



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



In the matter of: )  
)  
) ISCR Case No. 19-00219  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*  
01/31/2020

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns involving her failure to file federal income tax returns, as required, and Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On June 26, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 responded to the SOR on August 14, 2019, and elected to have her case decided on the written record in lieu of a hearing. The Government submitted its

written case on September 17, 2019. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the Government's FORM on September 26, 2019. She did not respond to the Government's FORM. The case was assigned to me on November 22, 2019. The Government's documents identified as Items 1 through 7 are admitted in evidence without objection.

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.b and 1.e and admitted the remaining SOR allegations. She is 48 years old. She married in 2005 and divorced in 2013. She has an adult child. (Items 2, 3).

Applicant graduated from high school in 1991. She attended college from 2008 to 2013 but did not earn a degree. She was unemployed from March to April 2004 and February to July 2013. She held part-time seasonal employment from October to November 2016. As of her January 2017 security clearance application (SCA), she worked as a dispatcher for a DOD contractor since October 2016. She has never held a DOD security clearance. (Items 3, 4).

The SOR alleges that Applicant failed to file her federal income tax returns for tax years 2014, 2015, and 2016, as required. It also alleges that she has six delinquent consumer debts, totaling \$3,091. She listed her failure to file her relevant federal income tax returns and some of her delinquent consumer debt on her January 2017 SCA, and discussed her financial issues during her November 2017 interview with a background investigator and in her February 2019 response to interrogatories. Her delinquent consumer debts are also reported on her 2017 and 2019 credit bureau reports. (Items 1, 3, 4, 5, 6).

Applicant attributed her financial predicament to her 2013 separation and divorce. She stated in her response to the SOR that her divorce was an "abrupt change [that] affected my finances tremendously and 6 years later I am still trying to recover." She acknowledged that her "finances are in extreme disarray," but maintained that it was not a reflection of her ability to do her job. She indicated during her background interview that she divorced her husband because she was the primary caregiver and she no longer wanted to be with him as he did not work for one and a half years. (Items 2, 3, 4)

Applicant also indicated in both her SCA and background interview that, unbeknownst to her until 2016, a previous employer made an erroneous change to her IRS Form W-4 for tax years 2013 to 2016. She stated that the previous employer listed her as having five dependents rather than one. She stated that she was waiting for that employer to issue her corrected IRS Form W-2 for those tax years so that she could "refile" those income tax returns. (Items 2, 3, 4).

In her response to interrogatories, Applicant stated that she had filed her 2014 federal income tax return in January 2015, her 2015 and 2016 tax returns in April 2017, and her 2017 tax return in January 2018. She stated that the IRS intercepted her tax refunds for tax years 2017 and 2018 and applied them to her outstanding taxes for tax years 2015 and 2016. She also stated that she still owed \$970 for tax year 2015 and \$900 for tax year 2016, the latter of which she was delinquent by \$106. She did not provide documentation to corroborate her claims. IRS tax account transcripts from June 2019, however, reflect that no tax returns had been filed for tax periods 2014 and 2015 as of February and October 2017, respectively. A June 2019 IRS tax account transcript for tax period 2016 simply reflected, "Requested Data Not Found." The transcripts also reflected that a tax return for tax period 2017 was filed in April 2018 and Applicant received a refund of \$762. (Items 2, 3, 4, 5).

Applicant also discussed during her background interview a delinquent title loan (SOR ¶1.b) and two delinquent credit cards (SOR ¶¶ 1.d, 1.e). She indicated that the creditor for her title loan sold her car for \$400 and she borrowed \$500. She acknowledged that she could not afford to repay her title loan and it, as well as her two credit cards, remained outstanding. She also indicated that she had not received any credit counseling. She listed in her SCA that she traveled for pleasure to Ireland and the United Kingdom (UK) in February 2013, Ireland in March 2013, and the UK again in July 2013. (Items 2, 3, 4).

### **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. 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 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 access to classified information 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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (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.

Applicant failed to timely file her federal income tax returns for tax years 2014 through 2016, as required. She was also unable to pay her debts. AG ¶¶ 19(a), 19(c), and 19(f) apply.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

(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;

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

(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.

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under the circumstances. Despite her claim in her February 2019 response to interrogatories that she had filed her outstanding federal income tax returns for tax years 2014 through 2016, IRS account tax transcripts from June 2019 reflect that no such returns had been filed for tax years 2014 and 2015 and does not provide any information regarding whether she filed her tax return for tax year 2016. She also failed to provide documentation to corroborate her claims. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, 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. 15-08782 at 3 (App. Bd. Apr. 5, 2017). In addition, she has not demonstrated that she has taken steps to resolve her delinquent consumer debt. I find that AG ¶¶ 20(a), 20(b), 20(d), and 20(g) are not established.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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 that Applicant has not mitigated the 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

## **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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge