



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 19-00814

Applicant for Security Clearance

**Appearances**

For Government: Brian Olmos, Esq., Department Counsel  
For Applicant: *Pro Se*

12/01/2021

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by her failure to timely file her federal and state income tax returns between 2013 and 2017, and by her failure to resolve two debts totaling about \$15,000. Applicant's request for a security clearance is denied.

**Statement of the Case**

On August 1, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended

(Directive), Section 4.2, that it is clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance.

On March 29, 2019, DOD CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was one of the adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested that her case be decided based on the written record without benefit of a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). In September 2019, DOHA Department Counsel provided Applicant with a file of relevant material (FORM) in support of the SOR. On October 16, 2019, Applicant requested a hearing. Her request was granted and the case was assigned to me on January 16, 2020.

This matter was originally set to be heard in person on March 31, 2020. On March 20, 2020, I cancelled that hearing in response to pandemic-related restrictions imposed by the Secretary of Defense. On August 9, 2021, I rescheduled this case for hearing on August 30, 2021 via web-based video conferencing. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 6, which were admitted without objection. Applicant testified but produced no other witnesses or documentary evidence. I held the record open after the hearing to allow her additional time to submit additional information. I received a transcript of the hearing (Tr.) on September 8, 2021. The record closed on September 10, 2021 after Applicant failed to make any post-hearing submissions.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant did not timely file her federal (SOR 1.a) or her state (SOR 1.b) income tax returns for the 2013 through 2017 tax years. It was also alleged that Applicant owed \$15,042 for two delinquent debts (SOR 1.c and 1.d). In response to the SOR, Applicant admitted all of the SOR allegations. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 62-year-old employee of a defense contractor for whom she has worked since August 2017. Applicant was married between 1975 and 1985, and between 1986 and 2001. She has three adult children. (GX 1)

Applicant lives and works in State A after relocating from State B in November 2010 seeking work after a period of unemployment in State B. She had been told that she could find work for a State A school system; however, after relocating, the job did not materialize. Applicant eventually found work in March 2011 but had to leave that job five months later to attend to a family emergency in State B. She was unemployed for the next

five months before finding work at a temporary staffing company on a one-year contract which ended in February 2013. She again was unemployed until July 2013. She has been steadily employed since then. (GX 1; GX 2; Tr. 39 – 40, 61, 68 – 70)

Applicant timely filed her 2011 federal and state income tax returns using the tax preparer her sister used. Her sister paid for those services. Thereafter, Applicant did not file either her federal or state returns for the tax years 2013 through 2017. She stated that she could not afford a tax preparation service on her own and that she could not figure out how to file her returns herself. After she was interviewed for her clearance by a government investigator (subject interview) in May 2018, she started working to file her past-due returns. She claimed that all of her past-due returns have been filed and that those returns were not filed until 2020. I held the record open after the hearing for the express purpose of giving Applicant more time to submit copies of those returns. She did not submit anything before the record closed. (GX 1 – 3; Tr. 36 – 37, 41 – 48, 74, 82)

Applicant attended a college-level technical school between March 1989 and September 1991, when she was awarded an associate's degree. She financed the tuition for her studies through a series of federally subsidized student loans totaling about \$5,000. Applicant made payments on those loans until about 1995. Thereafter, the only payments made on those loans, the current balance of which Applicant estimates to be about \$40,000, has been through involuntary diversions of her federal income tax refunds. (GX 1; GX 2; Tr. 49 – 51, 71 – 72)

Applicant does not know if she owes any unpaid federal taxes. In response to interrogatories from DOD CAF adjudicators, she established that a debt for unpaid State A income taxes for 2013 was satisfied by involuntary wage garnishment in August 2018. Applicant did not submit any additional information about her past-due state income tax returns. In addition to stating that she could not afford to have her tax returns prepared for her, Applicant also stated that the fact her federal tax refunds have been diverted to pay her student loan debts “has a lot to do with why [she does not] want to file (her tax returns).” (GX 3; Tr. 49, 52)

The debt at SOR 1.c arose in State A. Applicant traded in a used car with significant mechanical problems on another used car. She had paid on the loan for the trade-in for about two years but still had a significant balance remaining on that loan. The financing for the newly-acquired used car did not resolve the remaining balance on the trade-in. Applicant believes she entered into a bad deal because she was desperate to replace her unreliable trade-in. She has since financed the purchase of a different car and has made monthly payments as required. She has not taken any action to pay or otherwise resolve the SOR 1.c debt. (GX 2 – 4; Tr. 36, 54 – 60, 79 – 81)

The debt at SOR 1.d arose in State B when Applicant defaulted on a car loan after being unemployed for six months and the vehicle was involuntarily repossessed. Other than contacting the original lender after her May 2018 subject interview, Applicant has

never taken any identifiable action to resolve that debt. (GX 1 – 4; Tr. 36, 38, 54 – 60, 77 – 79)

Applicant's current finances are stable. In addition to her car loan, she pays her mortgage and other regular monthly expenses as required. (Tr. 60 – 65)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (See *Department of the Navy v. Egan*, 484 U.S. 518)

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters 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 one who will protect the national interests as his or her 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. (See *Egan*; AG ¶ 2(b))

## Analysis

### Financial Considerations

Applicant did not timely file her federal and state income tax returns for at least five consecutive tax years. Available information also shows she owes at least \$15,000 for two delinquent car loans, which remain unresolved. Further, the record does not support her claims that she has filed her past-due income tax returns and that she is now current in her tax reporting obligations. This information reasonably raises a security concern about Applicant's finances that is articulated at 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (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.

By contrast, available information requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (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;

(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.

Available information does not support any of these mitigating conditions. Applicant did not support her claim that she has resolved her tax-filing delinquencies. Her two delinquent car loan accounts remain unresolved and she has not shown that either debt can reasonably be disputed. There is no indication she has made any effort to repay her debts or that the issues addressed in this SOR arose from any unforeseen circumstances. Even were that the case, Applicant did not show that she has acted in a responsible way to resolve her taxes or her personal debts. She also has not sought any financial counseling or other professional assistance to resolve these matters. On balance, Applicant has not mitigated the security concerns raised under Guideline F.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The security concerns raised by the Government's information and by Applicant's admissions remain unresolved and sustain doubts about Applicant's suitability for continued access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR (as amended) as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                   AGAINST APPLICANT

Subparagraphs 1.a – 1.d:                 Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge