



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



In the matter of:)	
)	
)	ISCR Case No. 11-14485
)	
Applicant for Security Clearance)	

Appearances

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

02/14/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

In January 2006, Applicant was charged with nine counts of animal cruelty. With her December 2013 payoff of \$17,000 in restitution to the city, the incident no longer causes security concern. Applicant has also demonstrated a sufficient track record of repaying her delinquent real estate taxes to mitigate those concerns. Financial and personal conduct security concerns primarily persist because of her years of disregard of her federal and state income tax obligations. The IRS filed substitute federal returns for tax years 2004 through 2007, and she paid off a \$12,364 federal tax lien with a 401(k) loan. However, she did not file her federal or state returns for tax years 2008 through 2011 until 2013, and state returns have yet to be filed for 2004 through 2007. She owes past-due federal taxes of \$13,266 for 2009 and 2010, and state taxes of \$9,380 for 2008 through 2012. Clearance denied.

Statement of the Case

On July 3, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security

concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 September 1, 2006.

Applicant submitted a detailed, written response to the SOR allegations on August 9, 2013. Her answer was considered incomplete because she did not specifically admit or deny the allegations. On August 20, 2013, she supplemented her responses to the allegations, and she requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On November 8, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for her. I scheduled a hearing for December 5, 2013.

I convened the hearing as scheduled. Nine Government exhibits (GEs 1-9) were admitted into evidence. GEs 5, 6, and 9 were admitted over Applicant's objections. Thirteen Applicant exhibits (AEs A-M) were admitted into evidence without objection. A chart, which was prepared by Department Counsel as a supplement to his oral closing argument, was marked as a hearing exhibit (HE 1). The SOR was amended to conform to the evidence presented, as detailed below. Applicant and one of her coworkers testified, as reflected in a transcript (Tr.) received on December 13, 2013.

Procedural Rulings

After the evidentiary record closed, the Government moved to amend the SOR under ¶ E3.1.17 of the Directive to conform to the evidence admitted. Specifically, the Government moved to add two new allegations under Guideline F. Applicant had no objections, and the SOR was amended to add ¶¶ 1.l and 1.m, as follows:

1.l. You are indebted to the state of [omitted] for tax years 2008 to 2012 in the approximate amount of \$9,380.

1.m. You are indebted to the IRS for tax years 2009 and 2010 in the amount of \$13,266.

Summary of SOR Allegations

The amended SOR alleges under Guideline F and Guideline E that as of July 3, 2013, Applicant had not filed her federal (SOR 1.e, 2.a) or state (SOR 1.f, 2.b) income tax returns for tax years 2004-2011. Under Guideline F, Applicant allegedly owes past-due federal income taxes of \$12,364 for tax years 2004 through 2007 (SOR 1.a) and \$13,266 for tax years 2009 and 2010 (SOR 1.m); state income taxes of \$1,273.98 for 2010 (SOR 1.j) and about \$9,380 for tax years 2008 to 2012 (SOR 1.l); collection debt totaling

\$1,678.07 on four consumer accounts (SOR 1.b, 1.c, 1.d, 1.k); past-due vehicle taxes of \$380.59 (SOR 1.g) and property taxes of \$2,902.77 (SOR 1.i); and a public utility debt of \$2,654.18 (SOR 1.h). Under Guideline E, Applicant is also alleged to have been charged with nine counts of cruelty to animals in December 2005, for which she was placed on probation for three years and ordered to pay restitution around \$17,000 (SOR 2.c).

Applicant provided a detailed response to the SOR in which she denied the federal tax debt in SOR 1.a and a \$265 collection balance for cable services in SOR 1.k because they had been paid, and the \$1,273.98 state tax delinquency for 2010 in SOR 1.j because she had no knowledge of the debt. Applicant admitted the other Guideline F allegations and the three Guideline E allegations, although she indicated that she had either arranged for repayment (SOR 1.b) or was making payments (SOR 1.c, 1.d, 1.i) on most of her debts, including her federal tax debt (SOR 1.e, current debt balance in SOR 1.m). In addition, she had filed her late federal tax returns (SOR 1.e, 2.a), while her delinquent state returns (SOR 1.f, 2.b) were in the process of being filed.

Findings of Fact

Applicant's admissions to her record of delinquent debts, late tax returns, and payment of restitution for nine counts of cruelty to animals, are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 67-year-old senior piping designer, who has worked for the same defense contractor since November 1966, except for when she was out on strike. (GEs 1, 2; AE K; Tr. 76-77.) She completed three years of college study in mathematics in the 1960s. (AE K.) Applicant has held a security clearance at the Confidential or Secret level since she was first granted a DOD Secret clearance in March 1968. (GE 2; Tr. 79-80.) Her security clearance eligibility was last renewed in January 2008. (GE 1.)

Applicant married her spouse in March 1989, when she was 43 and he was 54. They lived in Applicant's home, which she has owned since January 1988. Her spouse has a grown daughter, who is now 51 years old, from a previous relationship. Applicant has no children of her own. (GEs 1, 2.)

From January 2001 to December 2004, Applicant attended a community college while also working for her employer. Six months later, she graduated from a technical high school as a trained, licensed practical nurse. (GE 1; Tr. 76.) Busy with her studies and employment, Applicant procrastinated about filing her federal and state income tax returns for tax year 2004. As the deadline approached and then passed, Applicant was unable to find the paperwork needed to file her returns. Her home was disorganized, in part because of her tendency to "hoard" items. (GE 4.) In addition, her husband was dealing with very serious health issues and did not keep good records. (Tr. 38-39.)

Around early December 2005, a complaint was filed with the animal control officer and with the police that Applicant had around 80 cats in her residence, in violation of a

municipal ordinance limiting household pets to three. Applicant acknowledges having had at least 17 cats in her home.¹ She was regularly feeding 12-15 feral cats outside her residence. (Tr. 41-42.) The police, accompanied by the animal control officer, executed a search warrant of her premises and removed all the indoor cats that they could capture. Applicant was prevented from entering the house for two weeks. When she returned to her home, she discovered that some cats had been left unattended in her home during her absence, and they had damaged the premises. Applicant was advised that she could keep three of the indoor cats. She took the cats to the veterinarian for treatment and then turned all but three over to the animal control officer. In mid-January 2006, Applicant was arrested and charged with nine counts of animal cruelty on reports of there being dead cats in her home and yard, which she denies.² (Tr. 43.) She was subsequently billed \$17,000, which she believed was for the veterinary care of the cats, both indoor and feral, and also for the hours spent by the police in her home. Applicant did not pay the debt because she did not have the funds, and she did not believe that she should pay for the care of the outdoor cats or the police hours. (GE 4.) On June 24, 2008, the charges were dismissed under an accelerated rehabilitation program. (AE I.) Applicant was ordered to attend counseling and to pay \$17,000 in restitution to the city.³ In August 2008, she began making payments on the debt under a five-year installment plan. From May 2009 to August 2013, she paid \$350 per month. (GE 4; AE J; Tr. 45.) With a final payment of \$52.76 on December 2, 2013, she satisfied the debt in full. (AE J; Tr. 66-67.)

Applicant and her spouse chose not to return to her house to live after December 2005. For the next three years, they rented a room in a motel. (GEs 1, 4; Tr. 70.) Around late 2008 or early 2009, Applicant and her spouse moved into a private home at a rent of \$300 a week. (AE K; Tr. 70.) They had an upstairs bedroom in the private home. Eventually, her spouse could no longer navigate the stairs easily due to his age and a serious medical condition, so in September 2012, they moved into their current, ground-floor apartment. (Tr. 70-71.) Applicant plans to resume residency in her house when her spouse passes away. She has never had tenants in the property. (Tr. 104.)

Applicant did not make her mortgage payments on her home from December 2005 through March 2006. Around September 2006, she paid off her loan. (GEs 4, 6.) With real estate taxes no longer being paid by escrow, Applicant had to pay the taxes directly to the city. Partially because of her own medical problems in 2006, she failed to pay her real estate taxes when they were due. (Tr. 39.) In July 2007, the city placed a tax lien against her property for delinquent real estate taxes.⁴ (GE 2.) In late March 2009, foreclosure

¹ Applicant previously told an investigator from the Office of Personnel Management (OPM) that she had 21 cats in her residence. (GE 4.) She now claims she had 17 indoor cats. (Tr. 41.)

² Applicant disclosed the charges on an Electronic Questionnaire for Investigations Processing (e-QIP) completed in October 2007 to update her security clearance eligibility. (GE 2.)

³ Applicant has been in individual therapy with a licensed clinical social worker for about four years. In the opinion of her therapist, she has made "immense progress and is clinically stable." (AE L.)

⁴ Applicant listed a property tax lien filed in July 2007 for an estimated \$1,700 on her 2007 e-QIP. (GE 2.) On her September 2011 e-QIP, she indicated that she was paying \$350 per month toward past-due property taxes that first became delinquent around January 2006. (GE 1.)

proceedings were initiated against her property for unpaid property taxes.⁵ (GE 3.) Applicant averted the foreclosure by making payments toward her delinquent property taxes for 2006 through 2008 starting in June 2009. In November 2012, the city released a lien on Applicant's property for delinquent property taxes for 2010. (GE 3; AE C.) As of mid-January 2013, Applicant still had not paid her real estate taxes of \$3,120 for 2011, which were payable in two equal installments due on July 1, 2012, and January 1, 2013 (SOR 1.i). As of mid-February 2013, Applicant's delinquent balance was \$2,902.77. (GEs 4, 8.) Between February 6, 2013, and March 28, 2013, Applicant paid \$888.33 toward her past-due property taxes for 2011. In mid-May 2013, Applicant entered into an agreement to pay at least \$350 per month to satisfy the \$2,256.02 balance. (GE 3; AE C.) As of December 2013, Applicant had reduced the balance of her delinquent property taxes for 2011 to \$1,427.86 (SOR 1.i). (Tr. 98.) She owes \$3,344.46 in real estate taxes for 2012. (AE C.) She is still paying \$350 per month toward her real estate taxes and expects to be caught up in 18-24 months. (Tr. 98.)

In addition, Applicant had a history of late payment of her motor vehicle taxes to the city. Car taxes for 2003 were paid in June 2005; for 2006 in April 2008; for 2007 on her new car⁶ and 2008 in April 2010; for 2009 in April 2011; and for 2010 in April 2012. (GE 4.) As of January 2013, Applicant had not paid her car taxes of \$322.53 for 2011 (SOR 1.g). With interest, the debt was \$361.24 as of mid-February 2013. (GEs 4, 7.) As of mid-May 2013, Applicant had not satisfied her delinquent vehicle taxes for 2011. She had missed several days of work the previous week because her spouse had to be hospitalized twice. Applicant had to pay the debt before she could re-register her vehicle, so she intended to pay it. (GE 3.) On December 2, 2013, Applicant paid \$104.68 toward her car taxes for 2011, to reduce the balance to \$150. (AE E; Tr. 50, 59.) Applicant has yet to pay her car taxes of \$298.93 for 2012. (AE E; Tr. 59-60.)

As of October 2011, Applicant had not paid a sewer installation assessment fee (SOR 1.h) delinquent for approximately a decade. Applicant did not pay it because she did not hook into the sewer line. (GE 4.) On April 1, 2013, the public utility billed her for the \$2,654.18 balance. (GE 3.) Applicant planned to start payments on the sewer assessment (SOR 1.h) after she paid off her car loan. As of December 2013, Applicant had not paid the debt because other debts had higher priority for her. She understands that she will have to pay the debt if she connects into the sewer line. (GE 3; Tr. 57, 97.)

Applicant had three collection debts on her credit record as of October 2011: a \$265 cable television debt from January 2007 (SOR 1.k); a \$324 medical debt from July 2008 (SOR 1.b); and a \$547 telephone debt from August 2010 (SOR 1.c). (GE 6.) She speculated during an October 2011 interview with an authorized investigator for the Office

⁵ Applicant also failed to timely pay refuse fees to the city between 2005 and 2009. (GE 4.) She paid off the refuse fees in October 2009. (AE D.)

⁶ Available credit records show that Applicant took on an automobile loan for \$29,996 in April 2007. She made her \$610.12 monthly payments on time and had reduced the balance to \$10,662 as of September 2011. (GE 6.) As of May 2013, she owed only \$613 on the car loan. (GE 5.)

of Personnel Management (OPM) that the cable debt was for services before December 2005, but she thought she had paid her account in full when she cancelled the service. The \$324 medical debt was likely for radiological services. Applicant provided the investigator with evidence that she had paid off the debt in September 2011 (likely the debt in SOR 1.b). Applicant disputed the \$547 telephone debt in collection in that after she cancelled the service she paid a collection agency around \$200 to satisfy the debt. Applicant indicated in October 2011 that she would contact her creditors, to pay off the cable debt and to inquire about the medical and telephone debts. (GE 4.) Applicant paid \$225.51 to her former cable television provider in November 2011 to satisfy that debt (SOR 1.k). The charge was for failing to return a converter box that was in her home after she and her spouse moved to the motel. (AE F; Tr. 48-49, 61.) In March 2013, she started paying \$84.15 per month toward a radiology debt in collection (likely SOR 1.d).⁷ (AE H.) She made the payments through June 2013. She missed a couple of payments before recently resuming payment. (Tr. 63-64.) Applicant paid \$100.41 in March 2013 on the telephone debt in SOR 1.c. She planned to pay the debt in \$50 installments, but she did not make those payments. (GE 3; Tr. 74-75.)

Income taxes

When the deadline to file their 2005 income tax returns came due, Applicant and her spouse were living in the motel. Applicant did not have the documentation needed to file their returns for 2004.⁸ Applicant made no effort to look for her income tax documentation for 2004 or 2005 while under medical treatment from the summer of 2006 to November 2006. As returns came due annually for subsequent tax years 2006 through 2011, neither Applicant nor her spouse filed federal or state income tax returns. Applicant procrastinated about looking for her information to file for tax year 2004, and, at least initially, she believed she had to submit the return for 2004 first. (GE 4.)

In March 2011, the IRS filed a tax lien of \$12,364 against Applicant for unpaid tax balances of \$3,163.57 for 2004, \$4,374.30 for 2005, \$2,333.15 for 2006, and \$2,493.80 for 2007. (GEs 3, 5, 6, 9.) The IRS had filed substitute federal returns for Applicant (as married filing separately) for tax years 2004 through 2007, and assessed delinquent taxes for those years.⁹ (Tr. 81-82.) The IRS began attaching her wages for the debt. Because she could

⁷ The SOR alleged two medical debts in collection, of \$324 (SOR 1.b) and \$542.07 (SOR 1.d). The OPM investigator reported that Applicant paid off a dental debt in collection, which may well be the debt in SOR 1.b. Applicant indicated in March 2013 that a collection agency was handling both debts, which had a collective balance of \$880.13. Available documentation shows an imaging debt in collection, which had a balance of \$627.68 as of June 5, 2013. (AE H.) Applicant does not now recognize the debt in SOR 1.b. Applicant testified that she has had some difficulties with insurance payments in that her plan changed a couple of years ago. Instead of paying 10% upfront for office visits for example, she is required to pay the balance until she reaches her deductible. (Tr. 47-48.)

⁸ According to Applicant, she and her spouse had filed their income tax returns jointly since their marriage. (GE 4.)

⁹ IRS records show that the IRS filed substitute returns for tax years 2004 and 2005 in late March 2008, showing taxable incomes of \$47,706 and \$66,125. In August 2008, the IRS filed a substitute return for 2006 showing taxable income of \$62,930. In August 2009, the IRS filed a substitute return for 2007 showing taxable

not live on her pay after the garnishment, Applicant elected to take out a five-year loan of \$10,673.64 from her 401(k) account at work.¹⁰ (Tr. 40-41.) After payments of \$3,163.57 in April 2011, and \$569.17, \$332.17, and \$10,351.41 in August 2011, the lien was released in September 2011. (AE A; Tr. 41.)

Due to the wage attachment, her employer's security department reviewed her security file from 2007. (Tr. 41.) Applicant was requested to complete an Electronic Questionnaire for Investigations Processing (e-QIP). On a September 27, 2011 e-QIP, and during an October 20, 2011 interview with an OPM investigator, Applicant explained that she had failed to file her federal returns for tax years 2004 through 2011 because she lost the paperwork for 2004, her home was raided in December 2005, and she had medical issues.¹¹ Applicant acknowledged to the OPM investigator that she had not yet filed her federal income tax returns for tax years 2008 through 2010, or her state tax returns for 2004 through 2010. Applicant expressed her intent to file joint amended returns for herself and her spouse for tax years 2004 through 2007 and to file their other late federal and state income tax returns. Applicant added that she would begin receiving social security in December 2011, and she intended to use the funds to repay her delinquent taxes and other debts. (GEs 1, 4.)

As of October 5, 2011, Applicant's credit record showed a federal tax lien of \$12,364 filed in March 2011. (GE 6.) During a second interview with the OPM investigator, which was conducted on October 27, 2011, Applicant indicated that the lien had been released after she paid off the federal tax debt for tax years 2004 through 2007. (GE 4.)

On September 10, 2012, the IRS sent notices (second reminder) to Applicant that she owed \$5,254.66 for tax year 2008 and \$6,410.96 for 2009. (AE A.) Apparently, the IRS had filed substitute returns for those years because neither Applicant nor her spouse had filed their returns. Around March 2013, Applicant verbally committed to the IRS to pay \$170 per month for delinquent federal taxes. In response to DOD interrogatories, Applicant indicated that at the request of the IRS, she and her spouse were in the process of preparing their joint federal returns for 2010 and 2011 first, because they anticipated refunds for those years. They had not filed any state income tax returns for tax years 2004 through 2011. They planned to file their state returns only after filing amended federal returns for 2004 through 2007 and their federal returns for 2008 through 2011. (GEs 3, 4.)

Around April 2013, a professional tax preparer faxed Applicant and her spouse's completed returns for tax years 2008 through 2012 to the IRS. (GE 3; Tr. 106, 112.) Applicant claims that she made some payments to the IRS voluntarily, pending the IRS's assessment of her returns (Tr. 105), although there is no corroborating documentation in

income of \$65,719. (AE A.) Applicant did not think about filing state returns at that time because she was having state taxes withheld from her wages, and she believed that the IRS would report her tax information to the state. (Tr. 111.)

¹⁰ Applicant has been repaying the 401(k) loan at \$82.38 a week. (GE 3.)

¹¹ Applicant presented medical record documentation showing that she was hospitalized for about a week in 2010 for follow-up surgery for a condition initially treated between 2006 and 2007. (AE M.)

the record. In mid-July 2013, the IRS applied Applicant and her spouse's income tax refund of \$2,515.09 for 2011 toward their tax debt for 2008, reducing the balance to \$1,398.89. In early September 2013, their tax debt for 2008 was paid off after the IRS applied \$1,384 of their \$2,028 refund for 2012 to their 2008 tax debt. The IRS applied the rest of their refund for 2011 to their 2009 tax debt to reduce their past-due balance for that tax year to \$6,051 (SOR 1.m). Two weeks later, Applicant and her spouse were notified that they owed \$7,215.13 for tax year 2010 (SOR 1.m). (AE A.) The IRS has asked Applicant and her spouse to repay their past-due taxes for 2009 and 2010 at \$180 per month starting in late January 2014. (Tr. 88, 105.)

With the assistance of a professional tax preparer, Applicant and her spouse completed their state income tax returns for 2010 and 2011 in April 2013, and for 2008 and 2009 in August 2013. Applicant took the forms from the tax preparer and put them in a drawer at home. She assumed that the tax preparer had submitted the originals to the state tax authority. (Tr. 89-90.) It is unclear when they filed their 2012 return. On September 4, 2013, the state notified them that they owed \$528.20 for tax year 2012 (SOR 1.l) on reported state adjusted gross income of \$86,430. In collecting documents for her security clearance hearing, Applicant noticed that she had not received any bills from the state for tax years 2008 through 2011, even though she had signed copies of the returns showing taxes owed for those years. She and her spouse went to a state tax office with the signed forms on December 4, 2013, and discovered that the state had no record of them. So, they filed their state returns for 2008 through 2011. (AE B; Tr. 46, 109.) Applicant and her spouse reported state adjusted gross income of \$93,939 in 2008, \$141,155 in 2009, \$150,688 in 2010, and \$93,322 in 2011. They calculated their tax debt at \$778 for 2008, \$2,600 for 2009, \$4,066 for 2010, and \$1,404 for 2011. As of December 5, 2013, the state had not yet processed their tax returns for 2008 through 2011. The SOR alleges in 1.j that Applicant owes delinquent state taxes of \$1,273 for 2010, but Applicant estimated her debt at \$4,066 for that year. Since her debt for 2010 is incorporated within SOR 1.m, a favorable finding is warranted as to SOR 1.j. Applicant and her spouse had yet to file their state returns for tax years 2004 through 2007 or to pay their past-due state taxes. (AE B; Tr. 105.) The state has recommended that they pay at least \$50 per month starting in January 2014. (Tr. 105.)

Applicant attributes their tax underpayments to her spouse's failure to pay taxes on his social security benefit of \$1,100 a month. (Tr. 83-85.) Applicant adjusted her federal and state income tax withholdings for tax year 2013 to reduce taxes owed, if any. Applicant now has taxes withheld at the single rate rather than as married. (Tr. 84-85.)

Applicant collects a social security benefit around \$1,813 a month after deductions for taxes. (GE 4.) As of March 2013, she had estimated disposable income around \$135 per month after paying household expenses, including rent of \$1,035, and debts (\$350 in restitution payments, \$350 toward her property taxes, her \$610.12 car payment, and a couple of credit card debts). (GEs 3, 4.) Applicant had three open credit card accounts with an aggregate balance of \$914 as of November 2013. (GE 9.) Applicant's financial situation has improved with the payoff of her car loan in June 2003 and of her restitution in

December 2013. (Tr. 115-116.) Her earnings from her defense contractor employment have varied because of time missed to care for her ill spouse. (Tr. 116.)

Character References

Applicant and her spouse paid their rent on time when they lived in the private home. Their previous landlord is of the opinion that Applicant was treated unfairly by the city over the cat issue. Applicant demonstrated to her “the highest level of integrity and honesty.” (AE K.)

Applicant’s present supervisor has known Applicant for over 25 years. Applicant earned his trust because of her work ethic, professionalism, and dependability. (AE K.) A union vice president, who works as an electrical designer, has maintained a relationship with Applicant for the last 15 years. He has found her to be a conscientious worker. He is aware that Applicant has had some serious health problems in the last 12 to 15 years that “probably contributed to . . . some confusion in record-keeping that might be part of the problem that she got into, with financial difficulties.” (AE K; Tr. 10-11.) A senior piping designer, who has known Applicant since he started with their employer in 1981, was informed by Applicant that she had not filed timely state or income federal tax returns starting with tax year 2004. While this piping designer does not condone her failure to file timely income tax returns, she and her spouse have both endured serious illnesses over the years. He considers her failure to file returns as an “oversight” and not a blatant disregard of the law. She was having taxes withheld from her pay, so she paid “the majority of her taxes in a timely fashion and has since made restitution for the delinquency upon being notified.” Applicant’s references consider her to be of sound character and trustworthy. (AE K.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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 applicant or proven by Department Counsel. . . .” The applicant 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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.

Guideline F articulates several conditions that could raise security concerns. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established. A federal tax lien of \$12,364 was filed against Applicant in March 2011 for delinquent taxes from 2004 through 2007 (SOR 1.a). As of December 2013, Applicant owed the IRS \$13,266 in delinquent income taxes for 2009 and 2010 (SOR 1.m) and her state at least \$9,380 for tax years 2008 through 2012 (SOR 1.l). A \$324 medical debt was placed for collection in 2008 (SOR 1.b), and it was not paid until September 2011. As of June 2013, Applicant owed \$627 on a radiology debt in collection (SOR 1.d). She had paid only about \$100 on a \$547 telephone debt in collection since August 2010 (SOR 1.c). Applicant did not pay her real estate taxes for 2006 through 2008

before June 2009, when she started making payments after being notified that the city intended to foreclose on her property. As of mid-January 2013, Applicant had not paid her real estate taxes of \$3,120 (SOR 1.i) or her vehicle taxes of \$322 (SOR 1.g) for 2011. A sewer assessment debt of \$2,654 from the early 2000s has not been paid (SOR 1.h), although Applicant maintains that she is not required to pay the debt unless she connects to the sewer. A cable television debt of \$265 was referred for collection (SOR 1.k) before she paid it in November 2011.

Applicant's tax delinquency is due partially to her failure to comply with her legal obligation to file timely federal and state income tax returns for tax years 2004 through 2011 (SOR 1.e). The IRS's filing of substitute returns for Applicant for tax years 2004 through 2007, and the adjusted gross incomes reported on her tax returns for 2008 through 2011, show Applicant met the income threshold to be required to file federal and state returns for those years. Most of the reported income is from her employment with the defense contractor. Her spouse has only his social security benefit. After the IRS issued the \$12,364 tax lien against her in March 2011, Applicant took no action to file her late returns for 2008 and 2009, or timely returns for 2010 and 2011. These federal returns were not submitted until April 2013, when she likely also filed her 2012 federal income tax return. Applicant did not file her state income tax returns for 2008 through 2011 until December 4, 2013, the day before her security clearance hearing. Even assuming that Applicant thought that her tax preparer had submitted her state returns for 2010 and 2011 in April 2013 and for 2008 and 2009 in August 2013, the returns were filed unreasonably late. As of December 5, 2013, Applicant had not filed, and the state had not prepared substitute returns, for tax years 2004 through 2007. The DOHA Appeal Board has held that each instance of failure to file timely income tax returns is a separate act of security concern. See *e.g.*, ISCR 11-06622 (App. Bd. Jul. 2, 2012). The disregard or neglect of her tax filing obligation raises doubts about whether she can be counted on to comply with well-established government rules, including the regulations for protecting classified information. See *e.g.*, ISCR Case No. 94-0964 (App. Bd. Jul. 3, 1996); ISCR Case No. 97-0744 (App. Bd. Nov. 6, 1998); ISCR Case No. 01-05340 (App. Bd. Dec. 20, 2002). AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," is clearly established, even when there is no intent to evade the payment of taxes.

Concerning potentially mitigating conditions, 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," has limited applicability. Applicant has largely paid her consumer credit debts on time. She is not behind on her current living expenses or credit card payments. The cable television debt in SOR 1.k was likely due to oversight in that she failed to turn in a converter box that remained in her property after she and her spouse vacated the premises following the December 2005 "cat raid." However, AG ¶ 20(a) does not apply to unresolved delinquencies, such as her motor vehicle and real estate taxes from 2011 and her federal and state tax debts. Applicant has paid only \$100 toward the telephone debt in collection since 2010.

Mitigating condition 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,” is partially implicated. Applicant and her spouse have both had serious medical issues that resulted in some medical copayments and lost time at work. She testified that she has had some difficulties with insurance payments since her plan changed a couple of years ago. Instead of paying 10% upfront for office visits for example, she is required to cover the full cost until she reaches her deductible. (Tr. 47-48.) This might explain her radiology debt, but without more information about her and her spouse’s medical copayments over the years, I cannot determine the extent to which medical debt impacted their household finances. Medical issues could mitigate Applicant’s inattention to her income tax filing obligations, but only for a brief time while she or her husband was in treatment or recuperating. In August 2010, she had follow-up surgery for a serious medical condition for which she was treated from the summer of 2006 to November 2006. Her tax returns for the previous year would have been due before she received treatment in both 2006 and 2010. The evidence falls short of showing that she was prevented because of her or her spouse’s medical conditions from filing timely returns for any of the tax years at issue. Applicant cannot fully avail herself of mitigation under AG ¶ 20(b) where she did not file her returns because of admitted procrastination and disorganization. Applicant’s belated real estate tax and motor vehicle payments were also within her control. The \$17,000 restitution repayment for the animal cruelty charges took funds that could have been used to pay her taxes. However, Applicant and her spouse’s adjusted gross income ranged from \$93,939 to more than \$150,000 when she was making the restitution payments. Applicant did not act responsibly concerning her federal and state tax filing and payment obligations.

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,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” both address efforts to resolve financial issues of security concern. There is no indication that Applicant has ever had financial counseling, but she has taken affirmative steps to pay off some of her delinquencies. The \$12,364 tax lien was released on her final payment of \$10,351 in August 2011 with funds borrowed from her 401(k). Paying off the tax lien with a loan was reasonable, given it avoided further accrual of interest and penalties for late tax payments. She is repaying the loan through wage deductions. Applicant paid off the cable debt (SOR 1.k) in November 2011. Applicant made no payments toward her delinquent real estate taxes from 2006 through 2008 until the city notified her of its intent to foreclose on her property. Still late in her payments, she did not pay off her 2010 real estate taxes until 2012. As of January 2013, she owed \$3,120 in real estate taxes for 2011. Yet, in her favor, she made payments in 2013 to reduce her balance for 2011 to about \$1,427 as of December 2013. In mid-May 2013, she entered into an agreement with the city to pay \$350 per month to satisfy her real estate taxes. Applicant is not required to pay off each of her delinquent balances before she can be granted security clearance eligibility. It is enough that she have a credible plan in place and that she has taken significant steps to implement her plan. See ISCR Case No. 07-06482 at 2-3 (App.

Bd. May 21, 2008). Applicant is likely to continue to make her payments to the city to catch up on her real estate tax obligation.

Applicant's case for full mitigation under AG ¶ 20(c) or AG ¶ 20(d) falls short with respect to the telephone debt in SOR 1.c, the medical debt in SOR 1.d, her motor vehicle taxes from 2011 in SOR 1.g, the public utility assessment in SOR 1.h, and her delinquent federal (SOR 1.e and 1.m) and state (SOR 1.j and 1.l) income tax debts. Applicant has been inconsistent in her timing and amount of her payments toward those debts. She has made only one payment, around \$100, on the telephone debt. Applicant arranged with the collection agency holding the medical debt in SOR 1.d to make \$84.15 payments, but she missed some payments after June 2013. It is unclear why she did not keep up with the payments, given she had paid off her car in June 2013, so she should have had an extra \$610 in discretionary income each month. Applicant paid around \$104 toward her car taxes for 2011 in December 2013, to reduce her balance for that year to \$150, but again, she has yet to explain why she hasn't been able to satisfy the debt in full. Applicant testified that she cannot afford to pay the sewer assessment at this time. As for her delinquent federal and state income taxes, Applicant reportedly committed to paying \$170 a month to the IRS starting in March 2013, pending completion of her delinquent tax returns. When asked at her hearing whether she had missed any payments to the IRS since April 2013, Applicant responded:

I haven't paid anything, no, because the confusion was going to go on a payment plan until we get all our back taxes. They have to be filed.

Applicant then indicated that she was paying "on her own voluntarily." (Tr. 106.) Available documentation from the IRS shows that Applicant and her spouse's tax refund for 2011 was applied to taxes owed for 2008. Their refund for 2012 was applied to satisfy the balance of the 2008 taxes, and to reduce their 2009 tax debt to \$6,051. IRS records do not indicate a track record of payments from Applicant toward her back taxes. With \$7,215 in federal tax debt for 2010, Applicant and her spouse owe the IRS \$13,266 for 2009 and 2010, which she has promised to repay at \$180 monthly. Applicant and her spouse calculated their state tax debt at \$9,380 for 2008 through 2012. She has informally agreed to pay \$50 to the state toward her back taxes pending the state's assessments of their returns. Since neither Applicant nor her spouse has filed state returns for tax years 2004 through 2007, her total tax liability cannot be accurately determined.¹² It remains to be seen whether she will make the payments required by the IRS and the state toward her tax delinquencies.

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,"

¹² Under Section 12-735 of the state's income tax laws, if any person fails to pay the amount of tax reportedly due on the return within the time specified, the department of revenue shall impose a penalty equal to 10% of the amount due and unpaid. Interest will be assessed at the rate of one percent a month or fraction thereof, from the due date of the tax until it is paid. The commission may waive penalties, but only when the failure to pay any tax was due to reasonable cause and was not intentional or due to neglect.

applies to the federal tax lien in SOR 1.a and the cable debt in SOR 1.k because Applicant paid those debts in 2011, well before the SOR was issued. AG ¶ 20(e) is also implicated in that the evidence falls short of establishing that Applicant still owes the medical debt in SOR 1.b. Applicant told the DOD in March 2013 that the debt had been added to the balance in SOR 1.d. However, Applicant provided documentation to the OPM investigator in October 2011 showing payment of a \$377 dental debt. While a collection balance of \$324 remained on her credit record as of June 2013, the balance was as of July 2008. Concerning the \$2,654 public utility debt, Applicant expressed her belief that she does not have to pay the debt unless she connects to the sewer or sells her property. However, at least as of April 2013, the public utility was billing her for the entire balance. For the reasons noted, the financial concerns are not fully mitigated.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The SOR separately alleges Guideline E concerns because of Applicant's failure to comply with her federal (SOR 2.a) and state (SOR 2.b) income tax return filing obligation for tax years 2004 through 2011. Apart from any considerations of financial indebtedness, the failure to file income tax returns is a matter appropriately addressed under Guideline E, which deals with conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations. See ISCR 06-20964 (App. Bd. Apr. 10, 2008.) In an appropriate case, the conduct of security concern can be given independent weight under each guideline. See ISCR 11-06622 (App. Bd. Jul. 2, 2012.) Applicant knew that she was required by law to file timely federal and state income tax returns for each of the years at issue. Even assuming she had no intent to evade payment of taxes, she committed repeated violations of Title 26, Section 7203 of the United States Code, which provides as follows:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year or both, together with the costs of prosecution.

Concerning her state tax returns, Applicant was required under Section 12-719 of her state's general laws to file her income tax return on or before April 15th following the close of the tax year. Applicant exhibited very poor judgment by not fulfilling her lawful tax obligations for eight years. When considered as a whole, her failure to comply with her tax obligations before 2013 supports a whole-person assessment of questionable judgment and unreliability, as contemplated within AG ¶¶ 16(c) and 16(d), even if neither of those disqualifying conditions are fully met because her repeated failure to file is sufficient for an adverse determination under Guideline F.¹³ AG ¶¶ 16(c) and 16(d) provide as follows:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources.

Guideline E concerns are also established by Applicant's conduct concerning the cats in her home. The evidence falls short of establishing that she mistreated the 17 or so indoor cats. The cats had been "vetted" in that she had taken them to a local veterinarian. However, she had well over the three household pets allowed by the city in her home before the "cat raid" in December 2005. She had another 12-15 feral cats that she was feeding outside. However benign her motives, the matter involving the cats also implicates the judgment concerns addressed in AG ¶¶ 16(c) and 16(d).

¹³ Applicant's repeated failure to file her federal returns could have been alleged under Guideline J as well in light of her repeated misdemeanor violations of federal law.

Two mitigating conditions under AG ¶ 17 are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Sufficient time has passed since her violation of the city ordinance to mitigate the personal conduct concerns raised by the charges of animal cruelty under AG ¶ 17(c). Applicant participated in the counseling required as a condition of her accelerated rehabilitation, and her therapist considers her to be clinically stable. In December 2013, she finished five years of restitution payments. AG ¶ 17(d) also applies. In contrast, Applicant's disregard of her federal and state income tax filing obligations continued until August 2013 with some of her federal returns and until December 2013 with her state returns. Her noncompliance with her income tax filing obligation is too recent and repeated to mitigate the personal conduct concerns under AG ¶ 17(c) or AG ¶ 17(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹⁴

Applicant is a longtime defense contractor employee, who failed to comply with her income tax obligations even before the "cat raid" of her property in late December 2005. By all accounts, she has been a good worker for her employer. She has not allowed her financial matters, tax issues, or personal and spousal health problems to negatively affect her work performance. She continued to work full-time while caring for her ill spouse. However, her reputation at work for ethical behavior is undermined by her failure to file her income tax returns for eight years. Applicant has paid off a \$17,000 restitution debt and thousands in back taxes in the last five years. Applicant is in the process of resolving her tax liabilities. The DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need

¹⁴ The factors under AG ¶ 2(a) are as follows:

(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.

only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). At the same time, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Given the delay in filing her income tax returns, and with \$20,000 in tax debt still owed, Applicant needs to demonstrate a record of timely compliance with her income tax return filing obligations and payments on her income tax liabilities before I can be assured that her financial and personal conduct issues are in the past and not likely to recur. Under Applicant's current circumstances, grant or continuation of a security clearance is not warranted at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge