



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

)  
)  
)  
)  
)  
)

ISCR Case No. 20-02064

Applicant for Security Clearance

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel

For Applicant: *Pro se*

10/19/2021

**Decision**

MASON, Paul J., Administrative Judge:

To prove that she mailed certain missing federal and state tax returns to the federal and state tax agencies, Applicant claimed she had copies of those returns in her possession and would submit them into evidence after the September 2021 hearing. She claimed she had documented proof of interaction with a tax preparer she had hired to prepare the missing tax returns before mailing them to the federal and state tax agencies prior to the September 2021 hearing. No documentation was submitted. The settlement of the first commercial debt did not occur until: (1) after a lawsuit was filed; (2) after Applicant's wages were garnished; and (3) after she received the Statement of Reasons (SOR). Her claim of paying off the second commercial debt is unsubstantiated. The financial considerations guideline has not been mitigated. Eligibility for security clearance access is denied.

**Statement of the Case**

On July 29, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, GE 1) for security clearance eligibility so that he could work for a defense contractor. On September 17, 2020, she provided interrogatory

responses to questions, 12 pages in length, regarding the filing of her federal and state tax returns (GE 2), and whether she owed taxes to either tax agency. The exhibit also contains a personal subject interview (PSI) dated April 9, 2019 that she provided to an investigator from the Office of Personnel Management (OPM). She agreed with and authenticated the PSI's accuracy. The Department of Defense (DOD) could not make the necessary affirmative finding to grant Applicant's security clearance and issued her an SOR on January 4, 2021 detailing security reasons under the financial considerations guideline (Guideline F). The action was taken under Executive Order (E.O.) 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 in the DOD on June 8, 2017.

Applicant provided her notarized answer to the SOR on February 3, 2021, and requested a hearing. The case was assigned to me June 2, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 12, 2021, scheduling the hearing on September 10, 2021. The hearing was held as scheduled. The Government's seven exhibits (GE 1-7) were admitted in evidence without objection. The pages of GE 2 and GE 4-7 are numbered in the lower right hand corner. Applicant's five exhibits submitted during the hearing and six post-hearing exhibits were also received into evidence without objection. The record closed on September 28, 2021. The transcript (Tr.) was received on September 22, 2021.

### **Findings of Fact**

The SOR contains two allegations identifying missing federal and state tax returns for tax years 2010 through 2019 (SOR 1.a and 1.b) that Applicant did not file, eight allegations (SOR 1.c through 1.j) identifying federal and state taxes owed, and two allegations identifying delinquent commercial accounts (SOR 1.k and 1.l). Applicant admitted all allegations with brief explanations.

Applicant is 40 years old and single. Except for one year, she has lived with her parents since 1981, and has never paid rent. (Tr. 42) She received an Associate's degree in computer information science in May 2009. From 2004 to September 2016, she was a contract security officer. She was a customer service manager in 2017 before becoming a program analyst in July 2018, a position that she still occupies currently, even though her employer has changed several times. Her e-QIP discloses no period of unemployment between 2009 and 2017. (GE 1 at 12-19) She seeks continuation of her clearance which she has held since 2007. (GE 1 at 10-33; Tr. 6-15)

In her July 2018 e-QIP (GE 1), Applicant admitted that she had neither filed federal or state tax returns, nor paid taxes for tax years 2010 through 2017. She explained that she had no excuse and conceded no action had been taken to fix the tax problem.

(GE 1 at 35) She recalled that the Internal Revenue Service (IRS) filed an unalleged tax lien against her in 2012, because of unpaid taxes from tax year 2009. That lien will be addressed in the whole-person section of this decision. Concerning the two commercial debts appearing at SOR 1.k and 1.l, Applicant explained that no action had been taken because of low pay. (GE 1 at 38)

In her April 2019 PSI, Applicant confirmed that she had not filed the missing federal and state tax returns for 2010 through 2017. She indicated that she wanted to file the returns but never “got around to it.” (GE 2 at 8) She did not mention a social anxiety disorder that stopped her attempts to file returns. She noted that she had made no arrangements to resolve the federal debt but considered contacting a tax lawyer. Regarding the two commercial accounts, Applicant explained that she used the two credit-cards extensively while she was unemployed from September 2016 to March 2017. Surprisingly, her July 2018 e-QIP, shows continuous employment from February 2009 to July 2018. (GE 1 at 12-17) As to debt SOR 1.k, the collection agency had filed a civil action seeking a judgment. Applicant tried to enroll in a payment plan but the payments were too high. (GE 2 at 9) She claimed that she was repaying the SOR 1.l debt in a monthly payment plan. She presented no documentation substantiating participation in the plan or resolution of the debt. She conceded making poor financial decisions earlier in her life like over spending and purchasing a timeshare in 2009. (GE 2 at 9)

In her September 2020 responses to interrogatories (GE 2), Applicant provided a graph to show action taken on the missing tax returns. Though she provided no IRS account transcripts, she must have obtained assistance from a tax preparer, since the graph discloses years she owed taxes and years she was due a refund. The graph has five columns. Reading the graph from left to right, in the second and third columns, she indicates that she “filed” all missing tax returns, including missing tax returns for tax years 2018 and 2019, on September 17, 2020. However, she explained on the next page of her interrogatory responses that the returns had not been filed, only prepared three weeks before she submitted interrogatory responses, but she still had to mail them to the respective tax agencies. (GE 2 at 12) The fourth column displays the amount owed or “returned.” The fifth column shows that Applicant owes federal and state taxes for 2012 through 2015. The sixth column indicates that no payment plan was established for either tax agency. (GE 2 at 11) The graph also does not reveal additional penalties and interest imposed for filing the returns after the deadlines. (GE 2 at 11-12)

At the September 2021 hearing, Applicant explained that even when she started doing her own taxes at about 25 years of age (circa 2005), she was still receiving assistance from another person who abruptly stopped assisting her. (Tr. 27) Her inability to find assistance from another source caused her to stop filing tax returns. An additional reason is that she has an ongoing history of social anxiety that has frustrated her efforts to address her yearly tax obligations. (Tr. 27) She conceded that she had no legitimate explanation for not filing the returns from 2010 through 2019. (Tr. 37) Though she provided no proof, Applicant claimed that she mailed the returns during the week before

the hearing. The only tax returns Applicant filed were those for tax year 2020, which she filed following the September 2021 hearing. The electronic transmission of those returns shows a federal tax refund of \$193, and a state tax refund of \$43. After the hearing, Applicant called the IRS information center and was advised that it could take up to 12 weeks to process the requested information for the other listed tax years. Applicant also indicated the state tax agency official could only retrieve Applicant's 2018 returns. (Tr. 28, 31; AE 6, 10)

Applicant settled the SOR 1.k credit-card debt for \$5,000 following garnishment of her wages for a period of time that is difficult to ascertain from her testimony. (Tr. 29, 54-56; AE 1) She claims that the SOR 1.l credit-card debit was paid off when her payments were completed, and before she received the SOR. (Tr. 53) However, she provided no documentary proof as she had to establish that SOR 1.k was resolved. (Tr. 56)

Applicant was asked whether she had a budget. She replied that she had a mental budget that was not written out. Then she indicated that she prepared a budget on her computer. (Tr. 50) Her definition of a budget was not spending beyond a certain amount of money earmarked for spending. (Tr. 51) No written budget was presented. Applicant has never had financial counseling. She testified that "I have never been really the type to ask for help and I know that I should." (Tr. 51) During the April 2019 PSI, she indicated that she wrote a note to the OPM investigator describing her plan to resolve her smaller bills first and then tackle the larger ones. Using that approach, Applicant successfully paid off her car six months ahead of schedule. (Tr. 42, 52; AE 3)

Applicant was asked whether she intends to ask for assistance in correcting her tax issues. Her reply was ambiguous but she knew that she could rely on her father who was experienced in financial matters. He is cognizant of Applicant's tax predicament though she had not formally asked him for help. (Tr. 57-60)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

### **Financial Considerations**

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.

Paying voluntarily incurred debts in a timely fashion demonstrates good judgment and reliability. Filing federal and state tax returns on time every year also shows good judgment while accomplishing an applicant's legal obligation to comply with well-established rules and regulations, a key factor for those who seek security clearance eligibility.

AG ¶ 19. The disqualifying conditions relevant in this case are

- (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.

In Applicant's July 2018 e-QIP, her April 2019 PSI, her September 2020 responses to interrogatories, her February 2021 answers to the SOR, and in her testimony at the September 2021 hearing, she acknowledged that she failed to timely file her federal and state tax returns for tax years 2010 through 2019. Though she claimed that she could document interaction with her tax preparer and that she mailed the returns during the week before the hearing, she provided no proof that those actions were taken. AG ¶ 19(f)

applies. AG ¶¶ 19(a) and 19(c) apply to the delinquent credit-card debts identified at SOR 1.k and 1.l.

After the Government establishes a case under the financial considerations guideline, Applicant is responsible for presenting evidence to rebut, explain, or mitigate facts admitted or proven by the Government.

AG ¶ 20. Conditions that could mitigate security concerns include:

(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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a nonprofit credit counseling service, and there are clear indications that the problem is being resolved or is under control; 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's failure to file tax returns was not infrequent because no federal or state tax returns were filed for tax years 2010 through 2019. While she provided tax information that showed the missing tax returns were prepared in September 2020, she never provided documentary evidence showing that she filed the returns and paid the taxes. The late filing after the hearing of only federal and state returns for tax year 2020, following 10 years of not filing tax returns, infers that Applicant will continue to have tax problems in the future. Her pattern of inaction continues to negatively impact her current reliability, trustworthiness and judgment. AG ¶ 20(a) does not apply.

Title 26 U.S.C. § 7203 indicates a failure to file a federal tax return is a federal criminal offense at the misdemeanor level, irrespective of the tax liability. Applicant's longstanding social anxiety does not excuse her repeated failure to file her federal and state tax returns.

Only limited weight can be given to Applicant's unemployment between September 2016 and April 2017, because she supplied contradictory information about the status of her employment during the period. In addition, her unemployment during the period does not explain why she did not file the missing returns before she became unemployed and then after she resumed employment. Judging by the totality of the

evidence, Applicant's receives limited mitigation under the first prong of AG ¶ 20(b) for her documented settlement of SOR 1.k.

Applicant receives no mitigation under AG ¶ 20(c) because she has never had financial counseling and she supplied little convincing information that she uses a written budget to manage her finances. In sum, there are no clear indications that her problems are under control. AG ¶ 20(d) provides some mitigation to Applicant's \$5,000 settlement of SOR 1.k after garnishment of her wages. AG ¶ 20(d) is not available to mitigate SOR 1.l, as there is no independent documentary evidence showing the debt as paid. Nor is the condition available to mitigate the listed tax allegations. While Applicant provided evidence of preparing her federal and state tax returns for the missing years, the only evidence of filing tax returns is for tax year 2020. She still has not furnished any documented information of paying taxes that she owes.

AG ¶ 20(g) does not apply to the facts of this case due to the lack of evidence indicating that the missing tax returns were filed. While Applicant filed her 2020 tax returns, they were six months overdue. In addition, although the 2020-electronic tax return shows refunds are due, after the 2020 tax year is tabulated with the penalties and interest relating to other listed tax years where no returns were filed, Applicant will probably owe taxes. Filing late returns after filing no returns for 10 years, and paying no taxes, cannot be mitigated under AG ¶ 20(g).

### **Whole-Person Concept**

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the disqualifying and mitigating conditions under the guideline for financial considerations and in the context of the general factors of whole-person

concept. Applicant has known about her tax problems since her tax preparer stopped preparing her taxes in 2009 or 2010. Applicant remembered the IRS tax lien filed against her for failing to pay taxes for the 2009 tax year. In her July 2018 e-QIP, her April 2019 PSI, her September 2020 interrogatories, and at her September 2021 hearing, Applicant was put on notice and should have realized that her missing federal and state tax returns were a growing government concern. In the past 11 years, Applicant has only filed her federal and state tax returns for 2020, and this action did not occur until after the hearing in September 2021. Viewing the evidence in its entirety, Applicant's resolution of her 2020 tax issues and settlement of the SOR 1.k credit-card debt is insufficient to overcome the remaining security concerns raised by the guideline for 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.j, 1,l:	Against Applicant
Subparagraph 1.k:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

---

Paul J. Mason  
Administrative Judge