



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



In the matter of:)	
)	
-----)	ISCR Case No. 20-00630
a.k.a. -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2021

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information due to a long-standing history of income-tax problems. She owes more than \$13,000 in back taxes for multiple tax years. She has not yet made a payment arrangement with the IRS to address her indebtedness. It is too soon to tell if she will succeed in making a payment arrangement with the IRS and then comply with that arrangement. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, in April 2017. (Exhibit 2) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

Applicant was interviewed during the course of a 2019 background investigation. (Exhibit 4) She provided additional information in response to written interrogatories in

January 2020 and June 2020. (Exhibits 3 and 4) Thereafter, on October 15, 2020, after reviewing the available information, the DoD Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.

The SOR is similar in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of an offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR several months later in April 2021 in a two-page memorandum.¹ She denied the first allegation, explaining that she believed she had timely filed her federal income tax return for 2103, but it was not because of an error made by the firm she hired to prepare her income tax returns. She stated that she discovered the error in about 2019, and she filed the return in about October 2020. She also denied the second allegation, explaining that she believed she owed the sum of \$9,730, not the \$15,051 alleged, in back taxes to the IRS for tax years 2011, 2012, 2015, 2016, and 2017.² She did not provide supporting documentation. She stated that she wished to have an administrative judge issue a decision based on the written record in lieu of a hearing.

On June 29, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was mailed to Applicant, who received it August 24 2021. She did not reply to the FORM. The case was assigned to me October 6, 2021.

Findings of Fact

Applicant is a 59-year-old employee who is seeking to obtain a security clearance. She has a job as an administrative assistant with a major company in the defense industry. She has been so employed since 2016. Her educational background includes a certificate awarded in 2002 after attending a for-profit college (since closed) during 2001-2002, and a certificate awarded in 2014 upon completion of a six-month program at a community college. She has been married and divorced twice. She has three adult children. She has no military service.

¹ An applicant's answer must be received by the DOHA within 20 days of receipt of the SOR, and if not, processing of the case may be discontinued. Directive, Enclosure 3, ¶¶ E3.1.4 and E3.1.5.

² The SOR "shall be as detailed and comprehensive as the national security permits." Directive, Enclosure 3, ¶¶ E3.1.3. Despite this well-established rule, the SOR here simply stated a total sum, \$15,051, owed in back taxes to the IRS for five tax years. The SOR did not state in a detailed and comprehensive way the amount owed per tax year. Department Counsel did not explain how the total sum was arrived at, stating simply that "[p]er the SOR, [Applicant] amassed over \$15,000 in tax debts." Brief at 2. As a result of this ambiguity or inexactness, it was left to me to deduce the amounts owed for the individual tax years, and my math skills are less than stellar, to say the least.

The SOR concerns a history of income-tax problems consisting of Applicant's failure to timely file a federal income tax return for tax year 2013, and back taxes owed to the IRS for five tax years. As I understand and construe her answer to the SOR, Applicant does not dispute or contest the central point of the SOR allegations, but instead contends her tax situation is less serious than alleged.

Applicant disclosed her income-tax problems when she completed her 2017 security clearance application. (Exhibit 2 at Section 26) She provided additional information about her income-tax problems during her 2019 background investigation and in response to written interrogatories in 2020. (Exhibits 3 and 4) Of note, her response to the interrogatories included supporting documentation, such as IRS Account Transcripts for multiple tax years. I will rely on the transcripts because I have found them to be easy to understand, reliable, and the best evidence.

In addition to the IRS Account Transcripts, Applicant presented information showing she had filed state income tax returns and paid taxes due in her states of residence. (Exhibits 3 and 4)

Applicant's financial history includes a Chapter 7 bankruptcy case in 2014. (Exhibit 5) The Schedule E in the bankruptcy records reflects she then owed \$8,866 in back taxes to the IRS for tax year 2011, and \$2,891 for tax year 2012.

For tax year 2007, the IRS Account Transcript, as of January 2020, showed Applicant filing as head of household; an account balance of \$0; and taxable income of \$21,375. (Exhibit 3)

For tax year 2009, the IRS Account Transcript, as of January 2020, showed Applicant filing as head of household; an account balance of \$0; and taxable income of \$58,249. (Exhibit 3)

For tax year 2011, the IRS Account Transcript, as of February 2020, showed Applicant filing as head of household; an account balance of \$8,072; and taxable income of \$50,299. (Exhibit 4)

For tax year 2013, the IRS Account Transcript, showed Applicant filing as head of household; an account balance of -\$200; and the income information was not reported because the tax return had not been filed. (Exhibits 3 and 4) As stated in her answer to the SOR, she explained that she believed she had timely filed her federal income tax return for 2103, but it was not because of an error made by the firm she hired to prepare her income tax returns. She stated that she discovered the error in about 2019, and she filed the return in about October 2020.

For tax year 2014, the IRS Account Transcript, as of February 2020, showed Applicant filing as head of household; an account balance of \$0; and taxable income of \$25,643. (Exhibit 4)

For tax year 2015, the IRS Account Transcript, as of February 2020, showed Applicant filing as single; an account balance of \$1,547; and taxable income of \$29,195. (Exhibit 4)

For tax year 2016, the IRS Account Transcript, as of January 2020, showed Applicant filing as single; an account balance of \$559; and taxable income of \$36,225. (Exhibit 3)

For tax year 2017, the IRS Account Transcript, as of January 2020, showed Applicant filing as single; an account balance of \$567; and taxable income of \$42,698. (Exhibit 3)

For tax year 2018, the IRS Account Transcript, as of January 2020, showed Applicant filing as single; an account balance of \$0; and taxable income of \$38,922. (Exhibit 3)

In summary, the IRS Account Transcripts show Applicant owes approximately \$10,745, plus any additional penalty and interest, for the four tax years of 2011, 2015, 2016, and 2017. Including the \$2,891 in back taxes for 2012, which are reflected in the bankruptcy records, the total is approximately \$13,636 for the five tax years in question.

Per the IRS Account Statement for 2011, the IRS determined the balance due on Applicant's account was currently not collectible in October 2019. (Exhibits 3 and 4). As I understand IRS practice and procedure, a currently not collectible status protects a taxpayer from the IRS, stopping levies, threatening letters, and collection. It's like "putting a debt on the shelf" because the IRS takes the case out of their active collection inventory (shelving it); it is not a forgiveness or cancellation of debt. In addition, the IRS is free to return a case to their active collection inventory if the taxpayer's situation changes.

Applicant stated in her answer to the SOR that she has made payments to the IRS, corresponded with the IRS, and even submitted a payment plan form to which she had not received a reply from the IRS. A review of the IRS Account Transcripts shows that she has made sporadic or irregular payments over the years, her most recent payment was made in October 2018, that she had installment agreements established but they did not last, and that she received penalties for dishonored payments. To date, she does not have an installment agreement established or pending with the IRS so far as I can determine.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.³ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.⁵ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

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. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person’s self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible,

³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁴ 484 U.S. at 531.

⁵ 484 U.S. at 531.

⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(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; and

AG ¶ 20(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 evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply here.

Applicant is now in partial compliance with the IRS, which means that she filed all tax returns, as required. Her proof of filing for tax year 2013 is not documented here, but I am nonetheless persuaded that she filed the 2013 federal income tax return in about October 2020, as stated in her answer to the SOR. I was also persuaded by her explanation that the untimely filing was the result of an error made by the tax accounting firm. Her explanation was reasonable given that she otherwise timely filed tax returns. On this basis, the allegation in SOR ¶ 1.a is decided for Applicant.

Concerning her indebtedness to the IRS, Applicant owes more than \$13,000 in back taxes, interest, and penalties to the IRS. She presented no documentation showing that she is working to establish an arrangement with the IRS to resolve the indebtedness. It is further noted that her past efforts with installment agreements with the IRS were unsuccessful. Although her account with the IRS has been in a currently not collectible status since late 2019, that status does not prevent or prohibit her from paying what she owes. And it does not mean her years of nonpayment of back taxes cannot be considered here.

In addressing this issue, I note that an applicant's failure to timely file tax returns and pay tax when due bears close examination and is a matter of serious concern to the federal government. The DOHA Appeal Board has made it clear that an applicant who fails repeatedly to fulfill their legal obligations, such as filing tax returns and paying tax when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017).

To her credit, Applicant disclosed her income-tax problems in her 2017 security clearance application, and she provided additional information during the security

clearance process. But her remedial efforts fall short of the mark. This is shown by her sporadic or irregular payment history, and her last payment to the IRS about three years ago in October 2018. Furthermore, she has not yet made a payment arrangement with the IRS. It is also too soon to tell if she will succeed in making a payment arrangement with the IRS and then comply with that arrangement. The evidence as a whole is not sufficient to justify complete mitigation of her long-standing history of income-tax problems. On this basis, the allegation in SOR ¶ 1.b is decided against Applicant.

Following *Egan* and the clearly consistent standard, I have doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that she has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge