



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 14-06904

**Appearances**

For Government: Charles Hale, Esq., Department Counsel

For Applicant: *Pro se*

06/21/2017

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position. She did not present sufficient evidence to explain, extenuate, or mitigate the concern stemming from her failure to timely file state and federal income tax returns for tax years 2005 through 2012. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on January 2, 2014. Thereafter, on January 19, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), detailing a trustworthiness concern under Guideline F for financial considerations and Guideline E for personal conduct (falsification). The SOR is similar to a complaint. She answered the SOR on February 25, 2016; she admitted the financial allegations and provided an explanation; she denied the falsification allegation and provided an explanation; and she requested a hearing.

The case was assigned to me on August 17, 2016. The hearing was held as scheduled on December 6, 2016. Department Counsel offered Exhibits 1 and 2, and they were admitted. Applicant testified on her own behalf and offered Exhibits A and B, and they were admitted. The hearing transcript (Tr.) was received on December 14, 2016.

### **Findings of Fact**

Applicant is a 57-year-old associate director (and registered nurse) for a health-care contractor to the Defense Department. She has worked for the same company since 2001. She submitted multiple letters of recommendation from her co-workers attesting to her reliability, trustworthiness, and professionalism in the workplace.<sup>1</sup> She is seeking to obtain eligibility to occupy a position of public trust for her job responsibilities. Eligibility is necessary because her job involves access to sensitive but unclassified information. Her educational background includes a bachelor's degree in nursing. She is divorced and has no children.

In her January 2014 application, Applicant disclosed that she had failed to file state and federal income tax returns for tax year 2008.<sup>2</sup> She explained that her taxes were paid via payroll withholding, but the returns were not filed because she lost paperwork due to a cross-country move to her current state of residence.

In the January 2014 background investigation, Applicant clarified that the 2008 tax year mentioned above was mistaken and the correct tax year was 2005.<sup>3</sup> She also stated that after she failed to file returns for 2005, she avoided filing returns, and she had not filed returns for tax years 2006 through 2012. She pledged to gather the necessary documentation and meet with an accountant in March 2014. She explained she did not believe she owed any back taxes because she had always received refunds in the past.

As alleged in the SOR, Applicant admits failure to timely file state and federal income tax returns for tax years 2005 through 2012.<sup>4</sup> She explained that when she moved to her current state of residence in 2005, she lost or misplaced paperwork relating to moving expenses, and that accounted for the initial delay in filing returns.<sup>5</sup> She failed to file for tax year 2006 because she felt she needed to complete the previous year. By the time returns were due for tax year 2007, she felt overwhelmed by the situation, because she did not know how to proceed.

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<sup>1</sup> Exhibit B.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Answer to SOR; Tr. 57.

<sup>5</sup> Tr. 28-29.

Applicant filed self-prepared state and federal returns for tax years 2005 through 2013 in August 2015.<sup>6</sup> She received refunds, some of which were applied to money owed for previous tax years. In September 2015, she wrote checks to the IRS for about \$15,212 in back taxes for tax years 2009 and 2011, and she wrote checks to the state tax authority for about \$1,130 in back taxes for tax years 2005, 2006, 2010, 2011, and 2012.<sup>7</sup> She timely filed her state and federal returns for tax years 2014 and 2015.

In addition to the failure to file returns, the SOR alleged Applicant provided a deliberately false answer in her January 2014 application, when she disclosed failure to file for tax year 2008, but omitted the several other tax years. At the hearing, she explained that she did not know why she answered the question in that fashion, but was not attempting to hide or conceal the information.

Applicant described her overall financial situation as comfortable.<sup>8</sup> Her current annual salary is about \$100,000, she owns a home with a mortgage, and she has investment accounts.

Both in her answer to the SOR and during the hearing, Applicant expressed her deep regret for allowing her fear of not knowing how to correct her tax problems to continue for such a long time. She described her situation as “pretty terrifying,”<sup>9</sup> and I found her expressions of regret and remorse to be both genuine and heartfelt.

### **Law and Policy**

This case is adjudicated under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017.

### **Discussion**

Under Guideline F for financial considerations,<sup>10</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

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

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<sup>6</sup> Exhibits 2 and A.

<sup>7</sup> Exhibit A.

<sup>8</sup> Tr. 58-61.

<sup>9</sup> Tr. 62.

<sup>10</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.<sup>11</sup>

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority and is in compliance with those arrangements.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. Applicant's tax problems cover multiple tax years dating back to 2005. Her well-established pattern of conduct, by the repeated failure to timely file state and federal income tax returns, bears close examination and is a matter of serious concern to the federal government.<sup>12</sup> This pattern of conduct suggests that she has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting sensitive information. An applicant who has a history of not fulfilling their tax obligations may be said not to have demonstrated the high degree of judgment and reliability required for access to sensitive information.

I considered Applicant's evidence of reform and rehabilitation and of her good reputation in her workplace. That evidence is not minor or insubstantial. She provided documentation showing that she has been in compliance with state and federal tax authorities since about September 2015. In weighing this evidence, I considered both the timing and length of her compliance, and note that her tax problems were wholly unresolved at the time of her January 2014 application and background investigation, and she came into compliance the following year. Nevertheless, her favorable evidence is outweighed by the nature, extent, and seriousness of her tax problems. To sum up,

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<sup>11</sup> AG ¶ 18.

<sup>12</sup> The General Accountability Office (GAO) expressed serious concern over the relationship between tax delinquents and clearance holders in its July 28, 2014 report, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, <http://www.gao.gov/assets/670/665052.pdf>.

Applicant's tax problems are too much, went on too long, and are too recent to justify a favorable decision.

Under Guideline E for personal conduct, the concern is that "[c]onduct 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 or sensitive information."<sup>13</sup> In addition to those general matters, "[o]f special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative process."<sup>14</sup> A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The SOR accused Applicant of making a false statement, by omission, when she did not disclose the full extent of her failure to file state and federal income tax returns. I have considered her explanation, and I found her explanation credible and worthy of belief. I am not persuaded that she was deliberately attempting to omit, hide, or conceal her history of tax problems.

To conclude, Applicant's history of tax problems creates doubt and concern about her reliability, trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. For all these reasons, I conclude Applicant did not present sufficient information to explain and mitigate the trustworthiness concern.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.p:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

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<sup>13</sup> AG ¶ 15.

<sup>14</sup> *Id.*

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard  
Administrative Judge