



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-11431
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

07/09/2015

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 17, 2012 and certified it on June 18, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on January 6, 2015, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on January 15, 2015. She submitted a notarized, written response to the SOR allegations dated February 5, 2015, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on May 4, 2015. Applicant received the FORM on May 15, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated June 10, 2015. DOHA assigned this case to me on June 24, 2015. The Government submitted ten exhibits, which have been marked as Items 1-10 and admitted into the record. Applicant's response to the SOR has been marked as Item 4, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.i and 1.k - 1.r of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶ 1.j of the SOR.<sup>1</sup> She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 54 years old, works as an information systems administrator for a DOD contractor. Applicant worked for her employer from November 1990 until April 2006, when her position was eliminated. She returned to work for her employer in July 2007. During her years of employment, Applicant has received two service awards, a team award, a command award, a director's award, a citation, and a letter of appreciation.<sup>2</sup>

Applicant graduated from high school in 1979. She has not graduated from college. Applicant was married for 15 years. She and her husband are separated. She has a 29-year-old daughter and a 27-year-old son.<sup>3</sup>

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Item 5; AE A.

<sup>3</sup>Item 5; Item 6.

After she and her husband separated, Applicant thought that he had prepared a tax joint federal income tax return for the tax year 2004. She learn in 2011 that he did not prepare a joint tax return resulting in a \$8,570 tax liability to the IRS. In 2009, a spider bit Applicant. She was hospitalized for three days and did not work for two months while she recovered from the bite. She incurred significant medical bills as a result, which she was unable to pay.<sup>4</sup>

Applicant completed a personal financial statement in 2014. Her May 2, 2014 earnings statement reflected that she earned \$31.65 an hour. Her monthly gross income totaled \$5,064, and she received \$2,908 a month in net income. Her monthly deductions included a \$400 monthly garnishment to the Internal Revenue Service (IRS). She listed her total monthly expenses at \$1,580, leaving a balance of \$1,328 for debt resolution and unanticipated expenses. Since completing her financial statement, Applicant's income changed. On March 31, 2014, her employer notified her that her hourly wage would be reduced to \$22.16 an hour to bring her salary within the contract cap. Her new salary began with her May 30, 2014 pay check. She now earns \$3,546 in gross income, and she receives \$2,147 a month in net pay after deductions. Because of her salary reduction, she and the IRS agreed to a 50% reduction in her monthly payment, which is now \$200 month. She did not receive a pay raise in 2015. Applicant recently obtained a part-time job earning \$9.47 an hour plus tips. Her monthly net pay from this job averages approximately \$175 a month, increasing her total monthly income to \$2,322. Her current net monthly income has been reduced since 2014 by approximately \$600. Other than the reduction in her payment to the IRS, Applicant has not indicated a change in her monthly expenses, which remain at \$1,580.<sup>5</sup>

The SOR identifies 17 debts totaling \$13,375. The largest debts relate to an IRS tax lien of \$8,000 and a state tax lien for \$1,028. The remaining debts relate to medical bills, car insurance, an automobile, and credit accounts. Applicant stated that she paid the automobile debt in SOR allegation 1.i (\$1,697), but she did not provide any documentation showing that she paid this debt. Applicant has not provided any documentation showing that she is paying or has paid the debts in SOR allegations 1.a to 1.g and 1.j to 1.p. These debts remain unresolved. Applicant filed bankruptcy in 2003.<sup>6</sup>

The tax lien filed by the IRS in March 2009 for \$15,040 covered taxes owed for the tax years 2004, 2005, 2006, and 2007. Applicant did not provide any information explaining the reason for taxes owed for the tax years 2005, 2006, and 2007. Although she requested tax transcripts from the IRS in 2014, she did not provide a copy of the transcripts. From the information in this record, I am unable to determine if Applicant failed to file her tax returns for these three tax years or if she did not have enough

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<sup>4</sup>Item 6.

<sup>5</sup>Item 6; AE A.

<sup>6</sup>Item 1; Item 4; Item 6; AE A.

money to pay the taxes owed when the tax returns were filed or both. Applicant acknowledges that since 2008, she has filed her tax returns.<sup>7</sup>

The IRS garnished Applicant's wages after filing its lien. Applicant then developed a payment plan with the IRS, which she modified after a loss in income in 2014. With the payment plan and established compliance with its terms, the IRS released its lien on March 5, 2014. She continues to pay the IRS. As of May 2015, Applicant owed \$3,675 on this debt.<sup>8</sup>

Applicant advised that she disputed the State A tax debt for the income tax year 2006. She based her dispute on the fact that she did not live in the state for at least 176 days because her employer continued to move her between State A and State B. Applicant did not provide any documents showing that she formally disputed this debt nor did she provide any documents reflecting the response from State A to her dispute. She has not submitted documentation indicating a resolution to this debt even though she indicated in her response she would resolve the debt.<sup>9</sup>

### **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(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 access to classified information will be resolved in favor of 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.

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<sup>7</sup>Item 6; AE A.

<sup>8</sup>Item 6, Item 7; AE A.

<sup>9</sup>Item 6; AE A.

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. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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 information.

Section 7 of Executive Order 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**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems after she and her husband separated. The IRS filed a tax lien in 2009 for four years of unpaid taxes. Most of the debts have not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and the following are potentially applicable:

(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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(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.

Applicant and her husband separated in 2003, that caused a problem with filing their 2004 federal tax return. Applicant suffered a serious spider bite in 2009, which created medical bills. In 2014, she lost approximately 30% of her gross and net income through no fault of her own. All of these incidents are factors beyond her control. Although Applicant has resolved most of her IRS tax debt, the resolution of this debt started after the IRS filed its lien and garnished her wages. See ISCR Case No. 12-05053 (App. BD. Oct. 30, 2014). Applicant has not taken action on her other debts, so the second prong of AG ¶¶ 20(b) has not been met. This mitigating factor is not applicable.

The record lacks any evidence of credit counseling. Applicant manages her current income and expenses and is not incurring new debts. However, the record lacks evidence that she has control over her unpaid debts, except her IRS tax lien. After the IRS garnished her salary, she negotiated a manageable payment plan for her federal tax debt. She has complied with the terms of her payment plan and the IRS released its lien in 2014. AG ¶¶ 20(c) has some applicability in that after action by the IRS, she took control of the IRS tax debt.

Applicant disputes the tax debt with State A. Because she has not provided any documentation which shows she disputed this debt or which indicates that she has a valid legal reason to dispute the debt, AG ¶¶ 20(e) is not applicable. Except for this dispute, the record lacks any evidence that Applicant has not filed her state income tax returns as required each year.

### **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 an applicant's

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked for her employer for many years. She has received awards for her performance and longevity. Applicant's financial issues have been known to her for sometime, but she has not taken any clear action to resolve her past-due debts even though her financial statement reflects that she has sufficient residual income each month to apply towards debt resolution. Based on the record before me, she has not shown a track record for paying her debts.<sup>10</sup> The one exception is her IRS debt. After

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<sup>10</sup>In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for

the IRS filed a tax lien and garnished her wages, she negotiated a payment plan with the IRS and is compliant with the payment agreement. The record lacks any evidence which indicates how these IRS tax debts arose. It is unknown if she timely filed her federal income tax returns for 2005, 2006, and 2007, but lacked funds to pay the additional taxes due or simply failed to file these income tax returns. Without this information, I am unable to make a full and accurate assessment of her conduct and judgment related to the circumstances creating her federal income tax debt.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her finances under Guideline F.

### **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.r:	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 Applicant eligibility for a security clearance. Eligibility for a security clearance is denied.

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MARY E. HENRY  
Administrative Judge

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the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.