



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03689
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Andrew Henderson, Esq., Department Counsel

For Applicant:  
Shirin Asgari, Esq.

July 8, 2022

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 29, 2017. On February 5, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on July 8, 2021, one and one-half years after the issuance of the SOR. In her Answer, she requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 29, 2021. The case was assigned to me on October 13, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on February 23, 2022, scheduling the hearing on March 21, 2022. Upon a showing by Applicant's counsel of good cause, I granted her request for a four-week continuance on March 16, 2022. DOHA issued an Amended Notice of Video Teleconference Hearing on March 17, 2022, scheduling the hearing for April 18, 2022. The hearing was rescheduled again and held on April 20, 2022.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits (AE) A through F, which were also admitted without objection. I note for the record that AE D is a duplicate of GE 4. At the hearing, Applicant's counsel requested that the record remain open for the submission of additional documentary evidence. I agreed to keep the record open until May 4, 2022. Applicant timely submitted two additional exhibits marked as AE G and H, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 27, 2022. (Tr. at 10-13, 48.)

### **Findings of Fact**

Applicant is 57 years old. She has never married and has no children. She received a high school diploma in 1982 and has taken some college courses. She also received a professional certification in 2004. Applicant has worked for several U.S. Government contractors as a technology specialist since at least 2007 and has held a security clearance on and off since 1997. Applicant began working for her current employer, a defense contractor, in March 2021. She is seeking to continue her current security clearance in relation to her work with her employer. (Tr. at 16-19, 32; GE 1 at 9-10; GE 2 at 5; AE A at 3.)

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleged that Applicant is ineligible for clearance because she failed to file her Federal (SOR 1.a) and state (SOR 1.b) income tax returns as required for tax years (TYs) 2015 through 2019. As a result, the Government made a preliminary conclusion that Applicant is potentially unreliable and untrustworthy and presents a risk that she will not follow the Government's rules and regulations. In her Answer, Applicant admitted both allegations.

Applicant has a history of non-compliance with the Federal and state tax-filing deadlines. She did not file her tax returns for TYs 2009 and 2010 as required. She filed within the three-year Federal statutory deadline to avoid forfeiture of her tax refunds for

those years. The SOR did not allege these facts. In about May 2011, the U.S. Department of State granted Applicant national security eligibility at the Top Secret level. Applicant then timely filed her returns as required for TYs 2011 through 2014. She received refunds each year. For many years, Applicant has claimed zero exemptions on her W-4 tax withholding form, including the tax years that are the subject of the SOR allegations (2015-2019). She believed that her level of withholding resulted in the payment of sufficient taxes to ensure that she overpaid her Federal income tax liability in each of those years and that she would not be penalized for filing her returns after their due date. (Tr. at 34; GE 1 at 35.)

The current status of the matters alleged in the SOR is as follows:

**1.a. Failure to timely file Federal tax returns for TY2015 through TY2019 as required.** At the hearing, Applicant claimed that she misunderstood the tax-filing deadline because she was complying with the three-year restriction for eligibility to receive a refund of her overpaid taxes. She filed her TYs 2015 and 2016 Federal tax returns on February 9, 2018, which was in time to receive Federal refunds for those years. In her September 2017 e-QIP, she responded to a question in Section 26 by writing:

I have been late on filing for my federal refund for FY 2015 and 2016. I am not required to file my [State 1] taxes, since I always am due a refund. I will make sure that both FY 2015 and FY 2016 are filed by the extension date of October 15, 2017. (GE 1 at 36.)

As noted, she actually filed her TYs 2015 and 2016 returns on February 9, 2018, about four months after the October 15, 2017 date provided in her e-QIP. According to the tax transcripts in the record for those two tax years, Applicant had not filed for an extension in either year. She believes that the IRS extension request form states that it is unnecessary to file for an extension if that taxpayer is due a refund; however, she did not provide any documentation in support of her belief. She testified that she now understands that she needed to file her returns by April 15<sup>th</sup> of the following year. (Tr. at 36-37, 39-40; GE 4 at 55-56; AE G at 2-3.)

In her July 8, 2021 Answer, Applicant wrote that “after going through my adjudication in February 2020 [the month and year when the SOR was issued] . . . I filed my Federal and [State 1] tax returns for tax year 2019 . . . [and] I filed Federal tax returns from [sic] 2017 and 2018 (via mail).” She did not provide copies of those returns with her Answer, but she provided a copy of her TY 2020 Federal tax return.

In response to interrogatories from the CAF in 2020, Applicant submitted a number of documents with a cover note, dated September 8, 2020. In her note, she wrote that on July 15, 2020, she filed her Federal tax returns for TYs 2017, 2018, and 2019, but that IRS Tax Account Transcripts for those years were unavailable due to COVID-related delays at the IRS. Instead, she provided copies of her Federal tax returns for those years, which were undated. After the hearing, Applicant provided an IRS Wage and Income

Transcript for TY 2017. That type of IRS transcript does not reflect the tax return filing date and whether an extension was requested. At the hearing, Applicant claimed that on or before April 15, 2020, she filed for an extension to file her 2019 tax return within six months after the April 15, 2020 due date, and that she would provide evidence of that extension in a post-hearing submission. Her post-hearing submission did not include evidence of an extension for TY 2019. Her submission also included an IRS Account Transcript, which reflects that her 2020 Federal tax return was filed on May 17, 2021, which was timely under the IRS's COVID-related automatic extension in that year. In summary, Applicant failed to timely file her Federal tax returns for TYs 2015 through 2019 as required. (Tr. at 42-43; GE 3 at 2; AE G at 4-12.)

**1.b. Failure to file state income tax returns for TY2015 through TY2019 as required.** In her Answer, Applicant admitted that she failed to file her state tax returns for the years alleged in the SOR. She wrote that she was not obligated to file tax years in State 1 if she was owed a refund. Applicant provided the same comment in her e-QIP. In her Answer she quoted from a page of the website of State 1 that provided information regarding tax rules. The quote states: "You are not required to file if you do not owe any taxes and will not receive a refund." Department Counsel entered into evidence a page from what appears to be the same website page, which contains the language Applicant quoted in her Answer (GE 5). That exhibit states further that a taxpayer "must file an income tax return in [State 1] if . . . you have [State 1] adjusted gross income equal to or greater than the [following] amounts: Filing Status – Single or married filing separately Income Threshold - \$11,950." Applicant's adjusted gross income in [State 1] in each tax year alleged in the SOR substantially exceeded that threshold. These instructions are contradictory when applied to Applicant's situation. She never sought a clarification of her tax-filing obligation. After receiving the CAF's interrogatories in 2020, she filed her State 1 tax returns for TYs 2015 through 2019. The record is unclear if she filed her state tax returns on July 15, 2020, with her Federal tax returns for TYs 2017 through 2019 or on another date. (Answer at 1, 4, 7-14; Tr. at 23; GE 4 at 58-74; GE 1 at 36; GE 3 at 2, 5; GE 5.)

Applicant's state tax returns for TYs 2015 through 2019 reflect that she was due to receive small refunds in each tax year except in TY 2019, when she owed \$5. There is no documentation in the record showing that she filed her state tax return for TY 2019 by the filing deadline of May 1, 2020 or that she sought an extension to file after that date. (Answer at 13-14.)

## **Mitigation**

Applicant has been in continuous therapy with the same therapist since 2001. In September 2013, Applicant experienced serious vicarious trauma at the time of the shooting at her worksite at the Navy Yard in Washington, DC. Several of her close colleagues were shot and killed in that incident. She was scheduled to be with those individuals at that time, but a locked conference room door caused her to go elsewhere prior to the shooting. Her colleagues stayed behind and became victims of the shooter.

Applicant suffered from “survivor’s guilt.” As a result of this incident, her “executive functioning skills” were not as good as they needed to be. She entered an “emotional trauma” program to help her recover from that experience. In late 2016, she also began consulting with a psychiatrist who diagnosed Applicant as suffering from severe depression. The psychiatrist prescribed medication for depression, and continues to the present to manage her medication. Applicant described her depression as having been a “progressive” problem, meaning that it worsened over time, until she received medication. (Tr. at 24-26.)

Applicant is a recovering alcoholic and was a frequent drug user in her youth. She has been sober for about 32 years. She remains active in Alcoholics Anonymous and works with her sponsor. Both of Applicant’s parents died in the past two years. Her therapist wrote in a letter in the record that Applicant “manages her depression, and she reaches out for help when she needs more support to manage her depression.” Applicant described her current mental health at the hearing as “wonderful” though she is grieving the loss of her parents, with whom she was very close. (Tr. at 24-26, 29; AE A at 1.)

A senior U.S. Government IT official and a long-time friend of Applicant’s wrote a very positive character reference letter in support of Applicant maintaining her security clearance. The friend acknowledged Applicant’s failure to file tax returns and attributed her actions to a misunderstanding by Applicant of her tax-filing responsibilities. Applicant’s current supervisor also wrote a supportive character letter. At the hearing, Applicant described her performance reviews as consistently rating her as “exceeds expectations.” (Tr. at 27; AE A at 2-3.)

Applicant is financially secure and is capable of meeting any financial liability she encounters. She has significant liquid assets and minimal personal debts, mainly a relatively small mortgage on her residence. She testified that her liquid assets are for the most part from her inheritance from her father’s estate. Prior to his death, she said she was less secure financially although her annual income over the past decade has been well in excess of \$100,000; except in 2017, when she experienced a period of unemployment. Due to the need to file estate tax returns for her father’s estate as the executrix of the estate, Applicant is now working with a CPA. The CPA recently helped her submit an extension for the filing of her 2021 Federal tax returns, which was necessary due to her father’s death in 2021. (Answer at 15; Tr. at 46; GE 4 at 24, 35, 45, 54-58, 63, 67-68, 71; AE E.)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes a condition that could raise security concerns and may be disqualifying 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 failed to file her Federal income tax returns for TYs 2015 through 2019 as required. This disqualifying condition does not impose a burden on the Government to establish that Applicant knowingly violated Federal law, though the facts establish that she knew when her Federal tax returns were due during this period. She wrote in her e-QIP that her TY 2015 and 2016 tax returns were filed late, and she admitted the SOR allegations of untimely filings for the entire period in her Answer. She did not comply with the legal filing deadline and instead filed in time to qualify to receive refunds.

With respect to her state income tax returns, Applicant believed she was only required to file her tax returns if she owed taxes. Applicant chose not to prepare her state tax returns because she felt comfortable that her state withholding taxes would be sufficient to cover her state tax liability. Applicant did not provide satisfactory documentary evidence, however, to corroborate her claim that she was not required to file a state income tax return. Applicant failed to file her state tax returns for TYs 2015 through 2019 as required.

The Appeal Board has stated that a "failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). The Board

has also explained that “the three-year statute of limitations is not a grant of a [tax return] filing extension, but only a limitation upon claiming a [tax] refund.” ISCR Case No. 12-11375 at 5 (App. Bd. Jun. 17, 2016).

The record evidence establishes a *prima facie* case for the application of the foregoing disqualifying condition. The evidence shifts the burden to Applicant to mitigate the security concern under Guideline F.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s alleged financial difficulties:

(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 non-profit 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.

Under the unique circumstances of this case, the above mitigating conditions have been fully established. Applicant has filed her Federal and state tax returns for TYs 2015-2019. She is presently receiving professional tax advice and understands that she must file her tax returns as required by law. Applicant’s emotional problems and her 2013 work-related trauma and losses provide context for her behavior during the 2015-to-2019 period and are circumstances that are unlikely to recur. Her past behavior of five years of untimely tax filings do not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant has mitigated the financial considerations allegations in the SOR. Paragraph 1 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding her past actions. The situation regarding her TY 2015 through 2019 tax returns were resolved in a responsible manner and without any delinquent tax liabilities. Her character references and positive work experiences weigh heavily in her favor, especially in light of the emotional trauma she suffered at her DoD worksite in 2013. She has minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence leaves me without questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON  
Administrative Judge