax year 2014.

Subparagraphs 1.e - s:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a and b:	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 a security clearance. Eligibility for access to classified information is denied.

_____
CLAUDE R. HEINY II
Administrative Judge