



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-08782
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

01/26/2017

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 20, 2015. On June 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 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) implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on July 6, 2016, and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2016. On the same

day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 15, 2016. I convened the hearing as scheduled. Applicant waived the 15-day notice requirement in Directive ¶ E3.1.8. (Tr. 15.) Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until November 30, 2016, to enable her to submit additional evidence. She did not submit anything further. DOHA received the transcript (Tr.) on November 28, 2016.

### **Findings of Fact<sup>1</sup>**

Applicant admitted all the allegations in her answer to the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 61-year-old supply technician employed by a defense contractor since April 1996. She completed 12 years of high school, but did not graduate. (Tr. 44) She received a security clearance in 1987 and is seeking to continue that clearance. (GX 2 at 2; Tr. 8.)

Applicant married in December 1972 and separated in September 1996. She has three adult children.

When Applicant submitted her SCA, she disclosed that she had not filed federal or state income tax returns for nine years. She estimated that she owed \$100,000 in federal income taxes. (GX 1 at 36.)

Applicant's IRS federal income tax transcripts reflect that she owes \$1,575 for tax year 2010; \$915 for 2011; \$1,190 for 2012; \$1,017 for 2013; and \$1,012 for 2015. (AX B.) She submitted no evidence pertaining to her 2014 returns. In September 2015, the IRS filed a notice of levy to seize her state tax refunds or other property to satisfy her federal tax debt.

Applicant testified that she had a difficult time after separating from her husband, and she began having anxiety attacks about her financial situation. She was living from paycheck to paycheck. She stopped filing her federal and state income tax returns around 2004, because she was concerned about her inability to pay her taxes. She did not increase her payroll withholding because she could not afford to reduce her net income. (Tr. 39.) She testified that, after her security officer told her that she needed to resolve her tax issues, she contacted the IRS and was informed that she was only required to pay her delinquent taxes for 2010 to the present. In August 2016, she contacted the IRS and requested an installment agreement. The IRS approved her request and agreed to collect \$100 on the 20<sup>th</sup> of each month by direct debit from her checking account. She provided evidence that the IRS collected the October payment.

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<sup>1</sup> Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Even though the record remained open until November 30, 2016, she did not submit evidence of a November payment. (Tr. 36-37, 48; AX A; AX C.)

Applicant testified that she believes she does not owe any state income taxes. However, she has not contacted the state tax authorities or filed her past-due state tax returns. (Tr. 42-43.)

Applicant's annual salary is about \$42,000. She has no savings and no retirement funds. At the hearing, she was uncertain about her monthly remainder after paying all her living expenses. She testified that she believes her financial situation is under control, but she is still living paycheck to paycheck. (Tr. 32.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The SOR alleges that Applicant failed to timely file her state and federal income tax returns as required for tax years 2005 through 2014 (SOR ¶¶ 1.a and 1.b). It also alleges that she owes delinquent taxes for tax years 2005 through 2014 totaling about \$10,000 (SOR ¶ 1.c.)

The allegations in SOR ¶¶ 1.a and 1.b were based on Applicant’s disclosures in her SCA. The evidentiary basis for the amount of the tax debt alleged in SOR ¶ 1.c is unclear. In her SCA, Applicant estimated that she owed \$100,000, but the SOR alleged \$10,000. Applicant’s testimony and her documentary evidence show that she owes about \$5,700.

The concern under this guideline is 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by the documentary evidence submitted at the hearing, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required . . ."). The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's failure to timely file federal and state income tax returns, and the resulting tax debts were recent, frequent, and not the result of circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's limited income did not prevent her from timely filing her returns, nor did it prevent her from contacting the IRS and requesting installment agreements for years in which she could not afford to pay the taxes due. Although she attributed her failure to file to anxiety attacks, she submitted no medical or other evidence to corroborate her claim that her anxiety affected her ability to timely file her federal and state returns. She did not act responsibly, because she did not take any action to resolve her failure to file or pay the taxes due until her security officer warned her that she that she needed to resolve her tax issues.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and insufficient time has passed to establish "clear indications" that her financial problems are being resolved.

AG ¶ 20(d) is not fully established. Applicant receives some mitigation credit for entering into a payment agreement with the IRS, but she has not yet established a track record of timely filing her federal and state income tax returns or complying with her payment agreement. She has taken no action to resolve her state tax problems.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(a). Applicant was candid and sincere at the hearing. She has worked for her current employer and held a security clearance for many years. Her repeated failure to timely file tax returns suggests that she has difficulty complying with well-established government rules and lacks the good judgment and reliability required of persons who are granted access to classified information. ISCR Case No. 14-04159 (App. Bd. Aug. 1, 2016).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her failure to timely file her federal and state tax returns and her unresolved federal tax debt. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.c:

**Against Applicant**

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge