



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



In the matter of:

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) ISCR Case No.15-08304  
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Applicant for Security Clearance

**Appearances**

For Government: Robert Blazewick, Esq. Department Counsel  
For Applicant: Zekiah N. Wright

08/23/2017

**Decision**

LYNCH, Noreen, A., Administrative Judge:

On July 30, 2016, The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.<sup>1</sup>

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 15, 2017. A notice of hearing was issued on April 17, 2017, scheduling the hearing for August 4, 2017. Government Exhibits (GX) 1-5 were

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<sup>1</sup>In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-V admitted into the record without objection. The transcript was received on August 10, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegation in SOR ¶ 1.b, and denied allegations ¶¶ 1.a and 1.c. She provided explanations for the allegations under Guideline F (Financial Considerations).

Applicant is a 60-year-old senior subject analyst for a defense contractor. She is divorced and has one daughter. She obtained her undergraduate degree in 2001 and her master's in 2004 in taxation. She is also a certified public accountant (CPA). She has worked for her current employer since 2014. She completed her security clearance application (SCA) in January 2015, and she has held a security clearance for 10 years. (GX 1)

### **Financial Considerations**

The SOR alleges that Applicant failed to file her Federal and state income tax returns for tax years 2011 through 2014, as required; that she has an unpaid 2013 judgment in the amount of \$2,300; and that she is indebted to the state for delinquent taxes for tax year 2014 in the amount of \$1,693.

Applicant stated that this is the first time since she started filing income tax returns that she did not file her tax returns timely. She requested extensions of time to file but in some instances, she was forced to file outside of the extension date. The main reason for the delayed filings arose from a catastrophic event that occurred in her home while she was away on travel. When she returned home from travel, she learned that the water pipes had burst in her home and due to all the damage caused by the water, she lost belongings, and critical paperwork. As a result, the necessary documentation for the filing of her tax return was lost. At the hearing, Applicant explained that she needed documentation for the tax years to substantiate her deductions and business expenses.

She elaborated that from 2010 to 2013, she had several operations which lessened her earnings. (Tr. 37) She had to leave a full-time job in 2013 due to her health. At the time of November 2013 to November 2014, Applicant was self-employed as a real estate agent. Applicant had some delinquent accounts during that time but all have been paid as verified by her credit report. (GX 4)

Applicant disclosed in her SCA that she failed to file her tax returns and explained during her 2015 investigative interview that she always prepares her tax returns herself as she has the knowledge and expertise to do so. (Tr. 25) She also keeps her documentation in a secure place to avoid any future problems.

As to SOR allegation 1.a, Applicant contacted the IRS in 2011 and was granted an extension. She began to contact banks and other companies to obtain all the necessary information that she needed to substantiate her deductions and obtain 1099s. (Tr. 42) This took some time. Applicant wanted to be meticulous in her filings, so each year, she had to request an extension. Her plan was to start with the most recent tax years, as some of the 1099s for the earlier tax years could not be easily located. She contacted banks, investment companies, and credit card companies. (Tr. 48) She had to wait for statements and copies of checks.

Applicant explained that she filed the Federal and state tax returns for the years 2015 and 2014, which were filed together in the year 2016. She explained that there was a mixture of refunds and tax owed for the various years. (Tr. 25) She filed the 2013, 2012, and 2011 tax returns in 2016 and 2017. She has paid all taxes that were owed to either Federal or state. (AX C-P) For tax years 2014 and 2015, Applicant made a voluntary estimated tax payment to the IRS and the state. She is current with all Federal and state tax filings at this time. Also, Applicant paid the IRS in advance of them processing her tax return. She was proactive and acted in good-faith in an unfortunate situation. She was credible when she stated that upon contacting the IRS, she learned that tax law states a person has three years (if you do not owe any tax) from the date of filing to obtain a refund. After that, one forfeits the refund. (Tr. 28)

As to SOR allegation 1.b, the 2013 judgment (\$2,300) was the result of a property dispute. Applicant was the Plaintiff in the case. However, she was ill for the court date and could not attend. She sent her adult daughter with a physician's note asking for a continuance, but the court did not grant the continuance. (Tr. 33) The defendant countersued. (Tr. 34) Applicant was again ill and in the hospital in 2013. She could not locate the defendant to pay him. She contacted his law firm, but the attorney was no longer with the firm. She called the District Court, but learned that she could not make the payment to them. She finally located the attorney and issued a check to the person. The check was cashed two days later but he did not file a notice of satisfaction of judgment immediately. The payment of \$2,300 was made in August 2016, and a notice of satisfaction was issued in September 2016. (AX R)

As to SOR allegation 1.c, Applicant owed \$1,693 to the state for delinquent taxes for tax year 2014. She satisfied the amount with a refund from 2015. (AX Q )

At the hearing, Applicant stated that she understands the importance of accuracy in her tax filings. She has never had any difficulty handling her finances or filing tax returns. She pointed out that she co-signed a student loan for her daughter and the loan is in deferment. She also included a payment receipt for a non-SOR debt that appeared on her latest credit report. Her latest credit report reflect all accounts "pays as agreed" and the student loan in deferment. (GX 4)

Applicant earns about \$154,000 a year. She has both savings and retirement accounts. She is current with all her financial obligations. She has discretionary income at the end of the month in the approximate amount of \$2,500. She lives within her means and budgets.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 national security eligibility 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." <sup>5</sup> "The clearly consistent standard indicates that security clearance

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (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;

The Government produced credible evidence to establish the delinquent debts and the failure to timely file federal and state tax returns from 2011 to 2014.

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<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(f).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's late filing of Federal and state income tax returns was an anomaly. She had always filed timely. However, due to the water damage and loss of documents in her home and her illness and operations, she was late in her tax filings. She requested extensions for each year. She acted responsibly by immediately collecting the documentation that she needed to correctly file her income tax returns to substantiate 1099 income and her business deductions. She had a plan and followed through with it. She made estimated tax payments in some cases. She provided documentation that she has filed all the late Federal and state tax returns and has paid all taxes. She is current with all tax filings and payments. She contacted the IRS and requested an extension each year. She kept them apprised of the situation. MC AG ¶ 20 (a), (b), (d), and (g) apply. She met her burden in this case to alleviate the security concerns under the financial considerations guideline.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶2(d).

(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.

Under 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 60 years old. She is an educated woman who has worked and held a security clearance for ten years. She has worked diligently and is a responsible person. She is reliable and law-abiding. Due to extenuating circumstances, she did not timely file her Federal and state income tax returns from 2011 to 2014. She has rectified the situation. She has no delinquent debts. She explained the situation that occurred with the 2013 judgment. Applicant has no negative record with respect to employment or criminal activity.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under Guideline F. Accordingly, I conclude that she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **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:	FOR APPLICANT
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Subparagraphs 1.a-1.c:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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NOREEN A. LYNCH  
Administrative Judge