



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



In the matter of: )  
)  
) ISCR Case No. 14-01581  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

11/12/2014

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and she mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 16, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 8, 2014, and elected to have the case decided on the written record in lieu of a hearing. On July 28, 2014, Department Counsel requested a hearing before an administrative judge. The case was assigned to an administrative judge on September 3, 2014, and reassigned to me on September 23,

2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 29, 2014, scheduling the hearing for October 22, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. GE 2 was admitted over Applicant's objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. Department Counsel sent an informational letter to Applicant on September 2, 2014. The letter is included in the record as Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on November 3, 2014.

### **Findings of Fact**

Applicant is a 51-year-old prospective employee of a defense contractor. She will be hired if she obtains a security clearance. She has a bachelor's degree, a master's degree, and a doctorate in theology. She is married with a minor child.<sup>1</sup>

Applicant's husband had brain cancer in the 1980s. The surgery to remove the cancer also removed part of his brain. He had additional medical problems in 2005 and 2006 that may have been related to his brain cancer and surgery. Before his 2005 problems, he was able to work in a job for people with disabilities. He is now incapable of working and collects Social Security disability benefits. He also is on medication, which used to cost \$600 a month, but is down to \$36 every three months.<sup>2</sup>

Applicant ran a small retail business from 2001 through 2011. The shop did not make much money. She was unemployed for more than a year after the shop closed. Applicant did not pay her federal and state income taxes when due for tax year 2006. The IRS filed a \$5,286 tax lien against her and her husband in 2010. The state filed a \$923 tax lien against her and her husband in 2011. Applicant believes the individual who filed her income tax returns may have made a mistake, and that she should not have owed so much. She has not sought assistance from another tax professional to file an amended return or dispute the amount owed.<sup>3</sup>

The IRS levied Applicant's husband's Social Security benefits for a period. Applicant and her husband entered into an installment agreement with the IRS in August 2013 to pay their tax debt. A payment of \$57 was made in February 2014. As of July 2014, the balance due the IRS was \$6,635. She paid \$50 to her state in October 2014.<sup>4</sup>

Applicant and her husband did not file federal and state tax income returns for 2007 and 2008 when they were due. She did not believe they had to file the returns

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<sup>1</sup> Tr. at 37, 43, 86; GE 1, 2.

<sup>2</sup> Tr. at 38-42, 93; GE 1, 2.

<sup>3</sup> Tr. at 42-49; GE 1, 2.

<sup>4</sup> Tr. at 49-59; GE 1; AE E, G.

because their income was below the filing requirements of an employee.<sup>5</sup> Because Applicant was self-employed, she was required to file returns even if her income was below the filing requirements of an employee.<sup>6</sup>

Applicant filed the income tax returns before the SOR was issued. Her husband's and her combined adjusted gross income for tax year 2007 was \$12,230. Their adjusted gross income for 2008 was \$11,538.<sup>7</sup> They did not receive refunds because the returns were filed after the three-year statute of limitations. Refunds also could not be withheld to pay their tax liability for 2006.<sup>8</sup>

The SOR alleges 11 delinquent debts. All but two of the debts are medical debts. Applicant admitted owing the debts alleged in SOR ¶¶ 1.j (\$281), 1.m (\$142), and 1.o (\$57). She stated that she paid the \$281 debt alleged in SOR ¶ 1.j. The most recent credit report shows the balance on that debt as \$81.<sup>9</sup>

Applicant denied owing the remaining debts. The \$1,522 medical debt alleged in SOR ¶ 1.f is a duplicate of the \$1,522 medical debt alleged in SOR ¶ 1.e, and the \$1,387 medical debt alleged in SOR ¶ 1.h is a duplicate of the \$1,387 medical debt alleged in SOR ¶ 1.g. She disputed the debts with the credit reporting agencies. Her Experian credit report obtained on October 21, 2014, only lists one of the disputed debts: a \$350 medical debt (SOR ¶ 1.i).<sup>10</sup>

Applicant paid some debts that were not alleged in the SOR. She admitted she has unpaid medical debts. She has been unable to make greater strides toward paying her debts because of her limited income. She is a substitute schoolteacher, and she works part-time for a defense contractor. She lives a frugal lifestyle. She does not have a credit card, and her car is 11 years old without a loan. She does not have student loans. She refused to accept food stamps because she did not want to depend on the government. If she obtains a security clearance, she will receive a full-time position by the defense contractor and her income will increase substantially. She credibly testified that she will pay her taxes and other debts with her additional income. She received financial advice from her mother, but she has not received formal financial counseling. She plans to attend a financial seminar put on by her church.<sup>11</sup>

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<sup>5</sup> Tr. at 59; Applicant's response to SOR; GE 1, 2.

<sup>6</sup> See <http://www.irs.gov/Individuals/Self-Employed>.

<sup>7</sup> Tr. at 50, 59-62; Applicant's response to SOR; GE 2; AE A, B.

<sup>8</sup> See <http://www.irs.gov/taxtopics/tc153.html>.

<sup>9</sup> Applicant's response to SOR; GE 3, 4; AE F.

<sup>10</sup> Tr. at 77-86; Applicant's response to SOR; GE 2-4; AE F.

<sup>11</sup> Tr. at 62-65, 75-79, 82-86, 88, 91-96; Applicant's response to SOR; GE 2; AE F.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in November 2013. Under the financial questions, she listed that she owed the IRS about \$6,000. She also listed a \$269 medical debt that she reported as paid. She did not list any additional delinquent debts.<sup>12</sup>

Applicant denied intentionally falsifying the SF 86. She was unaware of the extent of her medical debts.<sup>13</sup> Having considered all the evidence, including that Applicant was forthcoming about the amount owed the IRS, I find that she did not intentionally falsify the SF 86.

Applicant submitted letters from people who have known her for about 20 years. The authors attested to her honesty, dependability, responsibility, leadership, dedication, trustworthiness, and integrity.<sup>14</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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>12</sup> Tr. at 64; GE 1.

<sup>13</sup> Tr. at 64.

<sup>14</sup> AE D.

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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts and was unable to pay her financial obligations. She did not file federal and state income tax returns when they were due for tax years 2007 and 2008. The IRS filed a \$5,286 tax lien against her and her husband in 2010, and the state filed a \$923 tax lien against them in 2011. The above disqualifying conditions are applicable.

The debts alleged in SOR ¶¶ 1.f and 1.h are duplicates of the debts alleged in SOR ¶¶ 1.e and 1.g. When the same conduct is alleged twice in the SOR under the

same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶¶ 1.f and 1.h are concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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, 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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's husband has had extensive medical problems. The operation to remove his brain cancer also removed part of his brain. He was able to work in a job for people with disabilities until about 2005 when he had additional medical problems. He is no longer able to work, but he collects Social Security disability benefits. His medication used to cost about \$600 a month, but is now down to a manageable \$36 every three months. Applicant's business was never very profitable, and she was unemployed for more than a year after the shop closed in 2011. She currently works as a substitute teacher and on a part-time basis for a defense contractor. All these events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant and her husband had limited income in tax years 2007 and 2008. There may have been a mistake on their 2006 income tax returns. Nonetheless, the IRS determined their tax liability for 2006, and unless an amended return is submitted or the amount otherwise disputed, that is the amount that they owe. Applicant mistakenly thought she did not have to file income tax returns for 2007 and 2008. Applicant has been working for several years to resolve her financial problems. She filed her tax returns. She maintained contact with the IRS and made some payments. She paid

some debts that were not alleged in the SOR. She successfully disputed several debts. She credibly testified that she will pay her delinquent debts with the additional salary that will come with her new position.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant made a good-faith effort to pay her debts, but her income has been too low to make a substantial dent in her tax bill. Her financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶¶ 20(a) and 20(b)<sup>15</sup> are not completely applicable because Applicant did not appropriately handle her taxes, and she still has debts to be resolved. AG ¶ 20(e) is applicable to the successfully-disputed debts.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

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<sup>15</sup> The Appeal Board reversed an administrative judge's adverse decision in which the judge determined that AG ¶ 20(b) was applicable:

Applicant's challenge to the legal sufficiency of the Judge's decision is persuasive. The Judge found that Applicant's case satisfied the criteria of [AG ¶ 20(b)], in that Applicant's financial problems were due to causes largely beyond his control and that his response to those problems had been reasonable. That finding is sustainable. Having so found, it is inconsistent for the Judge then to conclude that Applicant had nevertheless failed in meeting his burden of persuasion as to mitigation. The decision does not explain why, under the facts of this case, if Applicant had been reasonable in addressing problems rooted in causes beyond his control, the mere fact that it might take him a long time to complete the process was a reason to deny him a clearance.

ISCR Case No. 06-25584 at 3 (App. Bd. Apr. 4, 2008).

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on her SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

### **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):

(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.

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 Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence and the events beyond her control that contributed to her financial problems. Her current income does not permit her to make significant strides in addressing her debts. I am convinced that her efforts will greatly increase when she has the income to do so.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and she mitigated the financial considerations 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.o:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge