



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



In the matter of:

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ISCR Case No: 15-04646

Applicant for Security Clearance

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2016

Decision

DAM, Shari, Administrative Judge:

Applicant failed to timely file Federal income tax returns for six years and state income tax returns for eight years. She did not mitigate those financial security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 25, 2013, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP), as part of an application for a security clearance. On December 7, 2015, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (AR) on or about January 4, 2016, and requested a hearing before an administrative judge. On April 21, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 15, 2016, DOHA issued a Notice of Hearing setting the case for July 14, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibit (GE) 1 into evidence without objection. Applicant testified. She offered Applicant Exhibits (AE) A through X into evidence without objection. DOHA received the hearing transcript (Tr.) on July 26, 2016.

### **Findings of Fact**

Applicant admitted the allegations contained in the SOR ¶ 1.a, and ¶ 1.b. Those admissions are incorporated into these findings of fact.

Applicant is 44 years old and married to her husband since 2012. She has a 20-year-old daughter from a previous relationship. She earned a bachelor's degree in 2005. She is completing a paralegal certification program. In March 2012, she began a position with a defense contractor. Prior to that, she worked for financial institutions. (Tr. 15-20.)

Applicant testified that her income tax problems began between 2004 and 2005, and were attributable to several factors. During that time she was engaged to another man, and they purchased a home. Subsequently, the relationship terminated and Applicant became responsible for that mortgage in addition to a mortgage on a condominium that she owned. Her daughter had medical issues that required additional care. Applicant lost her job, and her mother had a stroke. The state repeatedly sent her notices that she had failed to file state income tax returns for 2000, which she asserted she had. (Tr. 26-27.) Out of frustration, she did not file her 2004 and 2005 state income tax returns, and later her Federal returns. She admitted that the situation began to "snowball" and she began to procrastinate. (Tr. 29-30, 42.)

Applicant filed her 2004, 2005, 2006, 2007, 2009, 2010, and 2011 state tax returns in August 2013, which was a month after she completed her security clearance application. These were all filed late. She filed her 2008 state tax return in December 2012, which was also late. She filed her 2012 state tax return in December 2014, which was timely because she and her husband had received an extension. (Tr. 38-39; AE C, AE N.)

Applicant does not know when she filed her 2006, 2007, and 2008 Federal tax returns. She thought she filed them one to three years after the due dates, and admitted they were probably filed late. She filed her 2009 Federal tax return in December 2012. She filed her 2010 and 2011 Federal tax returns in August 2013. Those three returns were filed late. She and her husband timely filed their 2012 Federal tax returns. (Tr. 43-45; AE C.)

Applicant and her husband timely filed their 2013, 2014, and 2015 Federal and state tax returns. (Tr. 46-48; AE C.) Applicant's annual salary is \$118,000, and her husband's salary is \$38,500. (Tr. 23, 25.) All of her living expenses and other credit accounts are current. (Tr. 50-52.)

Applicant accepts responsibility for not timely filing her state and Federal income tax returns. She acknowledged that it demonstrated a lack of judgment. She allowed the situation to "get out of control." (Tr. 41.) She regretted her behavior.

Applicant's supervisor is aware of this proceeding and the underlying security concerns. (Tr. 21.) In a December 2015 letter of recommendation, he commented on her honesty. (AE V.) She submitted her 2015 performance evaluation, in which she received an overall "exceeded goals" rating, and a subsequent performance award. (AE T, AE U.)

### **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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2(a), describing 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>1</sup>

AG ¶ 19 notes a disqualifying condition that could potentially raise security concerns in this case:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a long history of not timely filing Federal and state income tax returns. The evidence is sufficient to raise the above disqualifying condition.

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<sup>1</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

After the Government produced substantial evidence of the disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate financial security concerns under this guideline:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of failing to file income tax returns that spanned 2004 to 2011.<sup>2</sup> Her failure to comply with legal obligations for eight years casts doubt on her current judgment. Hence, AG ¶ 20(a) does not apply. Applicant failed to establish mitigation under AG ¶ 20(b), as there is insufficient evidence to conclude that circumstances beyond her control prevented her from timely filing tax returns. In fact, she stated that she intentionally did not timely file her 2004 and 2005 state income tax returns because she was frustrated with the state about an issue with her 2000 tax return. She also admitted that procrastination contributed to the late filings of her other tax returns. There is evidence that she filed all outstanding tax returns in 2013, and that she timely filed her 2013, 2014, and 2015 tax returns. The evidence establishes limited mitigation under AG ¶ 20(c). Given the lateness of return filings for tax years 2004 through 2011, and the fact that she filed many returns a month after submitting her security clearance application, she did not establish mitigation of good-faith efforts to resolve these issues under AG ¶ 20(d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

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<sup>2</sup> SOR ¶ 1.b alleged that Applicant failed to timely file state income tax returns from 2004 through 2012, as required. The evidence indicates that she timely filed her 2012 state tax return in December 2014 and that she had a legal extension to do so. Hence, tax year 2012 is stricken from this allegation.

(line space added here)

(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant is an intelligent, articulate, 44-year-old woman, who has successfully worked for a defense contractor since 2012 and is dedicated to her job. She has earned the support and recommendation of her employer. These are positive factors in this case.

However, between 2004 and 2011, Applicant failed to timely file income tax returns for reasons that she admitted involved poor judgment. In August 2013, she filed nine outstanding Federal and state tax returns. She has since timely filed her 2012, 2013, 2014, and 2015 returns. While she is slowly establishing a track record of complying with tax laws, her actions to date are not sufficient to outweigh a long history of non-compliance with a fundamental legal obligation to timely file tax returns. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).<sup>3</sup>

The record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. Applicant failed to fully mitigate the security concerns arising under the financial considerations guideline.

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<sup>3</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge