



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-02322  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

10/20/2017  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

CERVI, Gregg A., 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 April 15, 2015. On October 11, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F.<sup>1</sup> Applicant answered the SOR on November 16, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on December 21, 2016.

---

<sup>1</sup> 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.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 5, 2017. She did not submit a response to the FORM. The Government's exhibits included in the FORM (Items 1 to 5) are admitted into evidence. The case was assigned to me on October 1, 2017.

### **Findings of Fact**

Applicant is a 60-year-old electronics technician employed by a defense contractor since 2013. She previously worked for other federal contractors from 2004 to 2012. She received her high school diploma in 1975. She was married in 1978 and widowed in 1987. She has four children, all of whom are adults. She has previously held a DOD security clearance.

The SOR alleges Applicant failed to file her 2009 and 2010 federal and state income tax returns, and failed to file her federal and state income tax returns when due for tax years 2011 to 2015. She admitted all of the SOR allegations.

In November 2015, the Government requested Applicant obtain IRS and state tax transcripts for tax years 2009 to 2014. In response, Applicant submitted a 2009 IRS transcript showing she did not file a return, but that she did not owe any tax, penalties or interest. She did not file a 2010 return, and no transcript was available. She submitted a 2011 IRS transcript showing she filed her return in June 2015; a 2012 transcript showing her return was filed in March 2016; and 2013 and 2014 transcripts showing her tax returns were filed in February 2016. She received about \$9,200 in Federal tax refunds for tax years 2011 to 2014, and did not owe any penalties or interest.

Applicant also provided evidence showing that she did not file state income tax returns for 2009 and 2010; she filed her 2011 return in April 2014; and she filed her 2012 to 2014 state income tax returns in January 2016. She did not owe state taxes except for \$5 owed on her 2011 return. She ascribed her failure to file tax returns on poor time management and disorganization primarily due to working overtime, the eight-hour trip to tend to her mother during her illness and settling the estate after her death in 2014, and her own 120-mile daily work commute.

Applicant took responsibility for failing to file her tax returns as required. Beginning in 2015, she filed all returns since 2011, the years in which she had available tax reporting documents, and vowed to refrain from filing late tax returns in the future. She increased her tax withholding in each paycheck to ensure she would not owe any additional taxes at the end of the year. During the tax years she did not file returns, she did not owe any Federal or state taxes. Rather, after filing her late returns, she received a sizable refund. There is no evidence that she has had a lien placed on her property or a garnishment order issued against her for taxes.

Applicant expressed regret for jeopardizing her security clearance and apologized for her tax-filing mistakes. She described her work as very important to her, and she is

proud of her service to the government. She considers working overtime to accomplish the mission as her patriotic duty. Her late husband and her son served in combat in the U.S. Marine Corps. She has no reported delinquent debts, owns her own home, and has about \$148,000 in assets. She has a net monthly remainder of about \$662 after paying expenses and a car loan.

### **Law and Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. These AGs are applicable to this decision.

“[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.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 ¶ 1(d).

## **Analysis**

### **Financial Considerations**

The security concern 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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

(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 has a history of failing to file her Federal and state tax returns when due. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

(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 did not show that her failure to file tax returns resulted from a condition beyond her control, however she has taken action to correct the problem. She began an effort to file all past-due tax returns in 2015, and completed it in 2016. She is now current on filing Federal and state tax returns since 2011, and vowed to remain so. During the period she did not file on time, she did not owe taxes, rather she received over \$9,000 in refunds. The 2009 and 2010 tax returns are not likely to be filed as Applicant alluded that documents necessary to do so are unavailable, and the tax authorities have not required it. The record does not reflect any financial delinquencies, and Applicant owns a home and has sufficient income to meet her needs. She is a widow and her mother's illness and death in 2014 was a significant event in her life, occupying her time and attention. I am convinced Applicant now has a renewed understanding of the importance of filing her tax returns when due, and will do so going forward.

Although failing to file tax returns, even when nothing is owed, does not reflect the level of financial responsibility and compliance with rules and regulations expected of a person holding a security clearance, the record reflects that Applicant rectified the matter and expressed the intent to comply with tax-filing responsibilities in the future. Her tax issues have been resolved, and her current financial status is stable. AG ¶ 20 (g) applies.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant filed tax returns since 2011 and is up to date on her filings. She resolved the delinquent tax returns that she could reasonably file to date, and does not owe any unpaid taxes.

Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national security interests of the United States 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
---------------------------	---------------

Subparagraphs 1.a – 1.n:	For Applicant
--------------------------	---------------

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

---

Gregg A. Cervi  
Administrative Judge