



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00301  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

10/25/2019

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. She did not meet her burden in this case. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 9, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant timely answered the SOR 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 July 31, 2019. Applicant received the FORM on August 7, 2019. The Government's evidence, included in the FORM, and identified as Items 1

through 6, is admitted without objection. The case was assigned to me on October 22, 2019. Applicant did not respond to the FORM. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial concerns.

### **Findings of Fact**

In response to the SOR, Applicant admitted SOR allegations 1.a and 1.b and denied 1.c and 1.d. (Item 1) She is 64 years old. She never married and has no children. (Item 3) Applicant completed a security clearance (SCA) application in March 2018. Applicant obtained a technical diploma in June 2016 and has attended some college courses on-line. She has worked for her current employer as a voice technician since 2018. (Item 2) She reported that she had a security clearance at one time but does not remember the date.

### **Financial**

The SOR ¶¶1.a-1.d alleged failure to timely file state and Federal income tax returns from 2013 through at least 2017; a delinquent charged-off account in the amount of \$8,326; and a charged-off account in the amount of \$5,070. (Item 1)

Applicant explained that she attributes the debts to a reduction in force from her company due to the end of a contract. (Item 4) She worked for that company for nine years. Applicant worked abroad from 2008 until 2013. (Item 3) She could not find employment and decided to return to school to upgrade her technical skills. During the time from March 2015 through December 2017 while unemployed, Applicant used her savings. (Item 2) However, at one point she depleted her savings by 2016, and continued her course work. She began to use credit cards to pay for the remaining year of her training. Applicant collected unemployment benefits in the approximate amount of \$19,544 in 2015 and \$15,400 in 2017. (Item 6)

Applicant lived with her parents to reduce her expenses but could not find a job. Her two credit cards became delinquent. She made diligent efforts to resolve the outstanding accounts. In 2018, when she became employed, she began to resolve the two credit card debts. She submitted documentation that with respect to the charged-off account in SOR 1.c, in the amount of \$8,326. She arranged a payment plan in 2018, has made eleven payments (\$300 a month) and has 4 remaining payments. (Item 2) Applicant settled the charged-off credit card in the amount of \$5,070 for \$1,500 and submitted a letter that confirmed the account was settled in February 2019. (Item 2) Applicant also paid some non-SOR debts. (Item 5)

Regarding her failure to file the Federal and state income tax returns, Applicant explained that she moved several times or lost or misplaced documents which she needed to file tax returns. She stated that she is working to retrieve the missing information. She claims that she does not owe any outstanding taxes. Applicant also explained that she had every intention of filing the taxes last year, but she became critically ill and disabled for several months. (Item 2)

As to SOR 1.a, and 1.b, Applicant disclosed on her SCA that she did not file her state income tax returns from 2013 to 2017. However, she has filed her state income tax return in 2014. (Item 4) She failed to file the Federal income tax returns for tax years 2014 through at least 2017. At the close of the record, the 2015 -2017 income tax returns were not filed. (Item 2) Applicant was unemployed and had no income for 2016, so she did not file that year. She further explained that she was living and working abroad and has moved several times and did not have access to her tax documents. (Item 4)

There is no information in the record concerning applicant's income or budget. She was unemployed but began employment in 2018. There is no information concerning financial counseling.

### **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 to be 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, administrative judges apply the guidelines 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."

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 the 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 Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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 . . . .

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

Applicant's admissions, corroborated by credit reports establish three disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”), 19(c) (“a history of not meeting financial obligations”) and 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.”)

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20 (g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant admitted and her tax transcripts confirm that she failed to timely file her federal and state income tax returns, as required by law. In 2017, she filed the required income tax return for 2014. Applicant's 2015-2017 income tax returns still have not been filed. Her reasoning for not filing was living and working abroad for a number of years, with many changes in residences and not having tax documents. This explanation is not acceptable. She was unemployed for several years but AG 20(a) and 20(b) are not fully applicable because she still has not filed all income tax returns as required by law. Her intentions to file in the future is insufficient and not mitigating.

Applicant's two charged-off credit cards are under control. One has been settled and the other account has a few payments left to be resolved. Her unemployment for a number of years was the reason for the delinquent credit cards. AG 20(b) and 20(d) partially apply. Applicant paid other non SOR debts and she has not incurred any new debt. However, I do not find for Applicant due to the unfiled income tax returns.

### **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 relevant 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.

Applicant encountered unemployment. She used her savings and unemployment benefits but still incurred delinquent debt. When she began working in 2018, she began to resolve the delinquent accounts. One account is now settled, and the other account has four remaining payments. However, her judgment with respect to the filing of income tax returns for 2013, 2015, and 2017 provides doubts despite her intention and commitment to file them. On balance, Applicant did not produce information sufficient to mitigate the security concerns about her finances.

Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility for a security clearance at this time. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

### **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:

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|---------------------------|-------------------|
| 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 national interest to grant Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge