



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



In the matter of:	)	
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	)	ISCR Case No. 20-02795
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

09/27/2022

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from her problematic financial history. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted her security clearance application (SCA) on March 20, 2019. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on November 20, 2020, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an undated answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government’s file of

relevant material (FORM) on May 9, 2022, including documents identified as Items 1 through 6. DOHA sent Applicant the FORM on the same day, and she received it on May 16, 2022. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer are the pleadings in the case. (Items 1 and 2.) Items 3 through 6 are admitted without objection. The case was assigned to me on August 4, 2022.

### **Findings of Fact**

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 51 years old, never married, and has no children. Since December 2003, she has worked for a defense contractor. (Item 3.)

Under Guideline F, the SOR alleged that Applicant: (1) was indebted to a bank on a judgment for \$10,380 entered in 2019 (SOR ¶1 1.a); (2) was indebted on an account delinquent in the amount of \$38,282 (SOR ¶ b.); and (3) failed to file and pay, as required, federal and state income tax returns for tax years (TY) 2011 to 2018. (SOR ¶1.c.) (Item 1.) Applicant admitted those allegations, but claimed that the bank judgment (SOR ¶ 1.a.) had been paid off. (Item 2.) She did not provide documents that the bank judgment (SOR ¶ 1.a.) had been paid off. The record shows that the judgment (SOR ¶ 1.a.) and SOR ¶ 1.b. are still delinquent. The date of the last activity (DLA) for SOR ¶ 1.b. was April 2018. (Items 5 and 6.) Those two debts are for credit cards Applicant used to pay her bills during her medical leaves and subsequent leaves. She just got too far behind. Applicant made no contacts with those two creditors to resolve those debts. (Item 4.)

In her June 18, 2019 Personal Subject Interview (PSI), Applicant addressed her financial problems. In 2008, 2009, 2010, and 2014, she had spinal surgeries that necessitated bed rest and being on disability for long periods. In addition, in about 2014, Applicant's father was convicted of possession of child pornography and sentenced to 25 months in prison. He was released in July 2016. Applicant said that her medical problems and her father's incarceration "weighed on her decision not to take care of her taxes in a timely manner." (Item 4.)

In about 2015 or 2016, DOD contacted Applicant about her tax status. DOD wanted her to provide proof that her tax issues had been satisfied. Applicant never responded, because she had no proof she had taken care of her tax issues. She believes her failure to respond to DOD caused her clearance to be revoked in July 2016. Even after her clearance was revoked, Applicant did not contact the IRS because she was "nervous." Applicant still works for the same employer, but she is only able to work on unclassified projects. (Item 4.)

In her PSI, Applicant said she recently contacted a friend to help with tax returns and payments. Applicant, her friend, and her friend's husband prepared federal and state tax returns for TY 2010 to TY 2018. Applicant's tabulation showed that over those nine years, she owed the state a net of \$949 and owed the IRS a net of \$871. The record, however, does not indicate if those amounts include interest and penalties that IRS may impose. Applicant planned to mail each return to the taxing authorities with a check for any amounts due. She did not provide documents evidencing the filing of those returns or the payment of any taxes due. (Item 4.)

### **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 A2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

### **Analysis**

#### **Guideline F, Financial Considerations**

The security concern relating to Guideline F for financial considerations is set out in 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The followings conditions are applicable 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 SOR tax debts are established by Applicant's admissions and the consumer debts by Applicant's admissions and the Government's credit report. AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. 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., . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances); 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 financial problems with her two consumer debts did not occur that long ago. The judgment was entered in 2019, and the second consumer debt has a DLA of April 2018. Although there are only two delinquent consumer debts, the record shows no efforts by Applicant to address those debts. Applicant's many years of failures to file tax returns and to pay income taxes are circumstances that cast doubt on her current financial reliability. SOR ¶¶ 1.a., 1 b., and 1.c. are not mitigated under AG ¶ 20(a).

Applicant suffered back surgeries in 2008, 2009, 2010, and 2014. In addition, Applicant 's father was incarcerated from 2014 to 2016. She said those events weighed adversely on her financial judgment. Such conditions were "largely beyond" Applicant's control, as contemplated by AG ¶ 20(b). But that mitigating condition also requires an applicant to act responsibly under the adverse circumstances she confronted. Here, Applicant simply ignored those two debts. That is not responsible conduct. SOR ¶¶ 1.a. and 1. b. are not mitigated under AG ¶ 20(b).

Applicant's tax delinquencies suffer for the same reasons discussed above about the application of AG ¶ 20(b). Her family and medical challenges were no doubt "largely beyond" her control. But Applicant similarly ignored her tax failures, even after DOD asked her for written proof that she had resolved her tax issues. Instead, she engaged in self-help. On this record, there is no evidence that Applicant actually filed late tax returns or paid any taxes due. At best, she was in the process of filing late returns and paying overdue taxes. That is not responsible conduct. SOR ¶ 1.c. is not mitigated under AG ¶¶ 20(b) or (g).

### **Whole Person Concept**

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about her eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, 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.,b., c.:	Against Applicant

**Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Philip J. Katauskas  
Administrative Judge