



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02444
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

12/13/2023

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**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. One allegation was not established. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 24, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 implemented by DOD on June 8, 2017 (AG).

Applicant answered the SOR on January 12, 2022. She requested a hearing before an administrative judge. I was assigned to the case on August 23, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 31, 2023, and the hearing was convened as scheduled on October 5, 2023. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence

without objection. The Government's exhibit list was identified as hearing exhibit (HE) I, and its discovery letter was marked as HE II. Applicant testified, called one witness, and offered exhibit (AE) A (IRS tax transcripts for tax years 2016-2022) which was admitted without objection. The record remained open to allow Applicant to submit additional documentary evidence. She timely submitted AE B (email and 2015 tax transcript), which was admitted without objection. DOHA received the hearing transcript (Tr.) on October 16, 2023.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a–1.f, with explanations, but she denied the SOR ¶ 1.g. Her admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 61-year-old employee of a defense contractor. She began working at her present job in April 2006. She has worked for U.S. defense contractors for approximately 30 years. She has held a security clearance for 19 years, without any security incidents. She holds an associate degree. She married in 1985 and divorced in 2017. She has two adult children. (Tr. 6, 21-22, 25; GE 1)

Under Guideline F, the SOR alleged that Applicant failed to timely file her federal income tax returns for tax years 2014 through 2020, as required. Applicant's admissions establish the SOR allegations, except for tax year 2020. (GE 1-3; SOR answer)

Applicant accepted responsibility for failing to timely file her federal income tax returns for the years indicated. She also provided explanations for events happening in her life that impacted her ability to file these tax returns at the time.

When Applicant was married to her ex-husband, he took the responsibility for filing the family's tax returns. He owned a small business, which required that a more complex tax return was required. She would compile all of her tax-related documents, put them in an envelope, and give them to her ex-husband at tax time. That was the extent of her involvement with the tax-filing process during her marriage. Once she was divorced in 2017, she had to learn how to file her returns and pay any taxes herself. She sought the help and advice from a friend and tax preparer to mentor her on the tax process. Both she and her ex-husband have used this person to help prepare their tax returns for the past 30 years. (Tr. 22, 27-28)

In October 2018, Applicant's home was nearly destroyed by Hurricane Michael. She suffered property damage valued at approximately \$200,000. She also had to pay out-of-pocket for immediate repairs to her home to make it habitable. She would later be reimbursed by insurance for the damage, but only after she hired an attorney. While she was generally made whole by the insurance payment, the last payment was finally received in May or June 2023, some five years after the event. The hurricane impacted her tax situation because the repair expenses took funds away from being applied toward any tax debt. She also was unable to contact her tax mentor, who was severely impacted by the hurricane until sometime in 2019. Applicant found out later that the

hurricane caused her tax mentor to move to another state. Applicant prepared draft tax returns on her own for 2017 and 2018. These drafts reflected that she would owe money to the IRS for both years. She erroneously believed she could not file her tax return if she owed money but could not pay it at the time she filed the return. As a result, she waited until she accumulated enough funds to pay her taxes owed before she filed the returns for 2017 and 2018. (Tr. 28, 32-33, 35-36, 38-39, 51-52)

Applicant documented her federal income tax return filings below:

**TY 2014** She contacted the IRS but was unable to receive a copy of this return. This was during the timeframe that her ex-husband was filing their joint tax return.

**TY 2015** Filed May 2017.

**TY 2016** Filed October 2019.

**TY 2017** Filed July 2021.

**TY 2018** Filed May 2021.

**TY 2019** Filed July 2021.

**TY 2020** Filed October 2021 (timely filed with extension).

**TY 2021** Filed April 2022 (timely filed; non-SOR allegation).

**TY 2022** Filed April 2023 (timely filed; non-SOR allegation) (AE A-B; SOR answer).

Applicant credibly testified that she has learned from her mistakes and has since timely filed her federal income tax returns. She has received tax refunds for the past four tax years. While a copy of her 2014 tax transcript was unavailable, she owes no taxes for that year. This is also a tax return her husband would have prepared and filed. She admitted that the security clearance process lit a fire for her to file the late returns. All the late returns were filed before the issuance of the SOR. (Tr. 22-23; AE A)

Applicant's facility security officer (FSO) testified that he has known her since 2006 and highly respects her. She is trustworthy, reliable, and exercises good judgment. He is personally aware of the damage she suffered because of the hurricane in 2018, and the difficulty she faced dealing with the insurance company. She is not the type of person who is a tax protestor. He was also aware of her efforts to work with the IRS to resolve her tax issues. (Tr. 41-50)

## **Policies**

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 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, these guidelines are applied 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 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 that an 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.

Section 7 of EO 10865 provides that 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**

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

(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.

The evidence showed Applicant failed to timely file her federal income tax returns for tax years 2014-2019, but 2020 was timely filed. I find the above disqualifying conditions are raised for SOR ¶¶ 1.a-1.f, but SOR ¶ 1.g was not established.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; 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 should have responded in a timelier fashion to resolve her tax issues. However, she faced legitimate obstacles that contributed to her delayed action. Before 2017, her ex-husband always filed their joint tax returns. Once she was divorced and started filing her own returns, she sought guidance from her long-time tax preparer. After the hurricane of 2018, which destroyed much of Applicant's home, it also made it impossible to contact her tax preparer because she was also impacted by the hurricane. This led to Applicant's erroneous assumption that she could not file her tax returns for years that she owed taxes if she was unable to pay at the time of her filings. Her inability to pay, at that time, was caused by having to pay out-of-pocket to repair her

home before she was reimbursed by her insurance. She demonstrated responsible action by working with the IRS to resolve her tax issues. Ultimately, Applicant was able to file all the missing returns and for the last three years (2020-2022) did so in a timely manner. There is no evidence of any other tax issues. Moreover, there are clear indications that her tax issues are resolved, and recurrence is unlikely because she now has a firm handle on her tax filing responsibilities. AG ¶¶ 20(b)-20(c), and 20(g) all substantially apply.

### **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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's contractor service and the testimony of her FSO who wholeheartedly supports her to retain her clearance. I'm convinced she will act in a timely manner filing her tax returns from now on.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns and that one allegation was not established.

## **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: FOR APPLICANT

Subparagraphs: 1.a - 1.g: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge