



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



In the matter of: )  
 )  
 ) ISCR Case No. 12-08983  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

03/06/2017

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Although Applicant has paid the largest consumer credit account alleged in the SOR, she failed to mitigate the concerns raised by her failure to timely file federal and state income taxes in 2010 and 2011, as well as the concerns raised by her approximately \$26,000 in unpaid federal taxes. Clearance is denied.

**Statement of the Case**

On November 9, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. On June 23, 2016, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses. Department Counsel submitted documents by the July 6, 2016 deadline. At the hearing, which proceeded as scheduled on July 14, 2016, I admitted Government's Exhibits (GE) 1 through 5 and Hearing Exhibits I through III, without objection. After the hearing, the record remained open until August 31, 2016, to allow Applicant to submit documentation to support her claims regarding her finances.<sup>2</sup> She did not submit any documents. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on July 20, 2016.

## **Procedural Matters**

### **SOR Amendment**

At hearing, Department Counsel moved to amend the SOR to add an allegation under the financial considerations guideline, specifically that the IRS filed a tax lien against Applicant in November 2016, seeking to collect approximately \$26,000 in unpaid federal taxes. Applicant received notice of the proposed amendment in March 2016, but did not respond. At hearing, Applicant acknowledged receipt of the proposed amendment. She did not object to the amendment, which she admitted and denied, in part. Applicant admitted that she owed unpaid federal taxes, but she denied the amount owed or the existence of a lien. The SOR was amended without objection, the allegation is added to the SOR as ¶ 1.d, and Applicant's answer was noted for the record.<sup>3</sup>

## **Findings of Fact**

Applicant has worked for a federal contractor as a software engineer since May 2006. She completed her first security clearance application in April 2012, disclosing her failure to file and pay state and federal taxes for 2010 and 2011. She also disclosed participating in a debt consolidation program and retaining legal counsel to resolve a credit debt. Applicant did not disclose any delinquent or past-due accounts. In addition to failing to file state and federal tax returns for the years reported (1.c), the credit reports in the record show Applicant owes a collection account to a university for \$1,876 (1.a), a \$24,356 judgment for a credit card (1.b), and approximately \$26,000 lien for unpaid federal taxes (1.d).<sup>4</sup>

Applicant incurred SOR ¶ 1.a while pursuing her post-graduate degree. Although she did not complete her studies, she believes that she paid the alleged account in

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<sup>2</sup> Tr. 75.

<sup>3</sup> Tr. 9-14.

<sup>4</sup> Tr. 22-23; GE 3-5.

2010 or 2011 when she withdrew from her program. However, she did not submit any documentation showing that the account has been resolved. The largest debt in the SOR, ¶ 1.b, is for a credit card Applicant and her ex-husband used during their marriage, which lasted from 1999 to 2002. For a time, Applicant resisted paying the account because she believed that her ex-husband should have to pay for the charges he incurred. However, Applicant is the primary account holder while her ex-husband was an authorized user. As a result, he had no legal obligation to help her repay the debt. The creditor obtained a judgment against Applicant and garnished her wages to recover the delinquent balance. In 2014, Applicant settled the account with the creditor and it is resolved.<sup>5</sup>

Applicant's tax problems stem from the financial help she provided to her family members between 1998 and 2010. As the oldest of six siblings and the only one with consistent employment, Applicant assumed financial responsibility for younger siblings after she completed college and began working in the late 1990s. From 2004 to 2010, Applicant's younger brother and his two minor children lived with her. Applicant claimed head of household status on her federal taxes. She increased the number of tax exemptions to decrease the amount of taxes withheld from her pay. In 2010, Applicant's brother became financially independent and assumed financial responsibility for his children. In an effort to make sure that he was filing his tax returns correctly, Applicant delayed filing her own 2010 and 2011 federal and state tax returns. As of April 2016, Applicant claims that her federal and state income tax filings are up to date; however, she did not provide any corroborating documentation.<sup>6</sup>

Applicant admits she owes unpaid federal taxes as alleged in SOR 1.d. She cites two reasons for the federal tax liability: her failure to adjust her income tax withholdings after losing her head of household filing status and the tax consequences of cashing out stock options. In 2005, Applicant's father was arrested and charged with a felony. Applicant sold stock options she received from prior employment to help pay for his legal defense. In 2015, the IRS sent her employer a "lock-in" letter, ordering that her exemptions be reduced to zero. As a result of the adjustment, Applicant's federal tax withholdings resulted in an overpayment of her federal tax liability. The IRS captured her refund and applied it to her outstanding federal tax balance. Applicant claims that she established a payment plan with the IRS in October 2015 and that she made \$400 monthly payments in April and May 2016. She did not provide any documents confirming either the payment plan or payments to the IRS.<sup>7</sup>

Applicant's current financial health is unclear. She earns \$115,000 annually and is the primary source of income in her household, which includes her long-time partner. He contributes \$250 per month to the household expenses. Applicant continues to provide over \$1,000 each month in financial support to family members. She testified that in addition to the \$400 IRS payment, she is repaying a 401k loan as well as \$400

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<sup>5</sup> Tr. 29-35, 47-49; GE 1; Answer.

<sup>6</sup> Tr. 36-40, 40-50, 53, 58, 60-65.

<sup>7</sup> Tr. 35-36, 39-41, 50-57, 65.

each month toward student loans. Applicant believes that she has at least \$1,000 in disposable income each month. The credit reports in the record suggest that Applicant's monthly expenses exceed the estimate that she provided at hearing. Applicant did not provide a monthly budget or provide any other financial records to establish her ability to live within her means.<sup>8</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." 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 the 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 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.

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<sup>8</sup> Tr. 43-47, 66-74; GE 3-5.

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**

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”<sup>9</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record shows that Applicant has one outstanding delinquent account and that a creditor secured a judgment against her and garnished her wages to recover monies owed. Also, she owes at least \$26,000 in unpaid federal taxes. Applicant has a history of not paying her financial obligations.<sup>10</sup> She also admits that she failed to timely file her federal and state tax returns in 2010 and 2011 as required.<sup>11</sup> Applicant did not produce sufficient evidence to mitigate the security concerns raised by her financial history. Although Applicant provided documentation that she has resolved the \$24,000 credit card debt alleged in SOR ¶ 1.b, she has not provided documentation to corroborate her testimony that SOR ¶ 1.a has been paid, that she has filed her outstanding federal and state tax returns as alleged in SOR ¶ 1.c, or that she is participating in a payment plan to resolve her outstanding federal taxes as alleged in SOR ¶ 1.d. Accordingly, Applicant’s financial problems are ongoing and remain a concern.

After reviewing the record, it is not appropriate to grant Applicant access to classified information based on her current financial situation. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant’s financial problems are not caused by irresponsible or reckless behavior, but by her willingness to overextend herself to support her family members. Ultimately, Applicant failed to establish that she is able to live within her means, meet her recurring financial obligations, or that her finances are otherwise under control. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. In the future, she may well demonstrate persuasive evidence of her security worthiness.

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> AG ¶¶ 19(c).

<sup>11</sup> AG ¶ 19 (g).

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c - 1.d:	Against Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge