



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



In the matter of: )  
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----- ) ISCR Case No. 19-01604  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

09/15/2020

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. Applicant provided sufficient evidence to explain and mitigate her history of noncompliance with federal and state tax authorities, which is now resolved and unlikely to recur in the future. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on July 16, 2016. (Exhibit 1) This document is commonly known as a security clearance application. She was interviewed as part of a background investigation in March 2017. (Exhibit 2) She replied to written interrogatories in July 2019. (Exhibit 2). Thereafter, on July 22, 2019, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her

eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on August 14, 2019. She admitted the allegations concerning noncompliance with timely filing of federal and state income tax returns for a number of years. She also admitted owing back taxes for tax year 2018 in the amounts of \$3,286 to the IRS and \$520 to the state tax authority. She also requested a hearing before an administrative judge.

The case was assigned to me on September 17, 2019. The hearing took place as scheduled on December 3, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-3. Applicant offered documentary exhibits, which were admitted as Exhibits A-E. The hearing transcript (Tr.) was received on December 13, 2019.

The record was kept open until December 31, 2019, to provide Applicant an opportunity to present additional documentation. Those matters were timely received and they are admitted without objections as Exhibits F-I.

### **Findings of Fact**

Applicant is a 60-year-old employee who is seeking to obtain a security clearance. (Tr. 5) She is employed as an engineering support specialist for a large company in the defense industry. She has worked for this company since 2016. She has a good employment record and is considered an outstanding employee. (Exhibit E; Tr. 40-48) She married in 1986 and divorced in 1999. She has an adult son from the marriage, and she is a grandmother.

The SOR concerns a history of income-tax problems as follows: (1) failure to timely file federal income tax returns for tax years 2009-2015, and 2018; (2) failure to timely file state income tax returns for tax years 2009-2015, and 2018; (3) back taxes owed to the IRS in the amount of \$3,286 for tax year 2018; and (4) back taxes owed to the state tax authority in the amount of \$520 for 2018. Applicant disclosed her income-tax problems when she completed her 2016 security clearance application, and she provided additional information during the security clearance process. (Exhibits 1 and 2)

Applicant attributed her income-tax problems to her excessive use of alcohol. (Tr. 57) She dates her sobriety to November 17, 2009. (Tr. 59) She explained that although she had sufficient funds withheld for taxes, she fell behind in filing tax returns because she was focused on maintaining her sobriety, one day at a time. (Tr. 57-58) She described her tax problems as the “wreckage” of her past. (Tr. 58) She put off the tax matters until she was at a point in her sobriety where she was able to handle the issue and then focused on cleaning up the “wreckage” of her past. (Tr. 58)

Applicant is now in compliance with both federal and state tax authorities. (Exhibits 2, A, B, C, D, F, G, and I) She made contact with an accountant in late

February 2017 and filed federal and state income tax returns for tax years 2013, 2014, 2015, and 2016. (Exhibit G) She repeated the process the following year for tax years 2009, 2010, 2011, 2012, and 2017. (Exhibit G) Going forward, she intends to continue using the services of the accountant.

A review of the federal tax returns shows that Applicant was due a refund for tax years 2009, 2010, 2011, 2012, 2013, 2014, 2016, and 2017. (Exhibit 2) She owed the IRS \$528 for tax year 2015, which she paid. Likewise, a review of the state income tax returns shows that Applicant was due a refund for tax years 2009, 2010, 2013, 2015, 2016, and 2017. (Exhibit 2)

For the most recent tax year of 2018, Applicant obtained an extension of time until October 15, 2019, to file her federal tax return, and it was timely filed on June 26, 2019. (Exhibit A -- 2018 IRS Account Transcript) She filed her state income tax return the same day. (Exhibit 2) She owed \$3,286 for her federal return, and she owed \$506 for her state return. (Exhibit 2)

Applicant has paid all monies due the IRS. The following month after filing the 2018 returns, she entered into a short-term payment plan with the IRS agreeing to pay \$3,524 within the next 120 days, no later than November 28, 2019. (Exhibit B) She made at least three payments during September and October 2019, and her account balance for tax year 2018 is now \$0. (Exhibit I)

Likewise, Applicant paid all monies due the state tax authority during the course of 2019. (Exhibits C and D) She owed a total of approximately \$778 for tax years 2010, 2011, 2012, and 2018. The state tax authority certified, in a document dated December 11, 2019, that she has filed all returns and paid all taxes due, and that she is in good standing. (Exhibit F)

Her overall financial situation appears to be stable based on a review of credit reports from 2019. (Exhibits 3 and H) Both are "clean" reports in that neither contains derogatory information. For example, a December 2019 credit report discloses 13 accounts, all of which are described as current with \$0 past due, and five accounts have balances of \$0. (Exhibit H)

### **Law and Policies**

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>2</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</sup>

## Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

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. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person’s self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible,

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<sup>1</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

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

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; 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.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply to this case.

Applicant made great progress in resolving the income-tax matters, and she is now in compliance with both federal and state tax authorities. That means she filed all tax returns, as required; she paid all taxes due to the state tax authority, as required; and she paid all taxes due to the IRS, as required. And she did a good job documenting her compliance.

In addressing this issue, I note that an applicant's failure to timely file tax returns and pay tax when due bears close examination and is a matter of serious concern to the federal government. The DOHA Appeal Board has made it clear that an applicant who fails repeatedly to fulfill their legal obligations, such as filing tax returns and paying tax when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017).

Here, I am concerned about the duration of Applicant's income-tax problems and the timing of her remedial action. Both are questions of fact that must be addressed. Applicant failed to timely file state and federal income tax returns for seven tax years, 2009 through 2015. Payment of tax was a minor problem compared with the multiple years of failure to file. She did so, as she explained during the hearing, due to her focus on maintaining her sobriety and waiting to reach a point where she was able to handle the tax matters.

To her credit, Applicant disclosed her income-tax problems in her 2016 security clearance application, and she provided additional information during the security clearance process. She began taking remedial action in 2017, well before the SOR was issued, by retaining the services of an accountant and filing several years of returns. She repeated the process the following year when she filed the remaining outstanding

returns. She has timely filed returns for the last three tax years, 2016-2018. She paid all back taxes (less than \$5,000 in total) during the course of 2019. Recent credit reports show she is a responsible user of credit and not financially overextended. She has a good employment record and is considered an outstanding employee.

Ordinarily, I am not inclined to make a favorable decision in a case involving multiple years of failure to file income tax returns. But I am persuaded this case is different due to Applicant's explanation for why she incurred the tax problems, which I found persuasive and worthy of belief. I am persuaded that Applicant has reached a point in her sobriety where compliance with federal and state tax laws is no longer an issue for her. This is evidenced by her timely filing of tax returns for the last three tax years (2016-2018), and her ability and willingness to pay back taxes in a relatively short period of time. Accordingly, the mitigating condition at AG ¶ 20(g) applies. The evidence is sufficient to justify mitigation of her history of noncompliance with her federal and state income tax obligations.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that she has met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a -- 1.d:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard  
Administrative Judge