



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 16-02444

Applicant for Security Clearance

**Appearances**

For Government: Tovah Minster Esq., Department Counsel  
For Applicant: *Pro se*

10/20/2017

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

**Statement of the Case**

On December 23, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on February 11, 2016. (Item 3, Personal Security Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 5, 2016, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on November 14, 2016. She admitted the three financial allegations but provided detailed information to mitigate the allegations. (Item 6) Applicant elected to have the case decided on the written record. Department Counsel submitted the Government's written case on December 7, 2016. Applicant received a complete file of relevant material (FORM) on December 29, 2016, and she was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. (Item 8) Applicant timely provided additional information in response to the FORM on January 10, 2017. (Item 7) Department Counsel had no objection to consideration of the additional material. (Item 11) I was assigned the case on October 1, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the PSI (Item 3) was not authenticated and could not be considered over his objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the administrative judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant responded to the FORM (Item 9), but she did not object to consideration of the PSI. Since Applicant did not object to consideration of the PSI, I will consider the information in the PSI in my decision.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following findings of fact. Applicant is 69 years old, and a 1965 high school graduate. She was first granted eligibility for access to classified information in 1978. She worked as a government employee at an Air Force base from 1979 until 1999. After leaving government service, she worked for and is still employed by a defense contractor at the same Air Force base as a configuration manager. She was last cleared and is still cleared for eligibility for access to classified information in March 2006. She married in September 1970, and divorced in April 1997. She has two grown children. (Item 2, e-QIP, dated December 23, 2015; Item 3, PSI, dated February 11, 2016)

The SOR alleges, and a credit report confirms (Item 4) that Applicant has a state tax lien entered in June 2011 for \$17,863 (SOR 1.a), and a federal tax lien entered against her in April 2008 for \$23,622 (SOR 1.b). Also alleged is a telephone debt in collection for \$48 (SOR 1.c)

Applicant admitted that he did not timely file her 2002 and 2003 federal and state income tax returns. She lost the W-2 forms initially provided by her company. When she realized she needed the W-2s, the company she worked for had sold their interest in the company to a business headquartered outside the United States. She had a difficult time receiving the W-2s. She notified the federal and state tax authorities and started paying the state \$200 per month and the Internal Revenue Service (IRS) \$300 per month towards the taxes. (Item 3, PSI, at 4) She was finally able to obtain the proper W-2s and file her federal and state tax returns for tax years 2002 and 2003.

The IRS released the federal tax lien on April 27, 2016, since pay documents from her employer and the taxes she paid resolved the federal tax debt. (Item 7) Applicant provided documents from the state tax office showing they refunded all of the taxes Applicant paid to them for tax years 2002 and 2003. (Item 10) Applicant is current with her federal and state taxes.

The \$48 telephone debt was actually owed to Applicant by the phone company. A debt collection agency inadvertently entered a debt against Applicant. The telephone company refunded the \$48 to Applicant and the matter has been resolved. (Item 9, Response to FORM, dated January 10, 2017)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 access to classified information 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 the 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**

### **Financial Considerations**

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 a person’s reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Applicant admits to delinquent federal and state tax debts resulting from her inadvertent failure to timely file her 2002 and 2003 federal and state income tax returns. She also admits to a telephone debt in collection. This information raises the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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.

I considered the following Financial Considerations Mitigating Conditions under 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;

(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 individual has received or is receiving financial counseling for the problem from a legitimate and credible sources, such as a non-profit 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 arrangements with the appropriate tax authority to file or pay the amount and is in compliance with those arrangements.

The mitigating conditions apply. Applicant incurred federal and state income tax debt because she was unable to timely file her 2002 and 2003 income tax returns. She lost the W-2s provided by her employer. The employer was now located out of the United States making it difficult to get the proper forms. Applicant notified the federal and state tax authorities and setup payment plans until the taxes could be filed and resolved. The state and federal taxes have been paid and Applicant received refunds.

The tax issues happened under circumstances unlikely to recur, and the problems creating the tax issues were beyond her control. There are clear indications the financial problems have been resolved. Applicant's efforts to notify the tax authorities and make payments until the issue could be resolved indicates her good-faith efforts to repay the creditors and resolve the debt. Applicant did not report any financial counseling, but there are clear indications the problem has been resolved.

Normally, failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified and sensitive information. A person who fails repeatedly to fulfill his or her legal obligation to file tax returns does not demonstrate the high degree of good judgment and reliability required for a grant of access to classified or sensitive information. Where an applicant may have attempted to correct the tax return problem, there must still be careful consideration of the applicant's trustworthiness in view of his longstanding prior behavior evidencing irresponsibility by failing to timely file income tax returns. However, Applicant tried to negate the federal and state tax problems when she was unable to obtain the required pay documents. She contacted the appropriate tax authorities, explained the problems, and made payments on the taxes while the matter was being researched and resolved. She demonstrated the high degree of good judgment and reliability required of persons granted access to classified or sensitive information.

Applicant provided enough details about what she did to address the debts alleged in the SOR. She provided sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is sufficient evidence to establish that Applicant made great progress resolving her tax debts. Applicant established a track record of paying her tax debt and acting in a financially responsible manner. There is ample evidence of responsible behavior, good judgment, and reliable conduct and actions by Applicant towards her finances. Applicant met her burden to establish her good-faith efforts to resolve her remaining debts. She established that she acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards her financial obligations. There is sufficient assurance that her financial problems are resolved, are under control, and will not recur in the future. Her reasonable and responsible actions towards her finances is a strong indication that she will protect and safeguard classified or sensitive information. Applicant mitigated financial security concerns.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility 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(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 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 considered that Applicant has been eligible for access to classified information since 1978 with no indications of any problems or security issues. Applicant incurred delinquent debt when she could not timely file her 2002 and 2003 federal and state income tax returns. She has since received the necessary pay documents, filed the returns, and paid all taxes owed. Another small debt was not her debt but the responsibility of the creditor. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

### **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.c:           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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge