



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-05376
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2017

**Decision**

MARINE, Gina L., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 18, 2014. On December 9, 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 (EO) 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 (2006 AG).

Applicant answered the SOR on December 30, 2016, and requested a decision on the record without a hearing. On February 6, 2017, Department Counsel submitted the Government's written case and, on February 10, 2017, sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 6. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on February 21, 2017, and did not respond. Items 1

and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. The case was assigned to me on October 2, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).<sup>1</sup> Accordingly, I have applied the 2017 AG.<sup>2</sup> However, I have also considered the 2006 AG, because they were in effect on the date the FORM was completed. I conclude that my decision would have been the same under either version.

### **Findings of Fact<sup>3</sup>**

Applicant, age 39, has been married since 1998. She has one child, age 13, and one step-child, age 21. After obtaining her high school diploma in 1996, she took some college courses. She has been employed by a defense contractor since February 2014. This is her first application for a security clearance.

Applicant failed to timely file her federal and state income tax returns for tax years 2009 through 2011 (SOR ¶ 1.g). For those years, she failed to timely pay federal income taxes totaling \$25,390 (SOR ¶¶ 1.b, 1.c, and 1.e). For tax years 2009 and 2010, she failed to timely pay state income taxes totaling \$2,129 (SOR ¶¶ 1.d and 1.f). She filed the delinquent federal and state returns in June 2013. In July 2013, she negotiated an installment agreement with the IRS to resolve her delinquent debt. She made timely payments per that agreement through at least June 2014.<sup>4</sup> Her state tax debt was resolved through her tax year 2011 and 2012 refunds.<sup>5</sup> The Government relied solely on Applicant's self-reporting of the facts and circumstances, including documents that she provided, surrounding her tax issues in support of the related SOR allegations.<sup>6</sup>

Applicant attributed her failure to timely file her tax returns to an increase in her husband's income from new employment in 2009. They "severely underestimated" how

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

<sup>3</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 2), her SCA (Item 3), and the summary of her 2014 security clearance interview (Item 6). Item 6 was not authenticated as required by Directive ¶ E3.1.20. Because Applicant did not respond to the FORM and affirmatively waive any objection to Item 6, I will consider only those facts in Item 6 that are not adverse to Applicant, unless they are contained in other evidence or based upon her admissions in the SOR answer.

<sup>4</sup> See also Item 4.

<sup>5</sup> Item 6.

<sup>6</sup> See also Item 4.

that change would affect his IRS paycheck withholdings. They incurred additional tax debts for years 2010 through 2012 because they inadvertently failed to take their existing tax debt into account when making changes to IRS withholdings in 2010. There have been “no additional issues with their taxes” since 2012.<sup>7</sup>

During her May 2014 security clearance interview, Applicant was confronted with two delinquent debts totaling \$258, of which she had not been aware. She attributed those accounts to having moved several times over the prior few years. She promised to immediately investigate and resolve them. Neither appeared on her July 2016 credit report, but it did reveal two new medical accounts, in collection status, totaling \$2,195 (SOR ¶¶ 1.h and 1.i). In her SOR answer, Applicant did not address what, if any, efforts had been made or any future plan to resolve them. Applicant has not had any financial counseling.<sup>8</sup>

### **Policies**

“[N]o one has a ‘right’ to a security clearance.”<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup>

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.

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<sup>7</sup> Item 4 at 3.

<sup>8</sup> See also Item 4 at 3-4.

<sup>9</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>10</sup> *Egan* at 527.

<sup>11</sup> EO 10865 § 2.

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.”<sup>12</sup> 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.<sup>13</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>14</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>15</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>16</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>17</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>18</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>19</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline is set out in AG ¶ 18:

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

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<sup>12</sup> EO 10865 § 7.

<sup>13</sup> See *Egan*, 484 U.S. at 531.

<sup>14</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>15</sup> See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>16</sup> Directive ¶ E3.1.15.

<sup>17</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>18</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>19</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 failure to timely file state and federal income tax returns and pay state and federal income taxes (as required), and two delinquent medical debts establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and 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").

The security concerns raised in the SOR have been mitigated by the following applicable factors:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Before the issuance of the SOR and her security clearance interview, Applicant filed her delinquent federal and state tax returns, resolved her state tax debts, and initiated action to resolve her federal tax debts. Applicant established a meaningful track record of regular and timely payments to the IRS. Given the facts and circumstances underlying the tax issues alleged in the SOR, and in light of the responsible manner in which she addressed them, I conclude that they are not likely to recur.

I do not find Applicant's medical debts to be security significant in light of the record as a whole. However, if even they were so deemed, her actions with respect to her previous delinquent debts and tax issues demonstrate that she will resolve them, assuming that she has not already done so. She is otherwise managing her finances responsibly. I have no doubt about Applicant's current reliability, trustworthiness, or good judgment.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by her failure to timely file state and federal income tax returns and pay state and federal income taxes, and her failure to pay two medical debts totaling \$2,129. Accordingly, Applicant 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**

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.i: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge