



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



In the matter of:	)	
	)	
XXXXXX, Xxx Xxx	)	ISCR Case No. 14-01046
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: Leslie McAdoo Gordon, Esquire

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I deny Applicant’s security clearance.

On 29 April 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 12 August 2014, and I convened a hearing 25 September 2014. DOHA received the transcript (Tr.) 7 October 2014.

\_\_\_\_\_  
<sup>1</sup>Consisting of Government exhibits (GE) 1-5, hearing exhibit (HE I) and Applicant exhibits (AE) A-W. AE W was admitted for the sole purpose of identifying AE A-V for the record.

<sup>2</sup>DoD acted 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 (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted SOR financial allegations 1.a, 1.b, and 1.d. She denied SOR 1.c and 1.e. She is a 43-year-old independent contractor employed by a prime defense contractor since January 2013. Except for six weeks in 2005, Applicant has been continuously employed since November 2001. She seeks to retain the clearance she has held, as needed, since August 1998.<sup>3</sup> Applicant graduated from college in 1995. She received an undergraduate degree in computer science and associates' degrees in accounting and business management (GE 1; Tr. 24).

The SOR alleges, and Government exhibits (GE 2, 4, and 5) substantiate, five delinquent debts totaling nearly \$554,000. Applicant admits three debts for nearly \$327,000. Four of the alleged debts are Internal Revenue Service liens filed in November 2009, February 2010, June 2011, and April 2014. The liens total nearly \$544,000.<sup>4</sup> The fifth debt is a January 2008 medical lien. However, Applicant's evidence shows that this medical bill was paid in August 2006 (AE I, J).

Between April 2007 and May 2014, Applicant and her husband paid the Internal Revenue Service (IRS) nearly \$710,000 (AE B).<sup>5</sup> With these payments, she and her husband have satisfied their tax liability for 2006 (as of February 2012), 2007 (as of June 2014), 2010 (as of January 2012), and 2011 (as of December 2013)(AE A, U, and V). Yet, when Applicant and her husband entered into an installment payment agreement with the IRS in July 2014 to cover their remaining liability, the initial amount covered by the agreement was \$521,000 (AE C, D). Applicant is current on her payments to the installment plan (AE E, T). Future payments will be made by direct debit.

Since tax year 2006, 2010 is the only year that Applicant and her husband have come close to both filing and paying their taxes on time. According to the IRS (AE A), Applicant filed her 2006 taxes in October 2008, missing the deadline for filing her taxes, even with the extension she received. She filed her 2007 taxes in October 2008 as well, also missing the filing deadline even with an extension. Her 2008, 2009, 2010, 2011, and 2012 taxes were filed on time, but she was unable to pay the amount owed at the time of filing. With an extension, her 2013 taxes were not yet due.

Applicant had an automobile accident in February 2003 (AE J). However, 2005 was the seminal year for Applicant. She had surgical procedures related to her February

---

<sup>3</sup>Applicant had previous background investigations in August 1996, June 2002, and June 2008 (GE 1). Her current periodic reinvestigation is based on her March 2013 clearance application (GE 1).

<sup>4</sup>As alleged, the liens cover tax years 2006-2007 (SOR 1.c), 2008 (SOR 1.b), 2009 (SOR 1.a), and 2012 (SOR 1.d).

<sup>5</sup>Included in this figure is a \$10,000 payment on their as-yet-unfiled 2013 tax return and a \$16,400 estimated tax payment for tax year 2014. Applicant and her husband have made their required quarterly payments through the third quarter of 2014 (another \$42,800), so their total paid to the IRS to date is nearly \$753,000.

2003 accident in October 2005 (AE I). She divorced her first husband in November 2005 (GE 1). Her current husband was divorcing as well. As a result of her surgery and recovery, she lost the contract she was working on and was unemployed for six weeks (GE 1; Tr. 27-28). She and her current husband married in September 2006.

Applicant's March 2013 clearance application (GE 1) reported a \$40,000 debt to the IRS that Applicant attributed to "bad divorces for both my husband and I that resulted in delay in getting taxes completed with the ex's prior to being able to file/complete our joint taxes 2006." She also reported making monthly payments ranging from \$5,000 to \$7,600. Government's records (GE 2) reflect that at the time of her clearance application, the IRS had filed the tax liens at SOR 1.a-1.c, totaling \$397,908.

Applicant's tax problems stem from several factors. Both Applicant and her husband own their own companies, organized as limited liability companies (LLC). At the time she and her husband wed in September 2006, they were each handling their taxes differently. Applicant's husband did not have any income taxes withheld from payments he received. Applicant had income taxes withheld from payments she received, but not enough to meet her tax liability for a given year (Tr. 35-37). Neither of them were making estimated quarterly income tax payments required by the IRS for self-employed workers. Applicant claims she was unaware of the requirement, a claim that is unbelievable given her background in accounting and business management. It is even more unbelievable given that she has employed a certified public accountant (CPA) since 2005 to help set up her company and address her tax issues (Tr. 37; AE K).

Their companies have done quite well. Their adjusted gross income (AGI) was \$359,283 for 2006; \$439,776 for 2007; \$460,368 for 2008; \$391,620 for 2009; \$477,131 for 2010; \$449,282 for 2011; and \$476,869 for 2012 (AE A). Their corresponding tax liabilities for those years, before withholding and payments: \$90,416 for 2006; \$126,963 for 2007; \$123,967 for 2008; \$101,478 for 2009; \$129,527 for 2010; \$110,735 for 2011; and \$128,296 for 2012. Thus, for tax years 2006-2012, their average AGI was \$436,347 and their average tax was \$115,912.

Because of the hubbub of 2005 and 2006, Applicant and her husband did not get around to filing their 2006 and 2007 taxes until October 2008. With nearly \$131,000 in taxes, penalties, and interest against \$21,000 in withholding and payments, they were already indebted over \$109,000 to the IRS when they filed their 2006 taxes. With nearly \$157,000 in taxes, penalties, and interest against \$59,000 in withholding and payments with her return they were another \$118,000 in debt to the IRS with their 2007 taxes—almost \$227,000 in delinquent taxes at once.

Applicant's approach to this problem—after consulting with her CPA—was to work directly with the IRS. She discussed installment payment plans with the IRS, but also began making voluntary payments in large amounts: sporadically in 2009; nearly-but-not-always monthly 2010-2013; and larger, sporadic amounts in 2014. She also increased her withholding and made increasingly larger payments with returns when

she filed her returns. At various times, her nearly-monthly payments were under a repayment plan. Other times, they were strictly voluntary payments. However, sometimes she was bumped off her repayment plan when she either did not file her taxes by the extended due date or was unable to pay the full amount owed each year she filed—which was every year.

Another factor in her tax problems was the cascade failure caused by the fact that she continued to file for automatic extensions of time to file when her taxes were due in April of each year, choosing to use the full extension into October of each year, and the fact that she never worked with her CPA or the IRS to simultaneously deal with her tax liability for the current year.<sup>6</sup> Consequently, nearly every payment she made to the IRS outside her withholdings or payments made with the filing of her returns was for back taxes. She was always trying to catch up (Tr. 50-54, 57). It appears that after the initial lien for 2006-2007 in November 2009, the IRS filed liens each time Applicant was unable to pay a given year's taxes by the extended due date: i.e., February 2010 for 2008 when she was unable to pay her taxes by October 2009; June 2011 for 2009 when she was unable to pay her taxes by October 2010; and April 2014 for 2012 when she was unable to pay her taxes by October 2013.

I note that while dealing with their tax issues, Applicant and her husband experienced life events—some foreseeable, some not; some enjoyable, some not—that distracted their attention from addressing their taxes. Applicant's father died of cancer in June 2010. The same week, her brother-in-law was killed by a drunk driver. Applicant and her husband had a son in September 2011, a month ahead of his due date. Her husband was laid off from his job the end of May 2013. External to Applicant, there was the Government shutdown in October 2013 that made the IRS unavailable for consultation.

In her consultations with the IRS, the IRS had mentioned assigning a revenue officer to their case, as their delinquent balances continued to grow. Applicant had requested that a revenue officer be assigned beginning January 2012, but one was not assigned until March 2014. The revenue officer was very proactive. He contacted Applicant's CPA for an updated power-of-attorney. He then contacted Applicant and told her three things that she had to accomplish immediately to start to deal with her current taxes. First, she was to start filing quarterly estimated taxes for 2014, which she did (AE F). Second, she was to make sure she filed her taxes on time, which in recent years had been the case, but which had not been the case in the early years (Tr. 74). Third, she was to make sure that they filed any delinquent tax returns. This last requirement was moot as Applicant and her husband were current with their tax filings, albeit with extensions and an inability to pay the full amount owed upon filing.

However, it was not until Applicant received the SOR in late-April 2014 that Applicant's accountant recommended that she obtain the services of a tax attorney.

---

<sup>6</sup>Applicant also testified that she thought that although she had to file her taxes by October of each year, she actually had until the end of the calendar year to pay the amount due.

Applicant hired him in May 2014 (AE R, S; Tr. 135) and he was able to work with the revenue officer to quickly conclude the installment payment plan between Applicant and the IRS in July 2014 (AE C, D). Under the terms of that agreement, Applicant and her husband would have to pay nearly \$100,000 per year to resolve their delinquent taxes. However, the IRS would not have approved the plan if Applicant and her husband did not have the assets to assure they could pay the complete amount (Tr. 149-150).

Applicant has a good security record at work (AE L). Her work and character references (AE —P) consider her honest and trustworthy, and recommend her for her clearance. She has received extensive training and recognition at work (AE Q). Applicant's husband also holds clearances, which were recently updated (Tr. 103).

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>7</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. Setting aside for the moment the question of whether Applicant's financial difficulties are reasonably attributable to circumstances beyond her control, she clearly has made substantial progress with her

---

<sup>7</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

delinquent taxes. However, she did so by only looking retrospectively at her taxes for over seven years. Consequently, having paid the IRS over \$750,000 since 2006, she still finds herself owing over \$520,000 in back taxes, a figure that can only grow as she continues to accumulate interest, penalties, and late fees. And these figures do not include what she may owe for current years, as she has only just begun to actually plan for her year-end tax liability.<sup>8</sup>

Looking at her history in the most favorable light, one can argue that the events of 2005-2006, happy and not, provide some justification for not filing her 2006 and 2007 taxes on time. However, those taxes were not merely late, the 2006 taxes were over a year late. Moreover, Applicant set herself up for failure by continually extending her due date for filing to the maximum date of October of the year taxes were due, and by not adjusting her withholdings in the current year to be able to pay the full amount owed when her taxes were due. Applicant's claims that she did not know she was required to make quarterly estimated payments are not credible. But even if I were to believe that, her own behavior belies her claims about the manner she believed how she was going to pay her taxes. She claimed that she thought that she could file her taxes by October of a given year and pay the balance by the end of the calendar year. Yet, in no year except 2011 (for tax year 2010) did she even come close to paying her full balance by the end of the year. Furthermore, even if I concluded that the events of 2005-2006 provided some justification for not filing on time and for not paying her full tax debt, that justification fades in years beyond 2008. Applicant should have known she needed to do more to ensure she was able to pay her tax debt. She should have known that she was required to make quarterly payments based on her own background. Her accountant certainly should have told her the requirements when she set up the LLC for Applicant.

Consequently, the mitigating conditions for Financial Considerations offer Applicant insufficient help. Her financial difficulties are both recent and multiple. While the circumstances which caused them may be receding, particularly as she is now receiving competent advice and has entered an installment payment plan, she owes a substantial debt.<sup>9</sup> However, none of the circumstances she cites as triggering her financial problems were circumstances beyond her control, certainly not past the first year or so. Further, although she has paid the IRS extraordinary sums of money over the last seven years, she really has not been responsible in addressing her tax situation, because she dealt only with her delinquent taxes and did little or nothing to ensure that she had no tax shortfalls going forward.<sup>10</sup> This was her obligation whether she knew about the required quarterly payments or not. Yet, she was only ever close to complying with her own understanding of her tax responsibilities once, for tax year 2010.

---

<sup>8</sup>¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

<sup>9</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

<sup>10</sup>¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

To the extent that hiring the tax attorney constitutes financial counseling, that happened after the SOR was issued, and while the ensuing installment agreement and first two payments offer Applicant hope for the future, it is certainly too early to conclude that the problem is resolved or under control.<sup>11</sup> Finally, Applicant's efforts to work with the IRS and the amount of money she has put toward her delinquent taxes certainly shows some good faith.<sup>12</sup> However, while her efforts were done in some good faith, they were also misguided and ineffective. Setting aside for a moment tax years 2006 and 2007<sup>13</sup>, Applicant's basic tax liability for all years in question totals \$811,382. The \$753,000 she has paid to date would pay all but \$58,382 of her basic taxes owed. Yet, she goes forward for at least the next five years obligated to pay \$99,600 annually toward her back taxes, plus \$85,600 annually for estimated 2014 taxes, and similar, if not higher estimated taxes for 2015 and beyond. Applicant's good performance and favorable work and character references are inadequate to overcome the security concerns raised by her past track record of financial irresponsibility dealing with her Federal income taxes. Consequently, I cannot find that Applicant has put her financial problems behind her. I conclude Guideline F against Applicant.

### Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Subparagraph e:	For Applicant

### Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue access to classified information. Clearance denied.

---

JOHN GRATTAN METZ, JR  
Administrative Judge

---

<sup>11</sup> ¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

<sup>12</sup> 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>13</sup>For which she would owe penalties, interest, and late fees in any event.