



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 23-00313

**Appearances**

For Government:

Andrew Henderson, Esquire, Department Counsel

For Applicant:

*Pro se*

02/15/2024

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted her most recent Electronic Questionnaires for Investigations Processing (e-QIP) on December 11, 2018. (Government Exhibit 1.) On May 5, 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 (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 9, 2023, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 3, 2023. The case was assigned to me on July 6, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 17, 2023. The case was heard on September 6, 2023. DOHA received the transcript (Tr.) of the hearing on September 15, 2023.

The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on her own behalf and asked the record to remain open for the submission of additional exhibits. She submitted Applicant Exhibits A through D in a timely fashion, they were admitted without objection, and the record closed on October 13, 2023.

### **Findings of Fact**

Applicant is 42 years old and single. She has a bachelor's degree. She has been employed by a defense contractor since 2003, and seeks to retain national security eligibility and a security clearance in connection with her employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 18; Tr. 5-6.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR stated that Applicant had 13 debts that were past due, charged off, or in collection, in the total amount of approximately \$59,758. These include delinquent Federal taxes as well as consumer indebtedness. In her Answer she admitted allegations 1.a, 1.b, 1.c, 1.d, 1.f, 1.g, and 1.h, with explanations. She denied allegation 1.e, stating that she had filed all of her Federal income tax returns. She further denied allegations 1.i, 1.j, 1.k, 1.l, 1.m., 1.n, and 1.o, stating she had resolved those debts. The existence and amount of these debts is supported by her admissions to seven SOR allegations in her Answer and by credit reports dated January 30, 2019; August 9, 2022; and July 3, 2023. (Government Exhibits 5, 6, and 7.) They are also confirmed by Applicant's answers during an interview with an investigator from the Office of Personnel Management (OPM) that was held on June 7, 2019. (Government Exhibit 2.) In addition, they were confirmed by Applicant's responses to DCSA CAS interrogatories, dated August 4, 2022. (Government Exhibit 3.) Finally, Applicant also supplied a credit report dated September 15, 2023. (Applicant Exhibit D.)

The current status of the debts is as follows:

1.a through 1.d. Applicant admitted owing delinquent taxes to the Federal government for tax years 2013, 2014, 2015, and 2016. She testified that the total amount owed to the Federal government for back taxes, including penalties and interest, is about \$30,000. She further stated that she has now filed all of her back Federal tax returns and begun working on a payment arrangement with the IRS. (However, see further discussion under 1.e, below.) The reason she did not file her tax returns in a timely fashion is that she got scared of the consequences as time went on. As of the date of the hearing, these debts have not been resolved. (Tr. 14-15, 23-25; Applicant Exhibit B at 4.)

1.e. Applicant denied that she failed to file her 2017 Federal income tax return. She stated in her Answer, "I deny, 2017, I worked for 2½ months and I was on medical. I have filed these taxes numerous amounts of times and they were received by IRS. I only had a [sic] income of about \$13,000." Government Exhibit 3 contains IRS account transcripts for various tax years. Regarding tax year 2017 the transcript states, "We apologize for the inconvenience, but we are not able to process the requested tax year at this time." (Government Exhibit 3 at 4.) Based on the state of the record, I cannot find wither that Applicant has filed this subject tax return or that she was not required to do so.

1.f. Applicant admitted that she had not filed her state income tax returns for tax years 2012 through 2017. In fact, she admitted that she had not filed her state income tax returns for approximately 18 years, through tax year 2022. She has prepared and printed out the returns but has not filed them. The reason she did not file her tax returns in a timely fashion is that she got scared of the consequences as time went on. However, she also stated that she does not believe she owes any back taxes to her state tax authority. (Tr. 15, 17, 23-24.)

1.g. Applicant admitted owing \$14,872 to a creditor for a charged-off automobile loan. She indicated that she is working with a credit repair agency to set up a plan to pay this debt. This debt had not been paid or resolved as of the time the record closed. (Tr. 26; Applicant Exhibit B at 4.) This debt is not resolved.

1.h. Applicant admitted owing \$11,998 to a creditor for a charged-off automobile loan. She stated that she still has the car, is making payments, and the amount currently owed is \$4,900. The most recent credit reports in the record (Government Exhibit 7 and Applicant Exhibit D) confirm that she has been making payments and the balance on the account has been significantly reduced. (Tr. 27-30.) This debt is being resolved.

1.i. Applicant denied owing \$2,284 for a collection account to a creditor. She submitted documentation showing that this debt was paid in March 2023. (Tr. 30; Applicant Exhibit C at 2.) This debt is resolved.

1.j. Applicant denied owing \$493 for a charged-off account. She testified that she had paid this debt and had a receipt to support her statement. A receipt from this creditor is not included in Applicant Exhibit C. The account does not show up in the most recent credit report in the record, Applicant Exhibit D. There is insufficient evidence to show that this debt has been paid or resolved. (Tr. 33.) This debt is not resolved.

1.k. Applicant denied owing \$330 for a past-due medical account. She testified that she had not paid this debt. No evidence was submitted after the hearing to show that this debt has been satisfied. (Tr. 34-35.) This debt is not resolved.

1.l. Applicant denied owing \$130 for a past-due medical account. She testified that she had not paid this debt. No evidence was submitted after the hearing to show that this debt has been satisfied. (Tr. 34-35.) This debt is not resolved.

1.m. Applicant denied owing \$70 for a past-due medical account. She testified that she had paid this debt and had a receipt to support her statement. A receipt from this creditor is not included in Applicant Exhibit C. (Tr. 34-35.) This debt is not resolved.

1.n. Applicant denied owing \$66 for a past-due medical account. She testified that she had paid this debt and had a receipt to support her statement. A receipt from this creditor is not included in Applicant Exhibit C. (Tr. 34-35.) This debt is not resolved.

1.o. Applicant denied owing \$65 for a past-due medical account. She testified that she had paid this debt and had a receipt to support her statement. A receipt from this creditor is not included in Applicant Exhibit C. (Tr. 34-35.) This debt is not resolved.

Applicant testified that she had satisfied debts that are not on the SOR, but are included in her credit reports. Applicant Exhibit C contains receipts to two creditors that are not identified on the SOR. (Tr. 16, 30-31, 34-38.)

Applicant admitted that she had several other delinquent debts that are not on the SOR. They are found in Government Exhibit 7 and Applicant Exhibit D. She is working with a credit consolidation company to resolve these debts, as well as the one in allegation 1.g. (Tr. 16, 34-38.)

## Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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 incurred approximately \$59,000 in past-due indebtedness over the last several years. The debts were unresolved at the time the SOR was issued. She also failed to file Federal and state tax returns for a considerable amount of time. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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 evidence establishes that none the above mitigating conditions apply to Applicant's debt situation. She has not filed any of her state tax returns. In addition, she has not begun to resolve her considerable Federal tax debt. While she did show that she has resolved several delinquent debts, others remain unresolved, and she did not submit a plan to show how she intended to resolve them. Paragraph 1 is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns over her past-due indebtedness. Her serious financial issues are both longstanding and ongoing. The potential for pressure, exploitation, or duress has not been reduced. Overall, the record evidence creates substantial doubt as to her suitability for national security eligibility and a security clearance.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	For Applicant
Subparagraphs 1.j through 1.o:	Against Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge