



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



In the matter of:	)	
	)	
[REDACTED] <sup>1</sup>	)	ISCR Case No. 19-03358
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

09/14/2021

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 3, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on March 31, 2020, and requested a hearing before an administrative judge.

The case was assigned to me on April 28, 2021. The hearing was scheduled for August 18, 2021, but was continued at Applicant's request. The hearing was convened as rescheduled on August 20, 2021. Government Exhibits (GE) 1 and 3 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified, but she did not submit any documentary evidence.

<sup>1</sup> Applicant now uses a different last name. I have not amended the SOR to avoid any confusion.

## Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. She has worked for her current employer since August 2015. She is applying for a security clearance for the first time. She attended college for a period without earning a degree. She is married with two adult children. (Transcript (Tr.) at 19, 23-24; GE 1)

Applicant was unemployed from 2012 until she started her current job in August 2015. She was diagnosed with breast cancer in October 2014. Her elderly mother came to live with her at about the same time. Applicant had an operation and additional procedures, and her husband had back surgery in 2015. Her mother passed away in 2015. Applicant helped her sister who had mental health issues. With everything happening, which included related financial problems, Applicant and her husband did not file their federal tax return for tax year 2014. She “let it get away from [her],” and tax returns for 2014 and subsequent tax years have never been filed. (Tr. at 17-21; Applicant’s response to SOR; GE 1)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in July 2017. She reported that she and her husband did not file federal tax returns for tax years 2014 through 2016. She indicated that there should not be any taxes owed, and that they were “working on getting [the returns] filed with a tax professional.” In response to DOHA interrogatories in September 2019, she wrote: “My returns are not yet completed. It could be another 2 to 3 weeks.” Applicant responded to the SOR in March 2020. She wrote that “[t]hings definitely got out of hand [and they were] trying to get caught up.” (GE 1, 3)

Applicant and her husband have not filed any of their federal tax returns for 2014 through 2020. She indicated they could not afford the tax professional’s fees to prepare their returns all at once. They planned to pay the professional to prepare and file one tax return per month, starting about a month after the hearing. (Tr. at 18-22; Applicant’s response to SOR; GE 3)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

(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 did not file her 2015 through 2018 federal income tax returns when they were due. AG ¶ 19(f) is applicable. Applicant was unemployed in 2014. It has not been established that she was required to file a federal income tax return for tax year 2014. The part of SOR ¶ 1.a that alleges Applicant did not file her 2014 federal income tax return is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; 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 went through an extraordinary amount of issues in 2014 and 2015. She stated in 2017, 2019, and 2020 that she planned to file the returns, but they are still not filed. While I sympathize with Applicant's problems, all I have from her are unfulfilled promises. I have no confidence that the returns will be filed in the foreseeable future.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018). There are no applicable mitigating conditions.

## **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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

## **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
Subparagraph 1.a:	Against Applicant (except for tax year 2014)

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge