



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



In the matter of: )  
)  
) ISCR Case No. 19-02208  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

05/06/2020

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 20, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 June 8, 2017.

Applicant answered the SOR on January 21, 2020, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on March 9, 2020. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant submitted documents that were marked as Applicant Exhibits (AE) A through K. There were no objections to any evidence and they are admitted. The case was assigned to me on April 7, 2020.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She married in 2004 and divorced in 2011. She has a 12-year-old son from the marriage. She has cohabitated with her fiancé since 2011. She disclosed in her June 2018 security clearance application (SCA) that she was employed from August 2006 to October 2014; unemployed from October 2014 to August 2015; employed from August 2015 to June 2016; unemployed from June 2016 to December 2016; and employed from December 2016 to December 2017, when she began her current employment with a federal contractor. (Items 3, 4)

Applicant was interviewed by a government investigator in August 2018. She attributed her financial difficulties to her 2011 divorce, periods of unemployment, and medical issues that began in 2011 and required surgery in 2014, which caused her to be out of work for several months under the Family and Medical Leave Act (FMLA). She indicated that she won a settlement from her employer for being terminated while on FMLA. She did not disclose the details of the settlement. (Item 4)

Applicant told the investigator that she had timely filed her 2014 federal income tax returns and most of her tax debt was due to an early withdrawal of approximately \$68,200 from her 401k retirement account. She had timely filed her 2015 and 2016 federal income tax returns without owing additional taxes. Her 2015 federal tax refund was applied to an unknown non-IRS debt.

In response to Government interrogatories, Applicant disclosed that she owed approximately \$7,868 to the IRS for tax year 2014 and that she had not timely filed her 2017 and 2018 federal income tax returns. She stated she filed her 2017 and 2018 federal tax returns late because she had moved. She also attributed her failure to timely file and pay her federal and state income taxes to a lack of money as a result of her 2011 divorce, medical issues, and job loss.

Applicant provided mail tracking numbers, presumably to show that she mailed her 2017 federal and state tax returns on March 15, 2020. She provided a copy of her TurboTax balance sheet for 2017 for state and federal tax returns (SOR ¶¶ 1.b and 1.c). She filed her 2018 federal tax return approximately five months late, but did not owe additional taxes. She provided documents to show she also filed her 2018 state tax return. In addition, a document from the IRS from September 2019, noted that a state refund of

\$639 was seized and applied to Applicant's federal tax debt (SOR ¶ 1.d). (Items 2, 4; AE F, G, H, I, J)

In Applicant's answer to the SOR, she stated that she established a payment plan with the IRS in September 2019, which was to begin in November 2019, whereby she would make monthly payments of \$300 towards her delinquent tax debt. In her response to the FORM, she provided documents to show she has been making the payments and her tax debt balance as of March 2020 was \$6,150. (Item 2, AE A).

The SOR debts are corroborated by Applicant's disclosures, admissions, and credit reports from August 2018 and March 2019. (Items 2, 3, 4, 5, 6)

The SOR alleged student loan debts in SOR ¶¶ 1.i (\$703), 1.n (\$256) and 1.p (\$100). Applicant provided a document from March 2020 from the state where she previously lived notifying her that a state tax refund of \$702 was intercepted and applied to her delinquent student loans. She provided a document from the Department of Education agreeing to accept a payment of \$1,000 as settlement for her delinquent loans. Applicant wrote on the document that she had made three payments, the last in March 2020 to settle the debt. She also provided confirmation numbers. (AE D, E)

Applicant provided a document dated August 2019, indicating her debt owed to the creditor in SOR ¶ 1.e (\$1,720) was paid in full. (AE C).

Applicant disclosed in her SCA numerous medical debts from 2016 and indicated they were "pending payment", but she had taken no action to resolve them. During her background interview, she stated that she had numerous medical bills, some dating back to 2012. She was attempting to pay some smaller bills. Applicant did not provide any evidence regarding the status of the medical debts alleged in SOR ¶¶ 1.f (\$965), 1.g (\$814), 1.h (\$710), 1.j (\$560), 1.l (\$470), and 1.o (\$221). She did not provide any evidence regarding the status of the consumer debts owed in SOR ¶¶ 1.k (\$526) and 1.m (\$423). (Item 4)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(c), 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 national security eligibility 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 federal and state income tax returns for tax years 2017 and 2018. She failed to timely pay her 2014 federal income taxes resulting in a delinquent tax debt. She has numerous other delinquent debts from at least 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

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

(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 admitted she owed all of the delinquent debts alleged in the SOR. Although she has resolved some, she did not provide evidence of any action or plan to resolve the remaining debts. I am unable to conclude that financial problems are unlikely to recur and do not cast doubts on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to a 2011 divorce, periods of unemployment, and medical issues. These were conditions beyond her control. She attributed her failure to timely file federal and state income tax returns to a move, and insufficient money to pay her taxes. Regardless of her ability to pay, Applicant's ability to timely file her income tax returns was within her control. For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. It has been nine years since Applicant's divorce, and she has been working for her current employer since December 2017, more than two years. She did not begin to take action on resolving her tax problems until after she was interviewed by a government investigator in August 2018, and did not establish a plan to resolve them until September 2019. She paid some of her delinquent debts, but not until after she was confronted with the debts during her background interview. She did not provide any evidence regarding her plan or payments for the numerous medical debts that remain delinquent. AG ¶ 20(b) partially applies.

There is no evidence Applicant has received financial counseling. AG ¶ 20(c) does not apply. Applicant provided proof that she paid her delinquent student loans (SOR ¶¶ 1.i, 1.n, and 1.p), albeit one was paid after her state tax refund was intercepted and applied to the debt. She also paid the consumer debt in SOR ¶ 1.e. AG ¶ 20(d) applies to these debts.

Applicant's repayment plan with the IRS was confirmed in September 2019 and she has been making payments since November 2019. She provided documents to show that she mailed her delinquent 2017 federal and state tax returns in March 2020. It is unknown if they have been accepted and whether there are additional tax consequences. There is evidence her 2018 federal and state tax returns are filed. There is sufficient evidence to conclude Applicant is in compliance with her payment agreement with the IRS. AG ¶ 20(g) applies to the allegations in SOR ¶¶ 1.a through 1.d.

### **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. I have incorporated my comments under Guideline, F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 42 years old. Her payment plan to resolve her federal 2014 tax debt, was not implemented until September 2019, after she disclosed the debt during her August 2018 background investigation. Her failure to timely file federal and state income tax returns was not completed until March 2020.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

It appears that Applicant has now filed her delinquent tax returns, but her failure to do so, as required and not until after she applied for a security clearance, remains a security concern. Applicant also began resolving some of her other delinquent debts after she completed her SCA. She has numerous debts that she has not provided evidence regarding her plans for resolving. Although there is evidence of some mitigation, Applicant failed to establish a reliable financial track record and failed to meet her burden of

persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

### **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.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.m:	Against Applicant
Subparagraphs 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge