



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03496
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2021

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**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to demonstrate financial responsibility. She failed to timely file her federal and state income tax returns for tax years 2012 through 2019. Her evidence is insufficient to mitigate the financial considerations security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 26, 2019. She was interviewed by a government investigator on September 26, 2019. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on January 7, 2020, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on January 20, 2020, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), containing the evidence supporting the security concerns, was provided to Applicant by letter dated March 18, 2021. Applicant received the FORM on March 26, 2021. She was granted a

period of 30 days after receipt of the FORM to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant responded to the FORM on April 19 and 22, 2021. She submitted numerous documents showing her recent filing of income tax returns for tax years 2012 through 2020, all of which I admitted and made part of the record as Applicant's exhibit A. The case was assigned to me on June 1, 2021.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of her interview with a government background investigator on September 26, 2019. (FORM, Item 4) Applicant was informed she could object to the summary of her interview, and it would not be admitted or considered, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered.

Applicant responded to the FORM and submitted relevant documentary evidence, but raised no objections to the FORM or to me considering the unauthenticated summary of her September 2019 interview. Without objections, I admitted and considered all of the FORM's proffered evidence.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the three SOR allegations, which include her failure to timely file: federal income tax returns for tax years (TY) 2013 through 2019 (§ 1.a); income tax returns for state "A" for TYs 2013 and 2014 (§ 1.b); and income tax returns for state "B" for TYs 2014 through 2019 (§ 1.c). Her SOR admissions, and those in her answers to the FORM and the documents submitted, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 31 years old. She graduated from high school in 2008, and attended college between 2008 and 2011, but did not earn a degree. Her 2019 SCA work history indicates she has been employed since 2012 with various employers. She started working for her current employer, a federal contractor and her clearance sponsor, in January 2019. This is her first clearance application. She married in 2010 and divorced in 2017. She has no children. The 2019 SCA indicates she has been living with a cohabitant since February 2018.

In response to questions in Section 26 (Financial Record) of her 2019 SCA, Applicant stated that she had failed to file federal and state income tax returns for TYs 2013 through 2019, and had failed to pay her federal and state income taxes as required. She explained that her filing of those income tax returns was delayed for many

different reasons. In 2013, her husband left her and she forgot to file her income tax return. She was living by herself and having a rough time with her divorce, and she was making sure she could live on her own. In 2014, she was living on her own and had back-to-back high electric bills that had to be paid, and she could not afford to get her taxes done. In 2015, 2016 and 2017, she was living with her grandmother and taking care of her financially and medically and pushed back her tax filing to make sure basic necessities were provided, because she was not making enough money to pay her taxes and her living expenses. In 2018 and 2019, she was working with an accountant to get her taxes resolved.

During her September 2019 Office of Personnel Management (OPM) interview, Applicant reiterated her 2019 SCA explanations for her failure to file her income tax returns. She stated her current financial situation was not great, but she was working on it. She indicated her willingness and ability to pay her debts, and promised to file her delinquent income tax returns and to pay her delinquent taxes. She stated she would make changes when she marries in October 2019. She believed her fiancé would take care of her finances and help her resolve her tax problems. As of the date of her interview, she had not participated in financial counseling.

In her two April 2021 responses to the FORM, Applicant submitted documentary evidence showing that in April 2021, she retained a bookkeeping firm to help her file her delinquent income tax returns. The firm prepared and submitted Applicant's federal and state income tax returns for TYs 2012 through 2020 in April 2021, except for the state TY 2014 income tax return that was not filed because she was missing her W-2.

According to her income tax returns, Applicant anticipates receiving refunds for TYs 2012, 2013, 2014, 2018, 2019, and 2020. She issued checks to pay owed taxes for TY 2015 (\$921); TY 2016 (\$1,236); and TY 2017 (\$170). She acknowledged that the IRS still has to accept her filings and that she will likely owe an undetermined amount of money to the IRS for applicable penalties and interest charges.

In her April 2021 responses to the FORM, Applicant stated that she has learned a hard lesson as a result of her tax problems and the clearance process. She promised to timely file her federal and state income tax returns in the future and to expeditiously pay any owed taxes. She noted that she has been honest and upfront during the security clearance process and disclosed her tax deficiencies in her 2019 SCA. She believes that filing her tax returns and paying her taxes will show she no longer will repeat the same mistakes, and that she is not a security risk.

Applicant did not present evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). She did not present evidence to show that she has a working budget. There is no evidence to show she has had recent financial counseling.

## Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in Security Executive Agent Directive (SEAD) 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered. [First time SEAD used]

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue her or her security clearance.

Persons with access to classified information enter 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 those who must protect national interest as their 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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. 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 . . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's financial problems are documented in the record. As alleged in the SOR, she failed to timely file federal and state income tax returns for TYs 2013 through 2019. Although not alleged, she also failed to timely pay income taxes as required for TYs 2015, 2016, and 2017. She paid those taxes in 2021.

I note that the record shows that Applicant failed to timely file both federal and state income tax returns for TYs 2012 and 2020, and that she failed to timely pay taxes for TYs 2015 through 2017. Because TY 2012 and the years she failed to timely pay her taxes were not alleged in the SOR, I will only consider them for the limited purpose of evaluating Applicant's evidence in mitigation.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(c) a history of not meeting financial obligations" and "(f) failure to file . . . annual Federal, state, or local income tax returns . . . or failure to pay annual Federal, state, or local income tax as required." The record established

these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant claimed that the filing of her income tax returns was delayed for many reasons set out above (pgs. 2-3). Some of these circumstances were beyond

Applicant's control and could have adversely affected her ability to timely file her income tax returns. However, these circumstances when considered in light of the number of years without timely filing income tax returns, and the lack of evidence of communications with the IRS and her state tax authorities before she received the SOR, are insufficient to prove she acted responsibly under the circumstances.

In regard to the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person 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. Aug. 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. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employing an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

In ISCR Case No. 15-01031 at 2 (App. Bd. June 15, 2016), the Appeal Board reversed the grant of a security clearance, and noted the following primary relevant disqualifying facts:

Applicant filed his 2011 Federal income tax return in December 2013 and received a \$2,074 tax refund. He filed his 2012 Federal tax return in September 2014 and his 2013 Federal tax return in October 2015. He received Federal tax refunds of \$3,664 for 2012 and \$1,013 for 2013.

Notwithstanding the lack of any tax debt owed when he filed his tax returns, the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. . . . By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, [that applicant] did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted).

AG ¶ 20(g) applies because Applicant has filed all of her late income tax returns, albeit on or after April 2021. She also paid the IRS her tax debt for TYs 2015 through 2017 in April 2021. The timing of the filing of her tax returns is an important aspect of the analysis. In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, Applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

Under all the circumstances, including the jurisprudence from the DOHA Appeal Board, Applicant failed to establish mitigation of financial considerations security concerns. Considering the record as a whole, I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to timely file her income tax returns or to pay her delinquent income taxes prior to April 2021. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Only AG ¶ 20(g) applies because she filed her late income tax returns, but it does not mitigate the security concerns. The other mitigating conditions are not applicable.



## Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 31, has worked for a federal contractor since January 2019. This is her first SCA. The evidence against grant of Applicant’s security clearance is substantial. As alleged in the SOR, she failed to timely file federal and state income tax returns for TYs 2013 through 2019. She also failed to timely pay income taxes as required for three years.

As noted previously, the record evidence shows Applicant failed to timely file federal and state income tax returns for TYs 2012 through 2020. I note again that some of the years she failed to timely file her income tax returns or to pay her taxes were not alleged in the SOR. Thus, I will only consider them for the limited purpose of evaluating Applicant’s evidence in mitigation.

When a tax issue is involved, an administrative judge is required to consider how long an applicant waits to file his or her tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments. The Appeal Board’s emphasis on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, “His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation’s secrets.”); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant’s control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant’s wages, and emphasizing the applicant’s failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant’s efforts to resolve tax liens).

The primary problem here is that Applicant knew that she needed to file her state and federal income tax returns. Whether she knew she was going to receive refunds or had sufficient or insufficient funds to pay any taxes owed, she had a requirement to timely file her tax returns. She did not fully understand or appreciate the importance of timely filing of tax returns in security clearance determinations. Her recent actions in

April 2021 are a good start for Applicant to establish her future financial responsibility, but at this time they are insufficient to fully mitigate the security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. Financial considerations security concerns are not mitigated at this time.

### **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
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Subparagraphs 1.a - 1.c:	Against Applicant
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### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant or continue Applicant's eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge