



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



In the matter of: )  
)  
) ISCR Case No. 20-03380  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

11/17/2023

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations), by Applicant’s failure to timely file federal and state income tax returns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on August 6, 2018. On July 23, 2021, the Department of Defense Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on August 16, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 18, 2021, and the case was assigned to an administrative judge on September 6, 2022. It

was reassigned to me on December 15, 2022, due to medical issues encountered by the previously assigned administrative judge. On January 4, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on January 19, 2023. She failed to appear.

On January 23, 2023, I ordered Applicant to show cause why her appeal should not be terminated for failure to appear. She responded on January 30, 2023, and she explained that she did not appear because of incorrect information from her supervisor about her need for a security clearance. I informed her that I would reschedule the hearing.

Rescheduling of Applicant's hearing was delayed when she went on medical leave on February 16, 2023. Due to complications after surgery, she remained on extended medical leave until early September 2023.

On September 13, 2023, DOHA notified Applicant that her hearing would be conducted by video teleconference on October 11, 2023. I conducted the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until October 31, 2023, to enable her to submit additional evidence. She timely submitted AX G through J, which were admitted without objection. DOHA received the transcript (Tr.) on October 20, 2023. The record closed on October 31, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, she did not expressly admit or deny the allegations, but she claimed that she had filed all her federal and state income tax returns for tax years 2015 through 2020. Her response amounts to a denial.

Applicant is a 62-year-old marine painter employed by a defense contractor since January 2018. She received her high school diploma in January 1993. She has been employed by her current employer since 2003 (Tr. 27) Her SCA reflects that she was unemployed from June 2009 to January 2010, March to May 2011, March and April 2015, November 2015 to May 2016, and September and October 2017. These periods of unemployment occurred between the days that a contract ended and a new contract began. (Tr. 18) She received unemployment compensation during the gaps between contracts. (Tr. 23) She has never married. She has two adult children. She has never held a security clearance.

When Applicant submitted her SCA in August 2018, she disclosed that she had not filed her federal and state income tax returns for 2015 and 2016 because she "didn't or wouldn't have the money" if she owed taxes. She stated that she was seeking credit counseling. (GX 1 at 39-40) When she filed her federal tax return for 2015 in March 2018, it reflected a refund of \$1,478. (AX A) When she was interviewed by a security investigator in June 2019, she stated that she did not file her federal and state income tax returns for

2016 and 2017, because she did not believe that she owed any taxes. (GX 2 at 14) When she filed her federal tax return for 2016 in October 2021, it reflected a refund of \$44 for 2016. (AX B)

On January 21, 2020, Applicant responded to DOHA interrogatories and stated that she filed her federal and state income tax returns for 2015 through 2020 on January 11, 2020. She estimated that her federal tax liability was \$1,268 for tax years 2016 and 2017, and her state tax liability was \$626 for tax year 2017. (GX 2 at 5-7)

At the hearing, Applicant submitted documentary evidence that she filed her federal and state returns for 2015 in March 2018, and she filed her federal and state returns for 2016 through 2019 at various dates in 2021. (AX A through D; AX I) She paid the balance due for federal taxes on a date not reflected in the record. (AX F) She paid the balance due for state taxes in June 2023. (AX G)

Applicant did not file her tax returns for 2021 until February or March 2023. She testified that her parents passed away, and because of the stress of losing her parents, she did not file her 2021 returns until she filed her 2022 tax returns. (Tr. 40) Her untimely filing of her 2021 returns was not alleged in the SOR, and I have considered it for the limited purpose of evaluating her evidence of mitigation and in my whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Applicant's current supervisor, who has known her for more than 20 years, strongly recommends that her application for a security clearance be granted. He states that she has always demonstrated a high degree of integrity, responsibility, and dedication. (AX J)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

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

The security concern under this guideline 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. . . .

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

The evidence in this case establishes the following disqualifying conditions:

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's failures to timely file her state and federal income tax returns are recent, numerous, and did not occur under circumstances making recurrence likely. Her failure to timely file her tax returns for 2021, although not alleged in the SOR, demonstrates the likelihood of recurrence.

AG ¶ 20(b) is not established. Applicant has experienced repeated periods of unemployment resulting from gaps between contracts. Most of the gaps were relatively short, but some, e.g., June 2009 to January 2010 and November 2015 to May 2016 were substantial. However, she has not acted responsibly. She failed to timely file her returns even when she expected refunds. She did not file her returns for tax years 2015 through 2019 until January 2021, after she was interviewed by a security investigator in June 2019 and responded to DOHA interrogatories in January 2020.

AG ¶ 20(g) is established. Applicant filed the past-due tax returns in January 2021 and has paid the past-due federal and state taxes.

The fact that Applicant has filed her past-due returns does not preclude careful consideration of her security worthiness based on her longstanding prior behavior. ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). A security clearance adjudication is not a tax collection process. Nor is it directed toward inducing an applicant to file tax returns. Rather, it is an evaluation of an applicant's judgment and reliability. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). Applicant did not take her tax obligations seriously until realized that her tax delinquencies were an impediment to obtaining a security clearance.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her failures to timely file federal and state income tax returns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b:

Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge