



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



In the matter of: )  
)  
)  
[NAME REDACTED] ) ISCR Case No. 18-02475  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: Marc Boutwell, Esq.

03/30/2020

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant accrued numerous delinquent or past-due debts as a result of injuries from traffic accidents and other medical issues. Additionally, Applicant failed to timely file her state and federal income tax returns between 2010 and 2017, and she incurred a large bill for unpaid taxes. Applicant’s failure to timely address her debts, as well as her ongoing failure to file and pay her income taxes, undermine confidence in her judgment, reliability, and trustworthiness. Accordingly, Applicant’s request for continued access to classified information is denied.

**Statement of the Case**

On April 19, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew her eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant

to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On January 9, 2019, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). This case was originally assigned to an administrative judge on April 1, 2019 and scheduled for hearing on April 25, 2019. On April 22, 2019, that hearing was cancelled *sine die*. Subsequently, a mutually agreeable schedule for hearing could not be established.

I received the case on October 8, 2019, and I convened the requested hearing by video teleconference (VTC) on February 6, 2020. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on February 19, 2020. Applicant and one witness testified. Department Counsel proffered Government Exhibits (GX) 1 – 6. With her Answer, Applicant provided documents included as Answer Attachments A – D. At hearing, Applicant also proffered Applicant Exhibits (AX) A and B. All attachments and exhibits were admitted without objection. (Tr. 14 – 21)

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant did not timely file her federal income tax returns for the 2010 – 2017 tax years; that although she had filed her returns for 2010 – 2012 before the SOR was issued in 2019, she had yet to file her 2013 – 2017 returns (SOR 1.a). It also was alleged that as of January 9, 2019, Appellant had not yet filed her state income tax returns for the 2013 – 2017 tax years (SOR 1.b); and that she owed \$24,287 for past-due federal income taxes (SOR 1.c). The Government also alleged under Guideline F that Applicant owes 36 delinquent or past-due debts totaling \$87,969 (SOR 1.d – 1.mm). Two of the allegations (SOR 1.v and 1.dd) address unpaid satellite television and cell phone accounts, respectively, and total \$6,419. The remaining allegations addressed unpaid medical accounts that comprise about 93 percent of Applicant's non-tax debt.

In response to the SOR, Applicant admitted with explanation the allegations at SOR 1.v, and 1.w – 1.bb. She denied with explanation the allegations at SOR 1.a, 1.b, 1.dd, 1.ll, and 1.mm. Applicant indicated she could neither admit nor deny the allegations at SOR 1.c – 1.u, 1.cc, and 1.ee – 1.kk, and her responses thereto have been entered as denials. (Answer; Tr. 8 - 9) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 52 years old and has worked as a long-distance truck driver since May 2005. She and her husband, with whom she drives as a two-person team, have been married since June 2000. Applicant previously was married from July 1986 until divorcing in February 1994. She had two children, now adults, during her first marriage. (GX 1)

Applicant has driven on government contracts for her current employer since December 2016. She previously worked for that company between May 2005 and April 2013. She then worked for a different trucking company, also on government contracts, until October 2015, when she fell ill while on the road for work. From October 2015 until November 2016, Applicant worked at home as bookkeeper for her husband while she recuperated and he drove on his own. Applicant was first granted a security clearance in 2006. (Answer; GX 1; GX 2)

Applicant and her husband own their own truck and “lease” its use and their driving services to the transportation company with whom the government contracts the transportation of sensitive materials and access to sensitive locations. Applicant’s income is reported to the IRS as that of a contract employee. She receives IRS Form 1099s each year and is required to report and pay her income taxes either on a quarterly or annual basis. Much of her attention throughout each year is on accurately recording her work hours, costs of operation, and other factors required to accurately assess and report her tax obligations. To that end, since they started their long-distance trucking work in 2005, she and her husband used an individual (T) to compile the necessary information in the form of receipts and driving logs and information from the transportation company. T then forwarded the information to an accountant / tax lawyer (H) whom Applicant and her husband started using around the same time to file their joint federal and state income tax returns. (Answer; AX A; Tr. 25, 37 – 45)

In 2011, Applicant was severely injured in a motorcycle accident. As a result, she was unable to work for several months. The timing of her accident coincided with the deadline for tax return filing for the 2010 tax year and Applicant did not file her federal or state returns on time. It also does not appear that she requested an extension of the filing deadline. Her 2010 returns were filed in August 2014. Applicant also did not file her 2011 returns until October 2016. Her 2012 returns were not filed until November 2017. During these tax years, aside from time off in 2011 recuperating from her motorcycle accident, Applicant steadily drove for the company that currently employs her. (Answer; GX 1; GX 2)

When Applicant was interviewed by a government investigator as part of her background investigation in May 2018, she stated that her 2013 and 2014 federal and state income tax returns would be filed by October 2018, and that her 2015 and 2016 returns would be filed sometime in 2019. At her hearing, Applicant provided copies of prepared federal income tax returns for 2013 and 2014, but she did not establish that those returns had been filed. Additionally, Applicant had not yet filed her returns for the 2015 through 2018 tax years. Applicant claimed her failure to file was due, in part, to the fact that T developed cancer in 2016 and died sometime between 2017 and 2018. She

also claimed H's involvement in a car accident in January 2020 caused her delay in filing her tax returns; however, in August 2018, H told Applicant she (H) could not complete her work on Applicant's past-due returns until Applicant produced the information required to complete the returns. Applicant did not provide that information until early 2019. On February 4, 2020, H told Applicant that her returns for 2015 – 2018 would be ready by the end of February 2020. (Answer; GX 2; AX A; Tr. 20, 24 – 25, 40 – 45, 48 – 49, 50 – 52, 63 – 66)

SOR 1.c alleges that Applicant owes \$24,287 in unpaid federal taxes. Applicant denied this allegation. SOR 1.c is based on Applicant's disclosure in Section 26 of her most recent e-QIP regarding her 2013 taxes. Additionally, information she discussed with a government investigator during her May 16, 2018 subject interview (SI) about unpaid taxes supports this allegation. During her SI, Applicant did not dispute that she owed a significant unpaid tax debt and averred she would establish a repayment agreement with the IRS to satisfy any past-due tax obligations; however, at her hearing, Applicant simply denied that the IRS was trying to collect the tax debt described at SOR 1.c. Information she provided in response to interrogatories in November 2018 showed that Applicant owed \$20,257 for 2011 and \$5,030 for 2012. Available information shows that the debt alleged at SOR 1.c is actually \$25,287, an apparent arithmetical error. (Answer; GX 1; GX 2; Tr. 12, 22, 45 – 46, 59 – 62)

In October 2015, while on the road for a different transportation company, Applicant was taken to the emergency room. She had been found unconscious and in severe respiratory distress. At the time, she did not carry any medical insurance. The medical debts alleged at SOR 1.d – 1.u, as well as the delinquent cell phone account at SOR 1.v, arose from that medical emergency and from her 2011 motorcycle accident. Applicant and her husband experienced a significant loss of income for the rest of 2015 and throughout 2016, because she could not drive and he was limited in how much work he could take on as a solo driver on non-government contracts. In January 2017, Applicant and her husband resumed driving as a team and restored some of their lost income. By operation of state law, most of the aforementioned debts may no longer be collectable; however, there is no indication that Applicant addressed any of them or sought assistance in resolving them after she returned to work full time despite having received collection notices at or near the time her earlier debts became delinquent. (Answer; GX 1 – 6; Tr. 12 – 13, 57 – 58)

In January 2018, Applicant was involved in another accident when the car she was driving was struck by a tractor trailer. Applicant again was injured and lost significant time and income from work. In about July 2018, she returned to work full time. Additionally, she also received a large civil settlement in May 2019 after filing suit in March 2018 against the trucking company operating the truck that struck her. The medical debts alleged at SOR 1.x – 1.cc, as well as the delinquent cell phone account at SOR 1.dd, resulted from the January 2018 accident, and the proceeds from the civil settlement are being used to resolve those accounts. Applicant also indicated the settlement is sufficient

to resolve her outstanding tax obligations, but there is no indication that any such payments have been made. (Answer; GX 2 – 6; AX B – D; Tr. 13, 23 – 24, 55 – 57, 61)

Applicant and her husband have excellent reputations with their employer. The company's vice president for safety has known them since they started driving in 2005. He believes they are reliable and trustworthy, and testified that they have not caused any safety or security problems in their tenure with that company. That witness was aware of Applicant's medically related financial problems but was not aware of any problems related to Applicant's income taxes. As to their current finances, Applicant and her husband live frugally and within their means. After their personal vehicle was totaled in Applicant's 2018 accident, they purchased an older used vehicle rather than incur the financing costs of a new car. They have owned their house for about 16 years, and there is no indication that they have incurred any new debts that they are unable to pay. (Tr. 34 – 35, 74 – 87)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute,

extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

The Government established that Applicant has failed to timely file her federal and state income tax returns since 2011. Available information also shows that she owes \$25,287 in unpaid federal taxes for the 2011 and 2012 tax years. Additionally, the Government established that since 2011, she has incurred delinquent or past-due debts totaling \$87,969. This information reasonably raises a security concern about Applicant's finances that is articulated at AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (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.

In response to the Government's information, Applicant established that all of the non-tax debts alleged in the SOR arose as a result of a 2011 motorcycle accident, a 2015 illness, and a 2018 automobile accident. All of these events were beyond Applicant's control, and in some instances occurred nine years ago. These circumstances require consideration of the mitigating conditions at 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*) and 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*).

As to the debts incurred after her 2018 accident (SOR 1.x – 1.dd), Applicant is resolving them with the help of her attorney and through application of the proceeds from settlement of a civil suit she filed against the owners and operator of the vehicle that struck her. However, in the nine years after her motorcycle accident, or in the time after her 2015 illness, Applicant did not take any action to resolve the medical debts she incurred. Although it may not have been possible to pay those debts in view of the interruptions to her employment, the record is devoid of any attempt by Applicant to contact her creditors or to seek professional assistance in solving her financial problems. Further, her reliance on the expiration of state statutes of limitation for reporting and collecting delinquent debts is misplaced. In addition to the risk that a person holding a clearance might engage in illegal activities to resolve delinquent debts, the Government is equally concerned when one does not act in a way that indicates a willingness to accept responsibility for their debts. Here, Applicant did not timely act in response to collection notices regarding her earlier medical debts. In view of the record as a whole, but for her receipt of a large civil settlement in 2019, I have little confidence Applicant would have taken any action to address her more recent medical debts.

It also does not appear that Applicant has acted responsibly to resolve her failures to timely file her federal or state income tax returns starting in 2011. Although there were intervening events that may have caused her to miss her filing deadlines, her 2010 – 2012 returns were all filed at least four years late. As to her returns since the 2013 tax year, even after being interviewed in May 2018, Applicant did not provide her accountant the information needed for filing until early 2019. As of the hearing, none of her past-due returns had been filed. Applicant did not establish that she acted in a timely or responsible way to resolve her tax filing delinquencies, instead blaming other events for her failure to file. In this regard, I did not find Applicant's testimony credible. Similarly, the Government's information, including Applicant's disclosures in her e-QIP and SI, supported the SOR 1.c allegation that Applicant owes past-due taxes in excess of \$25,000. Applicant's denials in response to the SOR and through her testimony at hearing were likewise not credible. Applicant has been aware since she submitted her e-QIP that she has an outstanding tax debt from 2011 and 2012; yet, despite receipt of a large civil

settlement, there is no indication she has arranged for repayment with the IRS as she said she would during her 2018 SI. All of the foregoing precludes application of AG ¶¶ 20(a) and 20(b). Likewise, there is no support for application of 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's debts and tax difficulties may have, at times, resulted from circumstances beyond her control. But to mitigate the security concerns raised by these facts and circumstances, it was incumbent on Applicant to take some action to resolve her problems; that is, to act in as responsibly as her circumstances permitted to address her financial and tax issues. Her failure to do so indicates flaws in her judgment and reliability that undermine confidence that she is suitable for continued access to classified information. The security concerns raised under this guideline are not mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The positive testimony of Applicant's employer is not sufficient to overcome the doubts about Applicant's suitability for access to sensitive information that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, any unresolved doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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.mm:                      Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge