



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



In the matter of: )  
)  
) ISCR Case No. 20-03597  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

09/27/2022

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**Decision**

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Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 25, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 15, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on May 4, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. She received the FORM on June 2, 2022. As of July 12, 2022, she had not responded. The case was assigned to me on September 8, 2022. The Government exhibits included in the FORM (Items 1-8) are admitted in evidence.

## Findings of Fact

Applicant is a 49-year-old employee of a defense contractor for whom she has worked since April 2000. She claimed she was out of work from about June 2017 until about February 2018 and August 2020 until July 2021 while she recovered from back surgeries. There is no evidence in the record regarding her education level. She has been married since November 1999. She has two children, ages 20 and 12. She had two adult stepchildren, both of whom are deceased. She claimed that she has held a security clearance since 1997. (Items 3-5)

The SOR alleges untimely filed federal and state tax returns for the 2014 through 2019 tax years (SOR ¶¶ 1.a and 1.b); delinquent federal taxes totaling \$19,355 for the 2014 tax year (SOR ¶ 1.c); delinquent taxes to State A for the 2014 tax year in the amount of \$8,219 (SOR ¶ 1.d); delinquent taxes to State A for the 2018 tax year in the amount of \$2,753 (SOR ¶ 1.e); a county tax lien for \$238 entered in 2021 (SOR ¶ 1.f); a 2018 judgment for \$2,619 (SOR ¶ 1.g); a wage garnishment in 2017 for \$2,711 (SOR ¶ 1.h); and a delinquent telecommunications debt for \$1,163 (SOR ¶ 1.i). In her SOR response, Applicant admitted the SOR allegations with additional comments. The SOR allegations are established through Applicant's admissions and the Government's evidence. (Items 1, 3-8)

Applicant claimed that there are several reasons for her financial difficulties, including her failure to timely file and pay federal, state, and local taxes. She claimed that her husband suffers from a drug addiction, has undergone drug treatment counseling, and spent six months in prison in 2018. She also claimed that he mentally abused her in an unspecified manner. Her stepdaughter passed away in 2018 and her stepson was murdered in late 2021. She was out of work for about eight months between 2017 and 2018 and for about a year between 2021 and 2022 because she was recovering from back surgeries. She also claimed that she financially supports her two children and two grandchildren. (Items 3-5)

There is documentary evidence that Applicant filed her 2016 federal and State A income tax returns in about May 2021. Also, there is documentary evidence that Applicant filed her 2019 federal income tax return in about August 2020. Finally, there is documentary evidence that Applicant filed her 2020 federal and State A income tax returns in about May 2021. The delinquent income tax returns listed in the SOR that Applicant eventually filed were all filed after she submitted her Questionnaire for National Security Positions (SF 86) and had her security interview. (Item 5)

There is no evidence that the IRS or State A granted Applicant a filing extension for any of the tax years relevant to the SOR. The documents reflect that she consulted with a professional tax filing service in order to file these tax returns. Applicant claimed that she would file all of her late income tax returns in 2020, however, there is no documentary evidence that Applicant has yet filed her 2014, 2015, 2017, and 2018 federal and State A income tax returns. Also, there is no documentary evidence that Applicant has filed her 2019 State A income tax return. (Item 5)

The \$19,355 federal tax debt for the 2014 tax year alleged in SOR ¶ 1.c has not been resolved. This balance reflects an offset from a federal tax refund from the 2020 tax year. Applicant admitted owing these taxes. She provided no documentary evidence to show that these taxes were paid, disputed, or otherwise resolved. (Items 1, 3-5)

The \$8,219 tax debt to State A alleged in SOR ¶ 1.d was resolved involuntarily through a wage garnishment in 2017 and 2018. (Items 1, 3, 5)

The \$2,753 tax debt to State A alleged in SOR ¶ 1.e has not been resolved. Applicant admitted this debt and acknowledged that she recently received a wage garnishment to pay it. She claimed that she has been working overtime in order to pay the debt more quickly. She provided no documentary evidence to show that these taxes were paid, disputed, or otherwise resolved. (Items 1, 3, 5, 6, 8)

The \$238 lien entered on behalf of County B alleged in SOR ¶ 1.f has not been resolved. Applicant admitted this debt and claimed that she will pay it. However, she provided no documentary evidence to show that this lien was satisfied, disputed, or otherwise resolved. (Items 1, 3, 8)

The \$2,619 judgment alleged in SOR ¶ 1.g has not been resolved. Applicant admitted this debt, but could not recall its status. She provided no documentary evidence to show that this judgment was paid, disputed, or otherwise resolved. (Items 1, 3, 8)

The 2018 wage garnishment for overdraft fees for \$2,711 alleged in SOR ¶ 1.h has been resolved. Applicant admitted this allegation. She provided no documentary evidence to show that this judgment was paid, disputed, or otherwise resolved. However, there is no evidence in the record that this garnishment remains in place or is ongoing. (Items 1, 3, 8)

The \$1,163 telecommunications debt alleged in SOR ¶ 1.i has not been resolved. Applicant admitted this debt. She provided no documentary evidence to show that this debt was paid, disputed, or otherwise resolved. This debt does not appear in the May 2022 credit report. (Items 1, 3, 4)

Applicant anticipates that she will incur an additional approximately \$10,000 in late federal and state taxes once she files her unfiled tax returns. She claimed that she will make arrangements to pay these taxes at that time. Applicant did not respond to the FORM, so more recent information about her finances is not available. (Item 5)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These 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(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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.

Applicant has a history of financial problems. She untimely filed several years of federal and state income tax returns and has not filed required federal and state income tax returns for several other tax years. She has delinquent federal and state taxes and other consumer debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

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

There is sufficient evidence that the issues alleged in SOR ¶¶ 1.d and 1.h have been resolved. I find in Applicant's favor with respect to those two SOR allegations.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant has suffered from many unforeseen setbacks ranging from unfortunate to tragic. Many of these issues were clearly beyond her control. However, none of these issues can reasonably excuse her failure to comply with her tax filing obligations over such an extended period of time. Likewise, these issues did not cause her to fail to withhold a sufficient portion of income to meet her tax burden. Even if one were to assume for the sake of argument that these issues were directly responsible for her failure to file and pay her taxes as required, she would still need to show that she has acted responsibly under the circumstances. She has failed to do so because she provided insufficient evidence of any efforts she has made to remedy her remaining delinquent tax filing and payment obligations.

While Applicant has remedied some of her late tax return filings and has paid some of her delinquent SOR debts through offsets and involuntary garnishments, she began these efforts after being put on notice that her failure on these fronts might interfere with her ability to maintain a security clearance. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). The timing and nature of Applicant's efforts to resolve her financial

issues undermine any claims that she was acting in good faith or acting responsibly under the circumstances.

Applicant sought assistance with her taxes from a commercial tax service, which resulted in her filing several years of her income tax returns. However, as she still has outstanding late tax returns and tax debts, as well as other financial delinquencies, I am unable to find that the financial problems are under control or are being resolved.

Applicant's state and federal tax and consumer debt issues are current and ongoing. Applicant's failure to comply with her federal tax obligations and to pay her debts continues to cast doubt on her current reliability, trustworthiness, and good judgment. The security concerns arising out of the established SOR allegations are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I have also considered the many difficulties Applicant has encountered during her life.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

### **Conclusion**

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

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Benjamin R. Dorsey  
Administrative Judge