



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 14-01308
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

10/22/2014

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated May 12, 2014, 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 (AG) effective within the DOD on September 1, 2006.

In a June 5, 2014, response to the SOR, Applicant requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The case was assigned to me on August 1, 2014. DOHA issued a notice of hearing on August 15, 2014, setting the hearing for September 11, 2014.

The hearing was convened as scheduled. The Government offered 4 documents, which were accepted as Exhibits (EX) 1-4 without objection. Applicant offered testimony and six documents, which were accepted without objection as Exhibits (EX) A-F. She

was given until September 19, 2014, to submit any additional materials. The transcript of the proceedings (Tr.) was received on September 17, 2014. On September 18, 2014, Applicant submitted three additional documents through Department Counsel, who noted no objection and forwarded them to me on September 24, 2014. They were accepted as Exs. G-I. The record was then closed. Based on my review of the testimony and materials, I find that Applicant mitigated financial considerations security concerns.

Applicant is a 55-year-old provider of administrative support for a defense contractor. She has worked for the same employer for nine years. She completed high school and has taken some post-secondary courses over the intervening years. Applicant is divorced and the mother of two grown children.

After nearly 25 years of marriage, Applicant's husband left her, and the couple eventually divorced in 2004. Before their separation, her work experience outside the home had been limited. (Tr. 13) She was unemployed from April 2003 until September 2005, when she started working for her present employer in a support capacity. During this period, she lived with her sister in their parents' former home, collected unemployment benefits, used her savings, and served as a caregiver for a family friend, for which she earned about \$100 a month.

Starting in 2006, her first full year as a single, working woman, Applicant failed to file her 2005 federal and state taxes. As noted in the SOR, she continued to fail to file her federal and state taxes from 2006 until 2011. (Tr. 19) She was initially unclear about the process for filing taxes. She never received correspondence requesting that she file returns. (Tr. 21) In retrospect, Applicant explained that her failure to timely file her taxes was the result of "forgetfulness, oversight, and stupidity." (Tr. 57) At the time, she failed to understand that the behavior one exhibits after work hours can adversely impact an assessment of one's personal qualifications for maintaining a security clearance. She now understands the connection and is seeking to comport her financial management skills appropriately. She noted:

[Y]ou miss a deadline one year . . . and you think to yourself, I have to take care of that. Then other things get in the way. . . . Then the next thing you know, another year has gone by and you think I need to do this, but now you're afraid because the [Internal Revenue Service or IRS] is like this big, scary bureaucracy and you read things, news articles, you talk to people and everybody tells you they're just going to be so bad at you. And things just tend to snowball and at one point I even called the IRS to ask for their advice, where can I get current forms or what. And this person was just scary, telling me we're going to do this and that. . . . And then finally I realized a couple of years ago, you know, they can't take things from me because I don't have anything for them to take. (Tr. 19-20)

With no significant past experience with taxes or tax filings, Applicant examined the situation on her own. She concluded that the IRS owed her money for the years at

issue. She acquired and learned how to use a well-known tax preparation software which first completes federal filings, then carries over the relevant information for completion of the state filing for that same year. Her federal filings for tax years 2007 through 2011 were made in April or May 2014. Applicant failed to keep copies of all of these filings, but did provide evidence of her 2011 federal tax filing and evidence of her \$1,318.76 refund. (Ex. B) In August 2014, Applicant filed her state taxes for 2007 through 2011. (Tr. 21-25; Ex. C) She is presently awaiting copies of her IRS W-2 forms to complete her 2005 and 2006 tax year filings. (Tr. 27-28) She was unable to get official copies and refund check copies of her federal tax filings for 2008 through 2011 before the record closed. It is her intent for any tax filings yet unaddressed to be filed as soon as practicable. (Tr. 33) For the years at issue, Applicant either received or is eligible to receive a refund, or owes no taxes. (Tr. 28-29) She has never been subject to a federal or state tax lien or assessment. (Tr. 29)

Applicant earns under \$45,000 a year. A few years ago, she moved out of parents' former house to rent and share a home with her two grown daughters. The three women share expenses. Applicant lives within her means. The SOR, however, reflects two delinquent debts in collection by the same collection agency for a debt or debts owed to a local cardiology practice. The credit report entries each reflect an account number, but it is dissimilar with the account numbers and associated codes used by the cardiology practice. They have different dates for the opening of the account with the collection entity, but the other dates noted regarding the debts mirror each other. The debts alleged are for \$2,470 and \$1,130, respectively. Applicant initially disputed both entries on her credit report.

The cardiologist's billing records back to the mid-1990s fail to support a delinquent account balance of \$2,470. With her answer to the SOR, however, Applicant provided a health insurance billing statement regarding the \$1,130 balance. It indicates that she was only responsible for \$50 on the account noted as delinquent in the amount of \$1,130, because the service provided was subject to a pre-negotiated rate through her health care insurer. (SOR Answer, attachment; Ex. E) When Applicant questioned the collection effort, her cardiologist's office stated that it concerned another sum of \$1,130 for unidentified services. Despite the practice's lack of evidence that there were ever two outstanding delinquent debts in the same amount of \$1,130, Applicant paid \$1,390 to the practice in August 2014 in order to "just to clear it up." (Tr. 40) As of September 2014, her cardio-care provider reflected no past due balance owed to the practice by Applicant. (Ex. G)

Applicant is highly valued at work. She has received an award for her outstanding service and support of her office's mission. She is known for her attention to detail. Applicant is current on all of her regular and recurring expenses, such as utilities. Since beginning to address her tax issues, she has been diligent in making gradual progress on the past-due filings and her current filings. She does not handle anything related to finance at work. Applicant is timely on her two credit cards, both of which have modest and manageable limits.

## 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 and 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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced evidence indicating Applicant owed two delinquent debts to one cardiology practice amounting to about \$3,600. It also showed that she failed to timely file federal and state tax returns for tax years 2006-2011. This is sufficient to raise three of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts,

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of same.

Five conditions could mitigate the finance-related security concerns in this case:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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's neglect of an alleged cardiology balance was based on a misunderstanding. She interpreted her health insurance company's statement of benefits to indicate she owed no more than \$50. When her cardiac care provider gave her a less than satisfactory explanation as to origin of the alleged debt, she paid the balance rather than further dispute it.

Applicant's initial failure to file federal and state taxes was similarly based on a misunderstanding. A recently divorced homemaker, she had little experience with such matters. When she discovered it was her obligation to make those filings, even if she owed no additional taxes, she was initially intimidated by the potential penalties that could be imposed for failure to file. After reviewing the situation, she realized she was owed refunds. Since that time, she has retroactively filed at least half of the state and federal forms referenced in the SOR, shown she owes no money for the tax years at issues, and expressed her clear intent to complete all neglected filings as soon as practicable. AG ¶ 20(d) applies.

### **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(a). 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The delinquent debt in this case is minimal and was readily paid by Applicant when she was told, albeit without substantiating documentation, it was owed. Her readiness to simply pay the debt, rather than protract her legitimate dispute, demonstrates a willingness to do what it takes to comport her actions with those expected of one who seeks to hold a security clearance.

The Government has a genuine concern regarding Applicant's failure to file federal and state taxes for multiple years. It is a failure of particular concern to both the Government and this process. That failure, however, was not the result of reckless behavior, an effort to avoid paying taxes, or a generally lackadaisical attitude with regard to the law. Applicant would have been about 20 years old when she married and in her mid-40s when her husband left her. She was primarily a homemaker, who raised two children. With a high school education, she had limited job market knowledge and skills. Her failure to inquire on how to file was as grievous as her failure to file. This

process, however, is not punitive. It is equally important to look at what she has done to fix the problem and amend her ways.

Applicant has learned how to do her own taxes on tax preparation software and to learn how to file them. Her evidence shows that she has filed for all but two of the state filings owed, and is awaiting the relevant W-2 forms to file those two which remain outstanding. Her tax software prepares federal filings before moving on to preparing the user's state filings, a not unusual pattern given that many states require that a federal filing be completed first in order to calculate one's adjusted gross income (AGI). Therefore, although she only has evidence of a 2011 federal filing and refund, she provided evidence that she filed five state tax returns. This implies that she completed and filed corresponding federal tax returns for these same tax years, as she needed the AGI from the federal returns for her state calculations. She has taken this experience as a learning process. She lives within her means and economizes. Given her stated plan for addressing her tax situation and the significant progress thus far made, I find that security concerns are mitigated. Clearance is granted.

### **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.c:	For Applicant

### **Conclusion**

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

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Arthur E. Marshall, Jr.  
Administrative Judge