



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00650
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

08/12/2024

**Decision**

Curry, Marc E., Administrative Judge:

Applicant’s failure to file her federal and state income taxes coincided with a period when she was struggling with severe *post-partum* depression, her husband was underemployed, and her accountant was disabled by cancer. After treatment for depression, Applicant retained a new accountant, filed her delinquent tax returns, and began catching up on delinquent payments. She has satisfied her state delinquency in its entirety, paid \$1,800 towards the satisfaction of her federal income tax delinquency, and has applied to the IRS to organize an installment agreement to satisfy the remainder. I conclude Applicant has mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

On May 24, 2023, Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On July 24, 2023, Applicant answered the SOR, admitting the allegations and requested a hearing, whereupon the case was assigned to me on August 22, 2023. On February 23, 2024, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling the hearing on March 14, 2024. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1 – GE 4), 26 exhibits from Applicant (Applicant’s exhibit (AE) A through AE Z), and Applicant’s testimony.

At the close of the hearing, Department Counsel amended the SOR, adding two allegations, as follows:

1.c. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$27,463 for tax years 2019 and 2020. As of the date of this Statement of Reasons, the taxes remain unpaid; and

1.d. You are indebted to the Commonwealth of [State X] for delinquent taxes in the approximate amount of \$13,892 for tax years 2015 through 2021. As of the date of the Statement of Reasons, the taxes remain unpaid.

I left the record open for 30 days to allow Applicant the opportunity to respond to the Amended SOR and to supplement her exhibits. (Tr. 75) On March 18, 2024, Applicant responded to the Amended SOR, admitting subparagraph 1.c and denying subparagraph 1.d. In addition, that day, she submitted three additional exhibits that I incorporated into the record as AE Z through AE BB. On April 4, 2024, Applicant’s counsel moved to extend the submission deadline to May 7, 2024. Department Counsel did not object, and I granted the motion. On April 26, 2024, Applicant submitted seven exhibits, that I incorporated into the record as AE CC through AE II, and on May 6, 2024, Applicant submitted an exhibit, incorporated into the record as AE JJ, whereupon I closed the record. The transcript was received on March 22, 2024.

### **Findings of Fact**

Applicant is a 49-year-old married woman with one child, age seven. She earned a bachelor’s degree in the field of computer science in 1998, and a master’s degree in the same field in 2003. (Tr. 14) She works for a defense contractor in the field of information technology. (Tr. 14)

Applicant is highly respected on the job. Her supervisor characterizes her as a “respected member of [the] team,” and stated that the company is “fortunate to have her work with [them].” (AE R at 21)

In 2014, Applicant and her husband separated. (AE T) The following year, they reconciled and decided to have a child. Applicant then received intensive IVF treatment.

Applicant's efforts to conceive were successful, as she had a child in February 2017. Applicant's labor was "horrible." Her spinal sac was punctured while receiving an epidural anesthetic. Subsequently, she had to undergo another epidural procedure and suffered two blood clots before delivering her child. (AE T) Although the delivery was ultimately successful, Applicant developed a severe case of *post-partum* depression, rendering her unable to work or perform basic health care functions for the next six months. (AE T).

In January 2017, approximately one month before Applicant delivered her child, her husband was laid off. (AE T at 2) He was unable to regain full-time employment because he had to care for both her and their newborn child. (AE T at 2) Limited to part-time employment and preoccupied with the care of both his immediate and extended family, Applicant's husband failed to file their tax returns. (AE T)

Applicant received intensive psychotherapy to address her *post-partum* depression between August 2017 through June 2022. (AE Y) However, pre-occupied with her illness, she did not file the family's income tax returns, either. (T. 44) Applicant was aware that she could have filed extensions, but did not because she "lost track" of them. (Tr. 56)

As Applicant began to gradually feel better, she began reaching out to her accountant to file her income tax returns. Her accountant, however, was unresponsive because she was incapacitated by cancer. (Tr. 40-41) Applicant and her husband then interviewed several different accountants. In August 2021, they retained a new accountant. (AE CC) By 2022, with the help of the new accountant, Applicant had filed her delinquent federal and state income tax returns for tax years 2015 and 2016, and by the end of 2023, Applicant had filed her federal and state tax returns for tax years 2017 through 2022. (AE L, X) She received federal and state refunds for each year except tax years 2019 and 2020. (AE L) For tax year 2019, she owed \$22,129 of delinquent federal income taxes and \$2,815 of delinquent state taxes. (AE L) For tax year 2020, she owed \$15,502 in delinquent federal income taxes and \$2,198 for delinquent state income taxes. (AE L)

In August 2021, Applicant, with her new accountant's assistance, began filing her late tax returns and paying delinquent tax debts. (AE B; AE U, AE CC) By November 2023, she had filed all her back federal and state tax returns. (AE X) In February 2024, she paid \$1,300 towards her federal income tax debt. (AE W at 3; AE DD at 1) On March 8, 2024, she filed a request for installment agreement with the IRS. (AE Z) By April 2024, she had paid an additional \$500 towards her federal income tax delinquency, and she had satisfied her state income tax delinquency in its entirety. (AE DD, EE, JJ)

Applicant currently earns \$200,000 annually. (Tr. 14) She has 1.2 million invested in a retirement account, and \$70,000 invested in a money market account. (Tr. 48)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484

U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 deciding.

The protection of the national security is the paramount consideration. AG ¶ 1(d) 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## **Analysis**

### **Guideline F: Financial Considerations**

Under this concern, "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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s failure to file or pay federal and state income taxes between 2015 and 2022 triggers the application of 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 under AG ¶ 20 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.

Applicant’s financial problems were initially caused by a marital separation. Later, they were compounded by her job loss after they reconciled, and they reached their nadir when Applicant was disabled by *post-partum* depression following the birth of her child. Although circumstances beyond Applicant’s control contributed to Applicant’s failure to file tax returns or to pay the corresponding tax debts on time, she did not file her returns for six years. Given the amount of time that elapsed before she filed her income tax returns, I conclude that she did not act responsibly enough for AG ¶ 20(b) to apply in its entirety.

Nevertheless, since recovering from *post-partum* depression, Applicant has retained a new accountant, filed her tax returns, satisfied the state delinquency in its entirety, and has made \$1,800 towards the satisfaction of her federal income tax delinquency. Consequently, these facts lead me to conclude that there are “clear indications that the problem is being resolved or is under control,” (AG ¶ 20(c)), and that Applicant “is adhering to a good faith effort to repay overdue creditors,” (20(d)).

Applicant did not file income tax returns for six years, and she just recently began paying down her income tax debts. Conversely, the circumstances surrounding her failing to file her tax returns were extraordinary and unlikely to recur. Moreover, given her financial stability and her emotional stability, having successfully received treatment for post-partum depression, I conclude that AG ¶ 20(a) applies.

There is no record evidence that Applicant has arranged with the state taxing authority to satisfy her delinquency. As for the federal income tax delinquency, Applicant contacted the IRS, but a plan is not currently in place, as of the date the record closed. Conversely, Applicant has satisfied the state income taxes entirely, and has made significant payments towards the satisfaction of her federal income tax delinquency. Consequently, although AG ¶ 20(g) does not apply, its inapplicability has no probative value. In sum, I conclude Applicant has mitigated the financial considerations security concern.

### **Whole-Person Concept**

In addition to the mitigating conditions, I considered Applicant's strong job performance. Upon considering all of the mitigating and disqualifying conditions in the context of the whole-person concept, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

### **Conclusion**

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge