



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



In the matter of:

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) ISCR Case No. 15-06732  
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Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: Scott M. Wagenaar, Esquire

02/27/2017  
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**Decision**  
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DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, dating back to before 2008, and including years of unpaid federal income taxes. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 5, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 5, 2016, 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 (AG) effective within the DOD for SORs issued after September 1, 2006.

On April 26, 2016, Applicant answered the SOR (Answer) and requested a hearing. On August 29, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On October 19, 2016, DOHA issued a Notice of Hearing, setting the case for November 15, 2016. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through E. All exhibits were admitted into evidence without objections. The record closed at the end of the hearing. DOHA received the hearing transcript (Tr.) on November 23, 2016.

### **Findings of Fact**

Applicant admitted all allegations in the SOR, except the allegations in ¶¶ 1.d and 1.h, which she denied with explanations. Her admissions are accepted as factual findings.

Applicant is 53 years old and married to her husband for 30 years. They have two adult children, ages 28 and 30. Both children are military veterans. Her husband became disabled in 2008 and has not been employed since then. He started receiving monthly disability payments of \$1,300 in 2010. (Tr. 42-43.)

Applicant attributed the alleged financial problems to both her and her husband's medical problems that resulted in unpaid bills because they did not have insurance. She stated that her husband's disability, and numerous periods of unemployment or underemployment contributed to her financial issues. Over the past 12 years, she was unemployed during the following times: 6/2004 to 4/2005; 11/2005 to 1/2006; 4/2006 to 8/2006; 9/2006 to 3/2007; 9/2009 to 8/2011; 11/2011 to 11/2012; 11/2013 to 12/2013; and 3/2014 to 8/2014. (GE 1.) She thinks the last time she had full-time employment was in 2014 for three months. She collected unemployment in 2015, but has not collected it in 2016. (Tr. 35.) Her most recent employment position was a part-time job from September through November 2016. She is currently unemployed. (Tr. 41.)

When Applicant completed a November 2014 e-QIP, she disclosed that she and her husband owed the Internal Revenue Service (IRS) about \$6,000.00 for unpaid income taxes for years: 2006, 2007, 2012, and 2013. She told the investigator that she made an arrangement with the IRS to start a repayment plan in November 2014 to resolve the outstanding taxes. (GE 1.) There is no evidence of the payment plan or payments made to the IRS.

On April 5, 2016, DOHA issued a SOR to Applicant. On April 21, 2016, she contacted a debt consolidation company for assistance in managing debts. According to the budget she prepared with the company's assistance, her net monthly income at that time was \$1,726, and expenses were \$1,662. The company proposed resolving 16 delinquent debts totaling \$13,861 through monthly payments of \$510, beginning in June 2016. Applicant did not make any payments into the repayment plan because her job terminated before June 2016. (Tr. 34.)

On April 25, 2016, Applicant contacted the IRS to inquire about her tax liability for tax years 2005, 2006, 2008, 2009, 2013 and 2014. The IRS responded and told her she owed \$9,018 for those years. (Answer; AE A.)

In October 2016, the IRS notified Applicant that she owed taxes for the following years: 2005, 2006, 2008, 2009, 2013, and 2014.<sup>1</sup> The IRS proposed a monthly payment of \$5, beginning on November 28, 2016, and increasing to \$200 on November 28, 2017. Applicant testified that she intended to make the first \$5 payment at the end of the month. (Tr. 33; AE E.) Applicant said that she filed her federal and state tax returns for 2015, and owed the IRS \$970.00 and the state \$90.00.<sup>2</sup> (Tr. 26-28; AE D.) The unpaid 2015 federal taxes are not included in the proposed monthly installment agreement. She thinks she owes the IRS about \$10,000 for all seven-tax years. (Tr. 32-33.)

Based on credit bureau reports (CBR) from July 2016, February 2016, July 2015, and December 2014, the SOR alleged 22 delinquent debts totaling about \$23,000. The SOR also alleged two bankruptcies and delinquent federal income taxes for two years. The status of each allegation is as follows.

(¶ 1.a) In October 2008, Applicant and her husband filed a Chapter 7 Bankruptcy. In March 2009, the court discharged about \$13,300 in delinquent debts, which were incurred between 2004 and 2008. They included medical, dental, utility, and credit card bills. The bankruptcy disclosed that Applicant and her husband owed the IRS \$3,500 in unpaid taxes for 2006 and \$300 in unpaid state taxes for 2006. Applicant said the medical bills related to her husband's disability. Applicant and her husband reported an average monthly income of \$2,426 and expenses of \$2,380 at that time. (Tr. 16; GE 8.)

(¶ 1.b) In September 2013, Applicant and her husband filed a Chapter 13 Bankruptcy. The bankruptcy listed delinquent debts that totaled \$52,160. They included \$27,500 in defaulted student loans, \$10,000 in medical bills, and \$14,500 in miscellaneous debts, such as utility bills, phone bills, credit card bills, insurance bills, cash advances, repair bills, and unpaid non-sufficient funds (NSF) checks. At the time they filed this bankruptcy, they reported a monthly income of \$4,021. The bankruptcy was dismissed in April 2014, after Applicant lost her job and was unable to make automatic payments through her salary. She held a security clearance for that position. (Tr. 17-18; GE 7.)

(¶¶ 1.c and 1.d) Applicant owes the IRS for delinquent taxes for tax years 2006 and 2013. (Answer; AE. A.)

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<sup>1</sup> The SOR alleged unpaid taxes for 2006 and 2013. Hence, the unpaid taxes for years 2005, 2008, 2009 and 2014, will not be considered in the analysis of disqualifying conditions. They may be considered in the analysis of mitigating conditions, the whole person concept, and Applicant's credibility.

<sup>2</sup> The SOR did not allege unpaid taxes for 2015. Hence, those unpaid taxes will not be considered in the analysis of disqualifying conditions. They may be considered in the analysis of mitigating conditions, the whole person concept, and Applicant's credibility.

(¶¶ 1.e through 1.z) These debts are unresolved. Applicant said they were previously included in the Chapter 13 Bankruptcy she filed in 2013, but was unable to complete.

Applicant is not working. She and her husband use his monthly disability payment of \$1,400 to pay their expenses that total \$1,300. (Tr. 27.) They intend to file a Chapter 7 bankruptcy to discharge the debts previously included in the dismissed Chapter 13 bankruptcy. However, they have been unable to file the bankruptcy because they do not have enough money for the filing costs. Applicant's student loans, totaling \$28,852, were deferred in August 2016 and will remain in that status until April 2017. If she is unable to begin payments then, she will apply for another period of deferment. (Tr. 26-28, 30-31, 38; AE C.)

Applicant submitted a letter of recommendation from a former employer. He said she is a trustworthy person. A long-time friend stated that Applicant is a reliable and hardworking individual. (Answer.)

### **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 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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.”

Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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>3</sup>

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) inability or unwillingness to satisfy debts; and

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

(c) a history of not meeting financial obligations.

Beginning prior to October 2008 when she filed a Chapter 7 bankruptcy and subsequent to the filing, Applicant accumulated delinquent debts that she has been unable or unwilling to resolve. That debt includes unpaid federal taxes. The evidence raises the above two security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

(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's financial problems began before 2008 when she filed a Chapter 7 bankruptcy, and subsequently discharged about \$13,000 in delinquent debt. After that, she accumulated over \$52,000 of delinquent debts, as documented in her 2013 Chapter 13 bankruptcy. Those debts remain unresolved. Her reliability in managing income tax obligations for at least seven years remains a concern. AG ¶ 20(a) does not provide mitigation.

Applicant has been unemployed for numerous periods and currently is unemployed. She and her husband have had medical problems that resulted in unpaid bills for which they did not have insurance. Her husband has been on disability since 2010. Those circumstances were beyond her control. She provided some evidence that she attempted to responsibly manage the delinquent debts when she filed a Chapter 13 bankruptcy in 2013. However, after it was dismissed in early 2014, there is little evidence that she took any additional steps to address the debts or taxes until April 2016 when she contacted the IRS and a debt consolidation company. AG ¶ 20(b) provides partial mitigation.

Applicant received credit or budgetary counseling from a debt consolidation company in April 2016, but there is insufficient evidence to conclude that her finances are under control or coming under control. Mitigation under AG ¶ 20(c) was not established. She provided evidence that at the end of November 2016, she intended to start a payment plan for unpaid federal taxes for years 2005, 2006, 2008, 2009, 2013, and 2014, but not 2015. She has not paid or addressed any of the 22 SOR-listed delinquent debts, including three small medical debts for \$35, \$43, or \$51. Hence, there is minimal evidence demonstrating a good-faith effort to resolve debts and legal obligations. AG ¶ 20(d) provides limited mitigation.

### **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):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be 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 pertinent facts and circumstances surrounding this case. Applicant is a mature, honest, and intelligent 52-year-old woman, who experienced financial problems prior to October 2008 when she filed a Chapter 7 bankruptcy. She subsequently discharged about \$13,000 of delinquent debts. Her financial problems continued after that discharge, and led to Applicant's filing a Chapter 13 bankruptcy in September 2013. She was unable to maintain payments into the bankruptcy plan because she lost her job in April 2014. In addition to accumulating delinquent debts over the years, she and her husband owe the IRS about \$10,000 for unpaid income taxes for 2005, 2006, 2007, 2008, 2009, 2013, 2014, and 2015. In 2014, she told an investigator that she was starting a payment plan to resolve six of those years. That did not occur. In November 2016, she agreed to begin payments on a plan she negotiated with the IRS in April 2016, seemingly after receiving the SOR. While many of her financial difficulties are undoubtedly related to a lack of steady employment and her husband's disability, she did not demonstrate that she made consistent efforts over the years to responsibly manage financial obligations,

including income taxes. Seven years of unpaid and unaddressed taxes is a serious security concern.

In ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009,) the Appeal Board addressed a situation where an applicant was sporadically unemployed and lacked the ability to pay her creditors. The Appeal Board noted, "It will be a long time at best before she has paid" all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct," that is actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008)

In this case, Applicant recently negotiated a payment plan with the IRS based on her limited income, but had not yet started the payments at the time of the hearing. Applicant was unable to maintain payments into the Chapter 13 bankruptcy plan she established. However, she took no further steps, including making nominal payments on delinquent debts or taxes, since April 2014. To date, she has not established a consistent track record of responsibly handling financial obligations to outweigh years of financial problems and unpaid taxes. Applicant did not meet her burden to mitigate the security concerns arising from her financial considerations.

### **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:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline F:      | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.z: | 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM  
Administrative Judge