



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01557

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: *Pro se*

12/22/2017

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on June 22, 2015.<sup>1</sup> On June 4, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) effective within the DOD for SORs issued after September 1, 2006.

On December 10, 2016, Director of National Intelligence issued Security Executive Agent Directive (SEAD) 4, which revised and replaced the 2006 AGs and

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<sup>1</sup> Also known as a Security Clearance Application (SCA).

became effective for all decisions issued on or after June 8, 2017. Accordingly, I have applied the newly revised AGs to this decision.<sup>2</sup>

Applicant answered the SOR on August 31, 2016, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 7, 2017, scheduling the hearing for December 6, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 – 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A – F. I agreed to leave the record open until December 20, 2017, for supplemental documentation. Post-hearing, AE G was admitted without objection. It is a December 19, 2017 character reference letter from a retired state supreme court judge.

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

The SOR alleges six delinquent debts totaling \$2,200, a federal tax lien of \$81,359 and failure to file federal income tax returns (returns), as required, in tax years (TY) 2010 and 2011. Applicant admitted she failed to file the 2010 and 2011 returns timely, but they have since been filed. She also admitted to the federal tax lien alleged in SOR ¶ 1.b, but that has since been resolved.<sup>4</sup> She denied the other alleged delinquent debts in her Answer to the SOR, with explanations.

Applicant is almost 42 years old. She obtained her juris doctorate degree in 2001, and she has been employed continuously as a solo practitioner, or in a small general practice firm. She also has a focus on child welfare and does extensive pro bono work involving juveniles. (Tr. 44-46) She needs a security clearance due to her involvement with federal and international agencies in child-trafficking cases. She is married since 2000 and has two children, ages 14, and 20. Applicant reports having no previous security clearance.

Applicant disclosed her failure to timely file returns for TY 2010 and 2011 (SOR ¶ 1.a) in section 26 of her February 2015 SCA. In 2010, after the economy crashed and she had to close her two stores, she struggled to make sure all vendors and taxes were paid. Her husband's employer, a non-profit-hospital foundation, closed abruptly and he was unemployed for the year. Post-hearing, Applicant submitted AE G which is a favorable character reference letter from a retired state court chief judge, attesting to Applicant's high regard and stature in the legal community.

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<sup>2</sup> Although I have applied the new AGs that became effective on June 8, 2017, to this decision, I have also considered the case under the previous AGs and my decision would be no different under either version.

<sup>3</sup> Unless stated otherwise, the source of the information in this section is Applicant's June 22, 2015 Security Clearance Application (SCA) (GE 1); her summary of clearance interview of December 15, 2015.

<sup>4</sup> Answer to SOR; AE A.

Applicant testified that in 2001 she and her husband opened a high-end children's retail store. They opened a second store in 2006, and all was going well until the economic collapse of 2008. Also, competition from internet shopping, affected their retail stores. (Tr. 22-23) All of the money that they earned from her solo practice, and his non-profit foundation, was funneled into keeping the two stores afloat. Around the same time, their long-time accountant [RA] went missing with all of Applicant's bank records, financial statements, and tax documents. (Tr. 26) She left no forwarding address or contact information. (Tr. 27) She also left Applicant with the impression that she had an extension to file their returns for 2010 and 2011, due to all of the business distress and his loss of employment. (Tr. 24) Instead, the extension was not filed timely and Applicant owed self-employment taxes for those two tax years. Their request for an extension to file returns, had in fact been filed on October 15, 2011. (Tr. 29)

Applicant did not learn that the extension was not filed until early 2012. She immediately employed new accountants to try to re-create the IRS Forms including W-2s, and 1099s, that RA had absconded with. (Tr. 26-27) It took her new accountants until early 2013 to straighten out the mess left by RA. Applicant and her husband paid the remaining balances on the leases for their two stores out of their own pockets, \$21,000 for one lease, and \$17,000 for the other. (Tr. 27) They sold their house in 2014 to pay bills and they closed the two stores after all accounts were zeroed out. They also paid any federal taxes owing from TY 2010 out of pocket. (Tr. 30-31)

They entered into an offer-in-compromise with the IRS concerning the back taxes owed for TY 2011. This amounted to approximately \$90,000 with interest and penalties, reflected in the tax lien at SOR ¶ 1.b. (Tr. 31) Applicant provided supporting documentation, including IRS tax transcripts (AE A) that reflect an installment payment plan she entered into with the IRS for this tax deficiency. She made two payments of \$20,000 and several subsequent payments of \$750 per month and the remaining outstanding balance is \$3,003. She expects to have this paid-off by the end of the year. (Tr. 34-35) The TY 2010 and 2011 returns were filed in February 2013, and July 2013 respectively. (Tr. 29)

SOR ¶ 1.c alleges a judgment entered against Applicant in 2011 in the amount of \$266. Applicant provided proof that this judgment was entered in error as she was named in a civil lawsuit as a defendant. In fact, she was the agent – attorney for service of process. (Tr. 38). She submitted an amended judgment entered in June 2016, correcting this error. (AE E) SOR ¶¶ 1.d through 1.h allege Applicant owes delinquent medical debts. SOR ¶¶ 1.d and 1.e are duplicate debts that have been paid in full. (AE F) SOR ¶ 1.f is also paid in full and Applicant successfully disputed the debt at SOR ¶ 1.g. (Answer; Tr. 40) None of these delinquent medical debts appear on her latest credit report dated December 2017. (AE F) In SOR ¶ 1.h, Applicant received an e-mail confirmation from the creditor that this is “closed and deemed uncollectible” and there will be no further collection efforts. (AE D)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, which are 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 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 national security eligibility 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to 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 concern relating to the guideline for financial considerations 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 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (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.

Applicant admitted to failure to timely file federal income tax returns, and the resulting \$81,359 tax lien, as alleged in the SOR. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 problems 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;

(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 arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has now filed her 2010 and 2011 returns, albeit late. She had compelling economic circumstances that explained her delay in filing including business failures, and loss of her husband's job. Applicant disclosed her delinquent debts in her SCA, and she has since contacted her creditors to make payment arrangements. She followed through with a demonstrated track record of consistent payments pursuant to installment plan with the IRS. Virtually all of her delinquent debts are now settled-in-full or otherwise resolved. Applicant has produced evidence that she substantially paid-off the federal tax lien, and the civil judgement was entered in error. She provided documentary evidence showing that the other delinquent debts alleged in the SOR have been disputed or resolved. AG ¶¶ 20(a), 20(b), 20(d) and 20(g) apply. I am satisfied that her delinquent debts have been or are being resolved.

### **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant's finances are no longer a security concern. There are ample indications that Applicant's financial problems are under control. She has met her burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline F, financial considerations.

### **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

Subparagraphs 1.a -1.h: For Applicant

### **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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge