



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-00073
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: *Pro se*

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On May 8, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 (AG) effective within the DOD on or after June 8, 2017. In a response notarized on June 1, 2019, Applicant admitted 12 of the 20 allegations raised and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on August 2, 2019.

On September 25, 2019, a notice setting the hearing for October 23, 2019, was issued. The hearing was convened as scheduled. Without objection, the Government introduced 10 exhibits (Exs.), noted as Exs. 1-10, and Applicant presented 11 documents, accepted without objection as Exs. A-K. Applicant also introduced one witness. The Government moved to amend the SOR to include a new allegation as 1.u. The addition indicated that Applicant owed approximately \$7,000 in delinquent taxes to a third state. (Ex. K; Transcript at 88-91) The motion was granted without objection.

Applicant was granted through October 30, 2019, to submit any additional materials. The transcript of the proceeding (Tr.) was received on October 31, 2019. Additional documents were received and forwarded to me on November 1, 2019, and accepted without objection as Exs. K-Q, with a final file of material received and accepted without objection as Ex. R on November 15, 2019. The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 48-year-old protective security officer who has served in that profession for different entities since 2004. She has completed nearly 100 college credits. Twice divorced and remarried, she has four children in their 20s. At issue are 18 federal and state-related tax issues (SOR allegations ¶¶ 1.a-1.q, 1.u), including failure to timely file multiple federal and state tax returns, and three delinquent commercial accounts (SOR allegations ¶¶ 1.r-1.t). In sum, nearly \$70,000 of delinquent taxes and delinquent debts are at issue, with almost \$58,000 related to taxes and the balances related to a medical account (\$2,117), a charged off credit card (\$2,347), and about \$4,774 past due on a student loan with a total balance of \$86,210.

In 2004, Applicant divorced her second husband. The resultant lack of housing and financial distress led her to a three-month period of homelessness (December 2007 to March 2008) while taking care of her children. (Tr. 21, 53) Related financial problems lasted until at least 2009, when some of her children went to live elsewhere and she was obligated to pay child support. Meanwhile, she failed to timely file federal and state tax returns. Applicant's main focus had been "trying to survive," caring for her children, maintaining long hours associated with her work, and, occasionally, taking second jobs. (Tr. 40)

Applicant did not know she could seek an extension to file her taxes. (Tr. 21, 49) As a result, "personal responsibility to take care of [her] administrative paperwork . . . fell by the wayside." (Tr. 51) She noted that "during [her] challenges, unfortunately, paying the taxes became secondary to initial survival and recovery." (Tr. 52) By 2013, she was confused as to her financial situation in terms of taxes. (Tr. 63, 67) As before, "other things were happening in [her] life and [she] didn't stay on top of it." (Tr. 67) Meanwhile, errors with her taxes and tax forms were encountered, such as lost or missing W-2 tax statements and delays from employers to get copies of needed paperwork. (Tr. 67-68, 72)

In sum, federal tax returns were not timely filed for tax years (TY) 2004-2006, 2008-2015, and 2017 (with delinquent taxes owed for TYs 2008-2011 and 2013-14 amounting to about \$24,200); state tax returns were not timely filed for TYs 2004, 2008-2009, and 2012-2013 (with delinquent taxes owed for TYs 2004, 2007-2009, 2012-2013 amounting to almost \$5,000); delinquent state taxes owed to a second state for about \$1,300); and a state tax return was not timely filed to a third state for TY 2017 (to which

she owed about \$7,000). Applicant testified that her tax returns for TY 2017 and 2018 were filed in April 2019. (Tr. 56)

As for her federal tax liability of around \$52,000, Applicant initially made some payments to the Internal Revenue Service (IRS). (Tr. 60) Those proceeds, however, were diverted to her ex-husband by the IRS to address her child support arrearage. (Tr. 60-62) In 2013, a tax advisor briefly started reviewing Applicant's federal tax situation before the job went to someone else. (Tr. 64-65) Tax transcripts suggest zero dollars are currently owed for TY 2004, 2005, 2006, 2012, and 2015 due to methods such as application of refunds, but Applicant's information indicate confusion remains. (Ex. 4) After the SOR was issued in September 2019, Applicant's present husband suggested she revisit a tax attorney and let him attempt to negotiate and compromise with the IRS on the amount owed. (Tr. 56, 65-66, 71; Ex. L) The attorney initiated that action in September 2019, shortly before the hearing. (Tr. 57, 74; Ex. Q) At present, the attorney is trying to get her federal tax situation contained and resolved. (Tr. 85)

That attorney is also working with Applicant's state tax issues, a job he initially started in 2013 before personal "life issues" arose that diverted him from her case. (Tr. 69-71) Applicant's tax liability to her primary state, the approximately \$5,000 at issue, was initially reviewed by the tax advisor. Actual progress on that state's taxes, however, was successfully initiated and made by that state in and after 2013. The state's efforts brought Applicant's tax balance owed to that state to zero through garnishment and tax refunds. (Ex. E; Tr. 87-89).

The attorney is also working on her state tax issues with a second state. The second state's tax liability was inadvertently satisfied when payments to a third state were misapplied by Applicant's employer (SOR allegations ¶¶ 1.o-1.p for about \$1,335). (Tr. 103) They were for delinquent taxes dating back to 2014 and 2015. (Tr. 74) This followed Applicant's initiation of an installment repayment plan in June 2019, reflected at Ex. H. (Tr. 75) She testified that she also had been making regular payments toward those balances through her online bank account, but she provided no documentation reflecting such payments. (Tr. 75) She also testified that the state at issue has no records of her employer paying certain taxes to it on her behalf. (Tr. 76) The attorney is also handling the tax issue involving a third state. For that state, Applicant testified that a belated tax return was filed, but she is awaiting a refund from another state to satisfy the balance owed. (Tr. 91)

With regard to a student loan account noted at SOR allegation ¶ 1.r, Applicant showed that she consolidated her student loans in May 2019. (Tr. Ex. B-C; Tr. 77) She was approved in October 2019, the day before the hearing, to be in forbearance on the account through May 2020 in order to work on her tax issues. (Ex. B; Tr. 76-77) Applicant testified she has been making payments on a charged off credit card, noted at SOR allegation ¶ 1.s for \$2,437, but provided no documentation of such payments after the hearing. (Tr. 78) A medical debt, noted at SOR allegation ¶ 1.t from 2016 for \$2,117 has been satisfied. (Ex. A; Tr. 81)

Applicant and her husband own their home on which they pay a mortgage. Applicant's personal financial statement shows a net monthly remainder of \$7,638, with assets including the mortgaged home and about \$226,000 in investments and automobiles. (Ex. 11) Applicant's husband fully supports his wife in addressing her debts and is willing to add his financial resources toward her effort to satisfy her debts when matters are sorted and balances are clarified. (Tr. 92-98) Applicant acknowledged that her tax debt has been "pretty much of a mess for pretty much a decade between survival, neglect, ignorance, [and] all of that . . . [She] was so busy taking care of others that [she] neglected [herself] and [her] responsibility. . . ." (Tr. 99) At present, her finances are stable and her life is peaceful. She and her husband are both committed to resolving the accounts at issue.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. 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(c), the entire process is a conscientious scrutiny of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant failed to timely file both federal and state tax returns, and to pay taxes owed for multiple tax years. In addition, three delinquent debts were cited. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c) a history of not meeting financial obligations, and

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.

Four conditions could mitigate the finance related security concerns posed here:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant's multiple federal and state tax issues arose from about 2004 through 2017. They largely remain existent today. She has had a tax advisor and a tax attorney

work on these issues off and on since 2013, with the tax attorney once again working on them today. She admits the need for help in order to sort her various tax issues. Personal life struggles, such as divorce, plagued her for years. It appears that marriage to her current husband around 2013 helped stabilize her finances and her life going forward, but there is scant documentation reflecting she acted reasonably regarding her tax issues between 2004 and 2013. Instead, it appears she was simply overwhelmed by her situation then and now.

There is no documentation showing Applicant has received any counseling that has resulted in her tax issues being resolved or made manageable, although there is evidence her student loans were put into deferment and a medical debt satisfied. Going forward, Applicant is depending on her tax attorney to sort out, negotiate, or coordinate her various tax issues. This method has continued for some time without notable progress. Much of the action that was noted was initiated after the SOR was issued. To her credit, however, it appears progress could begin to yield some forms of resolution in the near future.

Applicant is now awaiting information about an offer to compromise with the IRS concerning her federal tax issues, an effort her attorney initiated the month the SOR was issued. There is documentary evidence showing the tax returns at issue have largely been filed; little documentation confirms a majority of the taxes owed have been paid. For now, the haphazard approach taken to resolve these issues has only yielded piecemeal results that have yet to demonstrate a comprehensive and reasonable strategy for addressing the concerns raised. At best, I find AG ¶ 20(b) applies in part.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an one's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. Here, I have considered the nine adjudicative process factors listed at AG ¶ 2(d). Moreover, I am mindful that the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 48-year-old protective security officer. Since 2004, she has served in that profession for multiple employers. She completed some college. Married, she has four adult children. Her husband is successful and willing to help Applicant once her tax situation is better sorted and defined.

In 2004, Applicant divorced her previous husband. Thus began about a decade during which tax returns were not timely filed and debts were neglected. It is unclear if all the tax returns at issue have been filed. Her federal tax liability is still unpaid with no evidence it might be resolved through compromise in the near future. State taxes to her primary state were apparently resolved not by action by Applicant, but through that state's action in the form of garnishment and tax refund withholding. Taxes to a second state were inadvertently satisfied by her employer, who expected those proceeds to go

to yet a third state. In the end, however, the liabilities owed to the first and second states are now at zero through the actions of others. To date, Applicant's third state tax liability remains unaddressed. Her student loan is now in deferral and a minor medical balance has been paid, but no documentary evidence was submitted detailing progress on a charged off credit card.

The Appeal Board has repeatedly noted that failing to voluntarily comply with one's tax obligations is of special security significance. Moreover, efforts to address one's tax issues after the issuance of an SOR is of particular note. Failure to timely file tax returns suggests a problem with complying with government rules and fails to reflect the high degree of judgment and reliability required for gaining access to classified information. While Applicant is genuinely contrite over having let her tax and financial situation get to this point, she is now giving them more serious attention. Her documented record of success to date, however, remains slight and scattered. More time is needed for her to demonstrate a coordinated and sustained effort to comprehensively address her issues, and to gather the documentation needed to show she has her situation under control. I find Applicant failed to mitigate financial considerations 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t-1.u:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge