



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



In the matter of: )  
)  
) ISCR Case No. 14-01836  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

08/31/2015

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On January 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

On February 27, 2015, Applicant answered the SOR, and she elected to have her case decided on the written record in lieu of a hearing. On May 6, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on June 1, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object and the documents were admitted into evidence. In response to the FORM, Applicant submitted additional information, which was admitted into evidence without objection. The case was assigned to me on August 12, 2015.

### Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a, 1.b, 1.g, and 1.i. She admitted the remaining SOR allegations. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. She has worked for her present employer, a federal contractor, since 1985. She married in 1983 and divorced in 2000. She has not served in the military. She has a 30-year-old daughter.<sup>1</sup>

Applicant provided proof that she paid the debts in SOR ¶¶ 1.k and 1.m.<sup>2</sup> The debt in SOR ¶ 1.g (\$6,188) was owed to the IRS for delinquent taxes for tax year 2005. Applicant provided documentation to show her wages were garnished from approximately November 2005 through August 2007 to resolve the debt in SOR ¶ 1.g.<sup>3</sup> She was interviewed by a government investigator in 2006, and she disclosed that the reason for the delinquent taxes was because she failed to have sufficient money withheld from her income.

Applicant indicated she paid the debts in SOR ¶¶ 1.j and 1.l, but failed to provide corroborating documents. She stated she contacted the creditors for the debts in SOR ¶¶ 1.a and 1.b and was advised there is no record of the debts. A May 2013 credit report reflects that SOR ¶ 1.a (\$914) is an unsatisfied judgment and SOR ¶ 1.b (\$592) is an individual account in collection.<sup>4</sup>

Applicant admitted that she failed to timely file her state income tax returns for tax years 2006 through 2012 (SOR ¶ 1.c). She admitted she owes delinquent taxes to her state for 2006 (SOR ¶ 1.e - \$5,687) and 2007 (SOR ¶ 1.f - \$5,597). These taxes remain unpaid. In her response to the FORM, she indicated that her 2006 state tax return is not yet filed as she is waiting for the commercial tax preparer to download the appropriate software for that tax year. She provided copies of her 2007 through 2012 state tax returns that were filed on April 2, 2015. The returns show she owes the

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<sup>1</sup> Item 3.

<sup>2</sup> Item 2, attachments 2-3.

<sup>3</sup> Item 3, attachment 1.

<sup>4</sup> Item 8.

following for each tax year: 2008 - \$3,374; 2009 - \$3,758; 2010 - \$4,067; 2011 - \$4,369; and 2012 - \$2,838. These amounts may do not include penalties and interest.<sup>5</sup>

Applicant admitted she did not timely file her 2011 and 2012 federal income tax returns (SOR ¶ 1.d). She filed them on April 13, 2015. It appears she is entitled to a refund of \$1,619 for tax year 2012 and owes \$3,545 for 2011. She admitted she is indebted to the Internal Revenue Service (IRS) for delinquent 2008 and 2010 federal income taxes (SOR ¶ 1.h - \$9,296; SOR ¶ 1.i- \$9,936).<sup>6</sup>

Applicant has not made payments on her delinquent state or federal income taxes because she is waiting for the state and IRS to provide her with the total amount she owes, along with penalties and interest. She then hopes she will be able to participate in a tax forgiveness program, which will potentially reduce the penalties and interest owed. Once she is provided with a total amount she owes to both the state and the IRS, she intends to make an initial payment and the remainder through a monthly installment agreement until the debts are satisfied. She indicated refunds she may have been entitled to were applied to her tax debts. Specifics and documents reflecting the application of refunds were not provided.

Applicant attributed her financial problems to her 2000 divorce. Her financial problems continually worsened with time. She noted she had a daughter in college and a mortgage. She indicated she did not receive support, presumably from her ex-husband. She stated she paid her taxes, but did not file on time. She experienced stress trying to make ends meet and keep her daughter in school. In March 2012, she had a stroke and was hospitalized for a month, and spent three months in a rehabilitative center. She continues with the rehabilitation process. She continues to work, but is limited in some things. She sold her house in October 2014 and stated for the first time she is in a position to pay what she owes and not live paycheck to paycheck. She indicated she is attempting to pay all of her outstanding debts. She stated she does not live beyond her means. She acknowledged she used poor judgment and made bad decisions about her finances.<sup>7</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

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<sup>5</sup> Response to FORM with attachments.

<sup>6</sup> Response to FORM with attachments.

<sup>7</sup> Answer to SOR; Response to FORM.

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 avoided drawing 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 as to 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 that an applicant may deliberately or inadvertently fail to 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.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (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 failed to timely file her state income tax returns from 2006 through 2012. She failed to timely file her 2011 and 2012 federal income tax returns. She has a delinquent state tax debt for 2006 and 2007. She had delinquent federal tax debts for 2005, 2008 and 2010. Applicant has other delinquent debts that are unresolved. I find the above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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; and
- (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 resolved the debts in SOR ¶ 1.k, 1.m, and 1.g. Applicant indicated she paid the debts in SOR ¶¶ 1.j and 1.l. I found her statements credible and find in favor of her on these minor medical debts. AG ¶ 20(d) applies to these debts.

Applicant did not provide sufficient evidence or documents to dispute the legitimacy of the judgment in SOR ¶ 1.a and debt in ¶ 1.b. She did not provide documented proof of any actions she has taken to resolve the issues. The debts are unresolved. AG ¶ 20(e) does not apply.

Applicant admitted she failed to timely file her state income tax returns for 2006 through 2012 and federal income tax returns for 2011 and 2012. She did not provide an explanation for why she did not file the returns on time. She did not file her delinquent state or federal income tax returns until April 2015, after she received the SOR. Her 2006 state tax return is not yet filed due to a software issue. It appears she owes additional state income taxes. None of the delinquent taxes are paid. She intended to wait for a full accounting from the state and the IRS. Applicant's conduct is recent and there is insufficient evidence to conclude it occurred under unique circumstances. Her repeated failure to comply with her civic duty of timely filing her tax returns casts doubt on her reliability, trustworthiness and judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to her 2000 divorce. Presumably her stroke in 2012 impacted her ability to file her 2012 tax returns on time. Her medical problems were beyond her control. Her divorce was also beyond her control. However, its mitigation is minimized by the passage of time. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She offered insufficient evidence to explain why she failed to timely file her state income tax returns from 2006 to 2012 and her federal income tax returns for 2011 and 2012. Although, her 2012 stroke impacted her ability to file her 2011 tax return on time, she did not provide a credible explanation for why it took two years after the due date to file her federal income tax returns for 2011 and 2012. No explanation was offered regarding the other delinquent taxes. Applicant did file the delinquent returns after she received the SOR. She has not begun to make payments to resolve her tax debts. AG ¶ 20(b) marginally applies.

Applicant provided copies of her filed tax returns. She has not provided any other correspondence or documents to show actions she has taken to set up payment plans with each entity. There is no evidence she participated in financial counseling. There is some evidence, through the recent filing of her delinquent tax returns, to show she is attempting to resolve her tax debts, but the evidence is insufficient to conclude her financial problems are under control. AG ¶ 20(c) marginally applies.



Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Subparagraphs 1.j-1.m:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge