



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



In the matter of: )  
)  
) ISCR Case No. 21-00510  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*  
05/18/2022

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that she has been responsible addressing her income tax problems resulting from late income tax returns and delinquent taxes. She failed to establish she has taken good-faith efforts to resolve her tax problems and that her financial situation is under control. Clearance is denied.

**Statement of the Case**

Applicant submitted her most recent security clearance application (SCA) on February 27, 2018, seeking clearance eligibility required for her employment with a federal contractor. She was interviewed by a government background investigator on December 8, 2018, and responded to the Defense Office and Hearings and Appeals (DOHA) interrogatories on November 21, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on June 25, 2021, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 19, 2021, 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 on December 6, 2021. She received the FORM on January 3, 2022, and was given 30 days after receipt of the FORM to raise objections, to submit evidence in extenuation and mitigation, and to submit evidence of her efforts to resolve her financial problems. She did not submit an answer to the FORM. The case was assigned to me on March 17, 2022. Without objections, I admitted and considered the Government's proposed evidence and Applicant's response to the SOR.

### **Procedural Issues**

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of her December 18, 2018, interview with a government background investigator. (FORM, Item 9) 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 did not respond to the FORM. Without objections, I admitted and considered all of the FORM's proffered evidence.

### **Findings of Fact**

The SOR alleges Applicant failed to timely file federal income tax returns for tax years (TY) 2007 through 2013 (§ 1.a); that she is indebted to the IRS for delinquent taxes for TY 2008, totaling \$5,411 (§ 1.b); for TY 2009, totaling \$6,284 (§ 1.c); for TY 2011, totaling \$4,605 (§ 1.d); for TY 2012, totaling \$4,432 (§ 1.e); and that she is indebted to the Federal Government for a tax lien entered against her in August 2016 for about \$22,025 (§ 1.f).

In her answers to the SOR, Applicant denied all of the SOR allegations without comment, except for SOR § 1.f, which she admitted and stated that she was working with a tax-relief company to establish a payment plan with the IRS. Her admission is accepted as a finding of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 69 years old. She has been married twice. She married her current husband in 1993, and she has one adult son. Applicant has been working as a truck driver for at least five different companies from 2006 to present. Her employment history indicates no periods of unemployment or underemployment. Apparently, she has been working for the current employer since 2012. She is being sponsored for eligibility for a clearance by a federal contractor. She stated that the Office of Personnel Management (OPM) granted her eligibility for access to secret information in 2008. Apparently, her eligibility for access to classified information was not continued.

In her response to questions in Section 26 (Financial Record) of her 2018 SCA, Applicant stated that she had failed to both timely file income tax returns and to pay federal income taxes for TYs 2007 and 2009. She also failed to timely file federal income tax returns for TYs 2008, 2010, 2011, 2012, and 2013. She stated that her failure to timely file income tax returns and to pay her taxes when due resulted from her inability to get all her tax documents, lack of information or lost documents; and her inability to find help to complete the income tax returns. She also disclosed that the IRS placed a \$20,000 lien against her home in 2016. She averred she hired a tax-relief company to help her negotiate with the IRS and establish a payment plan.

Applicant was interviewed by an OPM investigator in December 2018. She told the investigator that she did not file her TY 2007 income tax return until 2013, because she was travelling frequently and had personal problems. She did not file her TY 2008 income tax return until February 2014. As of the day of her interview (December 2018), she had not started to pay her 2008 delinquent taxes, about \$4,000. As of May 11, 2020, she owed the IRS \$5,411 for TY 2008. Applicant did not timely file her TY 2009 income tax return. As of December 2018, she had not started to pay her 2009 delinquent taxes, about \$6,000. As of May 11, 2020, she owed the IRS \$6,284 for TY 2009. (Item (9))

Applicant stated she did not file her 2010 income tax return because she did not have the paperwork needed. She indicated she needed to call the IRS to get more information about her TY 2010 taxes. She filed late her TY 2011, 2012, and 2013 income tax returns. She believed she owed back taxes for 2011, 2012, and 2013, but she was not sure how much she owed. As of May 11, 2020, she owed the IRS \$4,605 for TY 2011, and \$4,432 for TY 2012. In 2011, Applicant earned \$114,604, and received an IRS Form 1099-C (Cancellation of Debt) for \$1,668. (Item 8)

Applicant stated she retained the services of a tax-relief company and was waiting for the company to settle with the IRS and establish a payment plan on her behalf so that she could start making tax payments. She averred she timely filed her TY 2014 through 2017 income tax returns. (Items 8 and 9) She failed to submit documentary evidence to corroborate her claims about retaining a company to help her negotiate with the IRS, and that she timely filed her TY 2014 through 2017 income tax returns.

All of the SOR allegations are established by the documents in evidence, including Applicant's SOR admission, her statement to an OPM investigator during her 2018 interview, and her answers to the DOHA interrogatory. (FORM, Items 2, 8, and 9)

Applicant failed to submit sufficient documentary evidence about her efforts to contact the IRS, of any payment agreements established, of any payments made to the IRS for taxes owed for TYs 2007 to present, or of having retained the services of a tax resolution company to assist her with her IRS tax problems. The accounts alleged in the SOR are outstanding and unresolved. She presented no evidence to show she has participated in financial counseling or has a working budget. She did not present

evidence of her and her spouse's current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). Without any documentary evidence of his current financial situation, it is not possible for me to assess whether she is financially overextended.

## **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 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.

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 his 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 . . .

Applicant's financial problems are documented in the record. As alleged in the SOR, she failed to timely file federal income tax returns for TYs 2007 through 2013 (¶ 1.a); she is indebted to the IRS for delinquent taxes for TY 2008, totaling \$5,411 (¶ 1.b); for TY 2009, totaling \$6,284 (¶ 1.c); for TY 2011, totaling \$4,605 (¶ 1.d); for TY 2012, totaling \$4,432 (¶ 1.e); and she is indebted to the IRS for a tax lien entered against her in August 2016 for about \$22,025 (¶ 1.f). Applicant presented no documentary evidence of any good-faith efforts on her part to pay, settle, or resolve her tax debts.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 explained she did not timely file her TYs 2007 through 2013 income tax return for several reasons: she was travelling frequently and had personal problems; she did not have the paperwork needed; she needed information from the IRS; and she was waiting for the tax-relief company she retained to settle with the IRS on her behalf and establish a payment plan so that she could start making her payments.

She failed to submit documentary evidence to corroborate her efforts to contact the IRS, of any payment agreements established, of any payments made to the IRS for taxes owed for TYs 2007 to present, or of having retained the services of a tax resolution company to assist her with her IRS tax problems. The SOR allegations are unresolved. She presented no evidence to show she has participated in financial counseling. She did not present evidence of her and her spouse's current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). Without any documentary evidence of his current financial situation, it is not possible for me to assess whether or not she is financially overextended.

Applicant's financial problems were likely aggravated by her job as a truck driver with limited time at home, and lack of access to her mail and documents. Although her

job cannot be considered a circumstance beyond her control, her financial problems could be attributed in part to, or were aggravated by, her job away from home. Nevertheless, Applicant's evidence is insufficient to show she has been financially responsible under her circumstances. She failed to submit evidence of her efforts to timely file her income tax returns, of her contacts with the IRS to settle or establish payment agreements, or of any tax payments made since the taxes became due. She failed to establish her good-faith efforts to resolve her delinquent tax filings, her delinquent taxes, and that her financial situation is under control.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

In this instance, the evidence is insufficient to demonstrate Applicant's current financial responsibility, and that her financial problems are being resolved and are under control. Mere promises to resolve financial issues in the future, without further confirmed actions, are insufficient. In this case, Applicant failed to submit sufficient documentary evidence of her offers to resolve her tax problems. Additionally, she presented no evidence to show she has participated in financial counseling. She also did not present evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). The financial considerations security concerns are not mitigated.

### **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. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 69, is a truck driver being sponsored by a federal contractor for a clearance. Her evidence is insufficient to establish that she has been financially responsible by timely filing her income tax returns and timely paying her taxes as required. She failed to establish she has taken good-faith efforts to resolve her tax problems.

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. 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
Subparagraphs 1.a – 1.f:	Against Applicant

### **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 Applicant's eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge