



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



In the matter of: )  
)  
) ISCR Case No. 22-00578  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

07/12/2023

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On September 30, 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 October 26, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 22, 2023.

The hearing convened as scheduled on June 6, 2023. Government Exhibits (GE) 1 through 12 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through D, which were admitted without objection.

## Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. She has worked for her current employer or a predecessor company since 2012. She earned an associate degree in 2022. She is married with a 22-year-old child. (Transcript (Tr.) at 19-20, 23, 27; Applicant's response to SOR; GE 1, 2)

Applicant worked as waitress and manager at a restaurant from about 2002 through 2008. She bought the restaurant in 2008 for about \$1.2 million. She paid \$150,000, and the remainder was financed by the previous owner. Her loan payments were about \$10,000 per month. The recession hit, and a new highway bypass diverted drivers around her small town. It was difficult to maintain the restaurant. She did not pay the property taxes, and she did not pay the IRS and the state the payroll taxes she withheld from her employees' wages. The loan agreement required Applicant to remain current with the property taxes. In about 2012, the previous owner threatened to foreclose on the property and sue Applicant. She returned the restaurant to the previous owner without court action. Applicant estimates that she paid the owner about \$540,000 over the course of the four years she had the restaurant. None of that was ever reclaimed from the previous owner after the owner resold the restaurant. (Tr. at 15, 20, 28-34; Applicant's response to SOR GE 1, 2)

Applicant accrued a number of debts from her attempt at making the restaurant work, and the IRS and her state filed tax liens against her, presumably for the unpaid payroll taxes. The state filed liens of \$14,592 in April 2011; and \$55,144 in September 2012. The IRS filed liens of \$11,483 in August 2012; \$51,967 in December 2012; and \$20,900 in December 2012. She filed a Chapter 7 bankruptcy case in 2013, and her dischargeable debts were discharged the same year. The bankruptcy did not affect her unpaid taxes. (Tr. at 15-16; Applicant's response to SOR; GE 1-4, 6-12)

Applicant retained an attorney to negotiate with her state. The attorney negotiated an offer-in-compromise with the state. She finished paying the negotiated amount in 2016, and the state tax liens were released in December 2020. (Tr. at 15-17, 20-21; Applicant's response to SOR)

Applicant contacted the IRS several times. She was told in about 2017 or 2018 that she owed so much in comparison to her income that the IRS considered the taxes uncollectable. The IRS would maintain the liens on her property so that it could collect any profit from a sale, and it would withhold any refunds she would otherwise receive, but it would not actively collect the taxes unless her income significantly increased. She was also told that the IRS cannot collect taxes after ten years. (Tr. at 17; Applicant's response to SOR)

Applicant decided not to attempt to pay the taxes, and she would wait until they were more than ten years old and uncollectable. She submitted an online IRS tax account statement from the IRS obtained in October 2022. The earliest year shown was 2012, which reported a balance of \$13,229. The only other year with a balance was 2014, with a balance of \$194. (Tr. at 21-23; Applicant's response to SOR)

In March 2023, Applicant submitted three applications to the IRS to withdraw the three tax liens. The basis for all three was, "This debt was attached to a restaurant that went out of business in 2012. I have been informed by Tax Advocate/IRS that it is considered in unpayable status and now after more than 10 years is uncollectable." The IRS has not acted on the applications. (Tr. at 18, 21-23; AE A-D)

Applicant regrets not paying the payroll taxes. She stated that she has learned a valuable lesson from the experience. Her finances are otherwise stable. Her most recent credit report lists a mortgage loan and two other accounts. She is current on all three accounts. (Tr. at 18-19, 24-25, 28, 32-33; GE 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 owned a restaurant from 2008 until she had to return it to the previous owner in 2012. She was unable to pay many of her debts. She filed a Chapter 7 bankruptcy case in 2013, and her dischargeable debts were discharged the same year. AG ¶¶ 19(a) and 19(c) are applicable.

Applicant chose not to pay the IRS and the state the payroll taxes she withheld from her employees' wages. That constitutes an unwillingness to satisfy debts regardless of the ability to do so. AG ¶ 19(b) is applicable to the payroll taxes. AG ¶ 19(f) addresses income taxes, not payroll taxes. AG ¶ 19(f) is not applicable.

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.

The failure of Applicant's restaurant was beyond her control. I find that filing a Chapter 7 bankruptcy case was a responsible way to deal with the debts other than the payroll taxes. AG ¶ 20(b) is applicable to the Chapter 7 bankruptcy (SOR ¶ 1.f).

Applicant was in a difficult situation, but not paying payroll taxes was not an acceptable option. If a business cannot pay its employees' payroll taxes, it is not a viable business and it should fail. 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 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). AG ¶ 20(b) is not applicable to the unpaid payroll taxes.

The state payroll taxes (SOR ¶¶ 1.d and 1.e) were paid in about 2016. AG ¶¶ 20(d) and 20(g) are applicable to the state payroll taxes.

Applicant has done nothing to resolve the federal payroll taxes (SOR ¶¶ 1.a to 1.c), except to wait until they become more than ten years old and uncollectable. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations. That is, a judge may consider the underlying circumstances of these uncollectable debts in evaluating whether an applicant demonstrated good judgment, trustworthiness, and reliability. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). Reliance on the statute of limitations does not constitute a good-faith effort to resolve debts and is of limited mitigative value. See e.g., ISCR Case No. 14-01231 at 3 (App. Bd. Feb. 10, 2015).

I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay her payroll taxes. Her financial issues continue to cast doubt on her current reliability, trustworthiness, and good judgment. There are no mitigating conditions applicable to the unpaid payroll taxes.

### **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 have incorporated my comments under Guideline F in my whole-person analysis.

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
Subparagraphs 1.d-1.f:	For 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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Edward W. Loughran  
Administrative Judge