



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



In the matter of: )  
)  
) ISCR Case No. 20-00786  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

03/04/2021

**Decision**

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 June 12, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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's answer to the SOR was undated, and in it she 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 November 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 8. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 8 are admitted into evidence. The case was assigned to me on February 24, 2021.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.b through 1.k, and 1.m and 1.n. It is noted that for the allegations in ¶¶ 1.b through 1.h, she admitted the allegation, but she disputed the dollar amount alleged. She denied the allegations in SOR ¶¶ 1.a and 1.l. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. She earned a high school diploma and a certificate from a business college. She married in 1994 and has three adult children and two adult stepchildren. She has worked for her present employer, a federal contractor, since 2014. (Item 3)

Applicant failed to timely file her 2014, 2015 and 2016 state income tax returns (SOR ¶ 1.a). She denied this allegation and stated in her answer to the SOR that she has filed every year. Documents from her state tax authority show she did not file for the alleged years. Applicant did not provide evidence to show the contrary. (Item 4).

Applicant admitted she failed to timely pay her federal income taxes for tax years 2012 (\$9,993); 2013 (\$5,887); 2014 (\$2,890); 2015 (\$1,451); 2016 (\$1,831); and 2017 (\$1,319). The total amount owed is approximately \$23,371. (Item 5). In her April 2017 security clearance application she disclosed her failure to pay her 2014 federal income taxes because she did not have the money and was in the process of working out a payment plan with the IRS. (Item 3) In response to interrogatories from December 2019 she said "payment arrangements have been made and are coming out of my husband's paycheck." (Item 4) In her subsequent answer to the SOR, she said that she was "working diligently with the IRS to clear this balance." (Item 2) Applicant failed to provide any documents to substantiate her claims that she is making payments on her federal tax debt.

Applicant admitted she owed all of the delinquent debts alleged in the SOR, except the debt in ¶ 1.l (\$94), which she said she paid. In her SOR answer, she admitted the debt in SOR ¶ 1.k (\$312) was delinquent, but said she also paid that debt. She stated that she was having payments deducted automatically from her account monthly to pay the debt in SOR ¶ 1.m (\$17,105). She did not provide documentary proof for any of the claims she made about paying these debts. Regarding the remaining delinquent debts alleged in the SOR, she stated in her answer that she is working with the creditors "to get the balance cleared up." Credit reports from October 2020, April 2020, and March 2019 corroborate the alleged debts as being delinquent and began accumulating in approximately 2018. These debts total approximately \$18,645. (Items 2, 6, 7, 8)

## 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 taxes as required.

Applicant has numerous delinquent debts that began accumulating in approximately 2018 and are not paid or resolved. Applicant failed to file her 2014, 2015, and 2016 state income tax returns. She owes federal income taxes for tax years 2012 through 2017. 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 initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 owes federal taxes for tax years 2012 through 2017. She did not provide documentary proof of any actions she has taken to pay them. In her 2017 security clearance application, she claimed she was working with the IRS. In her 2019 answer to interrogatories she said payments were being made. In her 2020 answer to the SOR, she said she was working diligently with the IRS to take care of the matter. Applicant has not provided proof she filed her 2014, 2015 and 2016 state income tax returns. She failed to provide evidence that she has paid any of her other delinquent debts. She provided no explanation for her failure to pay her bills, file her state income tax returns, or pay her federal taxes. She disputed certain debts claiming they were paid or being paid, but did not provide evidence to substantiate her claim. None of the above mitigating conditions apply. Her behavior casts doubt on her reliability, trustworthiness, and good judgment.

### **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 56 years old. She has been employed since April 2014. She has not paid her federal income taxes for tax years 2012 through 2017 and has not filed her 2014, 2015, and 2016 state tax returns.

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).

Applicant also has numerous delinquent debts. She 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.n:    | 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 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