



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 22-01962
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2024

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On January 18, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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.

Applicant responded to the SOR on January 20, 2023, and requested a hearing before an administrative judge. The case was assigned to me on June 14, 2023. On September 15, 2023, a Notice of Hearing was issued scheduling the hearing for November 15, 2023. The hearing was convened as scheduled via video-conference. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified. The record was held open until December 1, 2023, to allow Applicant the opportunity to submit additional documentary evidence. She timely submitted eight documents which were admitted as AE A – AE H, without objection. The transcript (Tr.) arrived on November 27, 2023.

### **Procedural Issues**

During the hearing, the Government moved to amend the SOR in accordance with Directive paragraph E3.1.17 in order to conform with the evidence as follows:

SOR ¶ 1.d You failed to timely file, as required your [State 1] income tax return for tax year 2018 and your [State 2] income tax return for 2021. As of the date of this Statement of Reasons, the tax return for 2021 remains unfiled. (Note: The change was a modification of the spelling of State 1. The names of the states are not disclosed for privacy reasons. You may refer to the amendment in the record.) (Tr. 37)

SOR ¶ 1.t: You failed to timely fail, as required, your federal and state income tax returns for tax year 2022. (Tr. 27, 34, 37-38) (Note: This is an additional allegation.)

There being no objection, the motion to amend the SOR was approved. (Tr. 37-38)

### **Findings of Fact**

Applicant is a 55-year-old employee of a defense contractor. She has worked for her current employer since January 2022. She served on active duty in the United States Army from November 1986 to March 1989. She went Absent Without Authority (AWOL) from August 2, 1988, to November 13, 1988, a violation of Article 86, Uniform Code of Military Justice (UCMJ). In March 1989, she received an Other Than Honorable Discharge in Lieu of Courts Martial. Her highest level of education is an associate degree. She divorced in 2018, has three adult children, and currently shares a house with her daughter and son-in-law. (Tr. at 14-16; GE I)

### **Financial Considerations**

On April 8, 2022, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (GE 1) A subsequent background investigation revealed Applicant failed to timely file Federal income tax returns for tax years 2018 and 2021 (SOR ¶ 1.a: GE 2 at 1-3, 13-14); Applicant failed to timely file state income tax returns for tax years 2018 and 2021 (SOR ¶ 1.d: GE 2 at 30); and owed 17 delinquent debts, an approximate total of \$18,604.

The delinquent accounts include a \$528 federal tax debt for delinquent taxes for tax year 2018 (SOR ¶ 1.b: GE 2 at 1-3, 13-14, 24-25); a \$467 federal tax debt for delinquent taxes for tax year 2019 (SOR ¶ 1.c: GE 2 at 14, 26-27); a \$4,142 delinquent credit card account placed for collection (SOR ¶ 1.e: GE 2 at 14-15; GE 4 at 2); a \$3,692 debt owed to an apartment complex placed for collection (SOR ¶ 1.f: GE 2 at 14; GE 4 at 3; GE 5 at 2); a \$1,548 charged-off credit card account (SOR ¶ 1.g: GE 2 at 15; GE 3 at 12; GE 4 at 3); a \$1,446 delinquent credit card account placed for collection (SOR ¶ 1.h: GE 2 at 14-15; GE 3 at 4); and a \$1,413 delinquent debt owed to an apartment complex placed for collection (SOR ¶ 1.i: GE 2 at 14-15; GE 4 at 3; GE 5 at 2).

Additional delinquent debts include a \$1,070 delinquent credit card account placed for collection (SOR ¶ 1.j: GE 2 at 15-16; GE 3 at 9; GE 4 at 4); a \$1,040 delinquent credit card account that was charged off (SOR ¶ 1.k: GE 2 at 16; GE 3 at 8; GE 4 at 4); a \$968 delinquent credit card account placed for collection (SOR ¶ 1.l: GE 2 at 16; GE 3 at 6; GE 4 at 4); a \$652 delinquent credit card account that was charged off (SOR ¶ 1.m: GE 2 at 16; GE 3 at 8; GE 4 at 4); a \$463 delinquent medical account that was placed for collection (SOR ¶ 1.n: GE 2 at 16; GE 4 at 5); a \$394 delinquent credit card account placed for collection (SOR ¶ 1.o: GE 2 at 15-16; GE 3 at 5; GE 4 at 5; GE 5 at 5); a \$300 delinquent student loan account that was placed for collection (SOR ¶ 1.p: GE 2 6; GE 3 at 5; GE 4 at 5); a \$294 delinquent student loan account that was placed for collection (SOR ¶ 1.q: GE 2 6; GE 3 at 5; GE 4 at 5); a \$179 delinquent cable television account that was placed for collection (SOR ¶ 1.r: GE 2 at 17; GE 4 at 6; GE 5 at 3); and a home mortgage loan that went into foreclosure in 2016; the balance owed, if any, is unknown (SOR ¶ 1.s: GE 4 at 7).

In her response to the SOR, Applicant denies the allegation in SOR ¶ 1.o and admits the remaining SOR allegations. She indicates most of the debts were incurred between 2014 – 2017. She incurred the credit card debts during times when she was unemployed. She was laid off twice within a four-year time span. The foreclosure alleged in SOR ¶ 1.s occurred at a time when she owned two homes. One was a rental property and she lived in the other one. The tenant in the rental property broke her lease at a time when Applicant was unemployed. She claims she had to choose between the two houses and let the rental property go to foreclosure. She testified that the 2016 foreclosure is no longer in her credit report. She is not certain how much was owed after the foreclosure. (Tr. 39-40) The apartment debt alleged in SOR ¶ 1.f occurred because she was laid off and had to move out. She moved to state 1 where she thought the cost of living would be cheaper. (Answer to SOR)

Applicant did not file federal and state income taxes for tax year 2018 because she was a full-time student at the time who worked part-time jobs. She believed her gross income was under the limit. She discovered the tax return needed to be filed when applying for financial aid for her daughter's education. (Answer to SOR) She filed the 2018 federal income tax return on June 21, 2021. She owes the IRS \$528.73 for tax year 2018; and \$464.84 for tax year 2019. She has not filed her federal income tax return for tax year 2021. (Tr. 26-27, 30-35; GE 2 at 24-27; 30) She testified that she is not sure whether she filed her state income tax returns for tax years 2018 and 2021. (Tr.

36-37) She also testified that she did not file federal or state income tax returns for tax year 2022. (Tr. 27, 37-38)

Applicant has not paid or resolved the remaining SOR debts, SOR ¶¶ 1.e – 1.r. She disputes the debts alleged in SOR ¶¶ 1.f, and 1.l. She submitted disputes with the credit reporting agencies. After some research, the debt alleged in SOR ¶ 1.l was confirmed as valid. She testified she has to prove that it is not her debt, but has not followed through the dispute. She has not received a response regarding her dispute of the debt in SOR ¶ 1.f. (Tr. 41-43)

Applicant has paid off several debts that were not alleged in the SOR. (Tr. 42) At the end of the hearing, Applicant mentioned that she is considering filing for bankruptcy. She has consulted two bankruptcy attorneys but has not hired one yet. (Tr. 47-48) After the hearing, she provided a receipt for a payment made to her college in the amount of \$504.90. (AE H) It is unclear if this relates to the student loan debts alleged in SOR ¶¶ 1.p and 1.q.

Applicant keeps a budget, but it is not written down. She currently earns between \$83,000 and \$85,000 annually. She occasionally provides support to her daughter who recently graduated from college. Her net monthly income is approximately \$4,200. Her total monthly expenses are approximately \$2,500. She rents a home with her daughter and son-in-law. They each contribute one third to the household expenses. She has about \$900 in her checking account, \$500 in a savings account, and \$15,000 in a retirement account. She tries to save \$1,000 a month, but recently had expensive car repairs that cost between \$5,000 and \$6,000. (Tr. 17-24)

Her financial problems began when she was laid off in 2015. She was also laid off in 2016 and 2017. Between August 2014 to December 2017, she was a full-time college student who worked part-time. She attended college using the GI Bill. She was unemployed between February 2019 to August 2019. She lived off her savings and worked part-time in a grocery store. (Tr. 28-30) She also has a chronic medical condition. (Tr. 49)

Applicant's integrity is very important to her. Her divorce and health issues have made things challenging. She has a strong allegiance to the United States. She has been waiting for an opportunity to get a security clearance for 15 years. Obtaining and keeping a security clearance is important to her. (Answer to SOR)

### **Whole-Person Evidence**

Several of Applicant's colleagues and friends provided letters on her behalf. Mr. R., her current supervisor, highly recommends Applicant be granted a security clearance. He has supervised her for two years. He finds her to be extremely trustworthy and competent. She continues to learn and has become a valuable asset to the team. (AE A; AE B) Ms. L., a friend and co-worker, describes Applicant as honest, forthright, and no-nonsense. (AE C)

Mr. M. has known Applicant for over 20 years, both personally and professionally. He has had the opportunity to observe her character in various situations. She consistently demonstrates sound judgment, discretion and is responsible. She is thorough, detail-oriented, and always strives for excellence. (AE D)

Applicant's ex-husband wrote on her behalf. Despite their divorce, he maintains a positive relationship with Applicant. She has always conducted herself with professionalism and dignity. When they were dating, she took care of his elderly mother while he was on deployment. She possesses the qualities necessary to hold a security clearance. (AE E)

Other co-workers and former co-workers have said similar favorable things about Applicant. (AE F; AE G)

### **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).

### **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:

AG ¶ 19(a) inability to satisfy debts;

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.

Applicant has a history of financial problems and delinquent debts. She also failed to timely file her federal and state income tax returns for tax years 2018, 2021, and 2022. She owes delinquent taxes to the IRS for tax years 2018 and 2019. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

While Applicant intends to pay her debts, the alleged delinquent debts remain unresolved. SOR ¶ 1.a does not apply because her financial issues are ongoing.

AG ¶ 20(b) partially applies because circumstances beyond Applicant's control adversely affected her financial situation. Since 2017, she has experienced periods of unemployment, significant health issues, a painful divorce, and recent costly car repairs. This mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances because she did not develop a plan to repay her delinquent debts once she found stable employment in January 2022.

AG ¶ 20(c) and AG ¶ 20(d) do not apply. Applicant has not sought financial counseling from a legitimate and credible source, such as a non-profit credit counseling service, and her financial problems are not being resolved. She did not initiate a good-faith effort to repay overdue creditors or resolve debts.

AG ¶ 20(e) does not apply. Although Applicant disputed the debts alleged in SOR ¶¶ 1.f, and 1.i, there is insufficient information in the record to conclude the disputes were reasonable or successful.

AG ¶ 20(g) applies with respect to Applicant filing her 2018 federal and state income tax returns. It does apply with respect to Applicant's failure to timely file her federal and state income tax returns for tax years 2021 and 2022, as well as her failure to pay or make payment arrangements with the IRS for federal taxes owed for tax year 2018 (\$528) and tax year 2019 (\$467).

With regard to tax issues, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* 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, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

While Applicant appears to be sincere about wanting to resolve her financial problems and tax issues, she has not taken proactive steps towards resolving them. The evidence is insufficient for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances. Applicant's financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficient to fully mitigate financial considerations security concerns.

### **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 Guidelines E and F in my whole-person analysis.

I considered the favorable recommendations of Applicant's supervisor, ex-husband, co-workers, and friends. I considered that she underwent periods of unemployment, a divorce, health issues, and unanticipated car repairs. Applicant's failure to timely file her state and federal tax returns and/or pay her state and federal taxes for 2018, 2019, 2021 and 2022 raise more serious security concerns. Her delinquent debt appears to be manageable. She needs to assess her financial situation and develop a plan for repaying her delinquent accounts. At the close of the record, she had no plan in place to resolve her delinquent debts. Applicant's history of financial problems and tax issues remain a concern.

Applicant did not mitigate the security concerns raised under Financial Considerations. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance at this time.

### **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.t	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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Erin C. Hogan  
Administrative Judge