



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [NAME REDACTED]                  | ) | ISCR Case No. 19-01765 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro Se*

07/08/2020

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about her failure to file her federal and state income tax returns for the tax years 2011 through 2018. Applicant’s request for a security clearance is denied.

**Statement of the Case**

On November 19, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew 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, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to have a security clearance.

On August 12, 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 guideline cited in the SOR was part of the current set of adjudicative guidelines (AG) 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). I received the case on January 16, 2020, and convened the requested hearing on March 4, 2020. The parties appeared as scheduled. DOHA received a transcript of the hearing (Tr.) on March 12, 2020. With her Answer, Applicant included documents in support thereof. Without objection, they remained attached to the Answer and were made part of the record. (Tr. 9 – 10) During the hearing, Department Counsel proffered Government Exhibits (GX) 1 – 3. Applicant testified and proffered Applicant Exhibits (AX) A and B. All exhibits were admitted without objection. (Tr. 13 – 22)

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant did not timely file her state income tax returns (SOR 1.a) or her federal income tax returns (SOR 1.b) for the 2011 through 2018 tax years. In response, Applicant admitted both allegations and provided information showing that her state and federal returns for those years were filed in September 2019. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 50 years old and works in an information technology (IT) position for a defense contractor. She was hired by her current employer in February 2020 after working for two years at a different company that sponsored this request for a security clearance. Applicant has worked in the IT industry since 1993. She has associate's and bachelor's degrees in IT-related fields. She enjoys an excellent reputation in the workplace, and a fellow Marine who has known Applicant for 25 years regards her as trustworthy, hardworking, and of high integrity. (GX 1; GX 2; AX A; AX B)

Applicant served on active duty in the United States Marine Corps between 1993 and 1997. Thereafter, she served part time in the Army National Guard and Reserve until retiring in 2018. Applicant first received a security clearance as part of her military duties in 1994. (GX 1; GX 2; AX A)

As alleged in the SOR, and as she disclosed in her e-QIP, Applicant did not timely file her state and federal income tax returns for eight consecutive years starting in 2012 with her 2011 taxes. Applicant averred that in 2012, she was forgetful and had difficulty concentrating due to post-traumatic stress disorder (PTSD) and other unspecified personal problems. In early 2013, when she was required to file her 2012 income tax returns, she realized she could not do so until her past-due 2011 returns were filed. As a result, Applicant put off filing her 2012 returns. Applicant continued to not file her returns

for the next seven years because her procrastination “snowballed” into an overwhelming circumstance. (Answer; GX 1 – 3; Tr. 23 – 25, 30 – 31)

In July 2019, Applicant began the process of resolving her past-due returns and unpaid taxes. In September 2019, her state and federal income tax returns for the 2011 through 2018 tax years were filed. Applicant timely filed her 2019 state and federal income tax returns in March 2020. She received refunds for some of the tax years at issue, and she owed additional taxes for other years. All refunds have been issued and all of her past-due taxes have been paid. (Answer; GX 2; AX B; Tr. 28 – 29)

To resolve her delinquent tax filing obligations, Applicant enlisted the services of a nationally-known tax preparation company. She had previously used that company up until 2011, when she last filed her tax returns as required. Applicant was aware at all times over the last nine years that she could have used that company to file her past-due returns. (Tr. 31)

### **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. (See *Department of the Navy v. Egan*, 484 U.S. 518)

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

Applicant's failure to file her state and federal income tax returns for eight consecutive years reasonably raised 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 disqualifying condition at 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*).

To her credit, Applicant filed all of her past-due returns and has satisfied any outstanding unpaid tax obligations. This supports application of the mitigating condition at 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*).

I also considered the potential application of the mitigating condition 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*). The record does not support this. Applicant only recently resolved her unfulfilled tax reporting obligations after nearly a decade of procrastination. Of particular import is the fact that in 2011, Applicant used the same tax preparation service she employed in 2019 to resolve her tax issues. She offered no acceptable explanation for why she waited so long to act. Applicant failed to more timely act to resolve her tax issues despite her awareness of the readily availability of the tax preparation service the whole time. This fact attenuates the benefit of AG ¶ 20(g) and undermines confidence in her overall judgment.

The record does not support application of any other mitigating conditions. On balance, Applicant has not mitigated the security concerns raised under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's record of military service and her good performance in her current job, as well as the fact that she now is current on her tax obligations are positive indications of suitability for a security clearance. Nonetheless, this positive information is not sufficient to overcome the security concerns raised by Applicant's knowing failure over several years to comply with her tax reporting obligations. Those concerns remain unresolved and sustain doubts about Applicant's suitability for continued access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

### **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.b:  | 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