



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 16-02715
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esquire, Department Counsel  
For Applicant: [Name Redacted], Personal Representative

11/28/2017

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On December 2, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006. On June 8, 2017, the AGs were updated and the AGs effective September 1, 2006 were cancelled. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On January 9, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 8, 2017. The case was assigned to another administrative judge on July 20, 2017. An original hearing date was scheduled for August 31, 2017. Applicant requested a continuance and the request was granted. On August 25, 2017, a Notice of Hearing was issued rescheduling the hearing for September 25, 2017. The case was transferred to me several days before the hearing and the hearing was held as scheduled. During the

hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A – D. The record was held open until October 10, 2017, to allow the Applicant to submit additional documents. Applicant timely submitted a 19-page document on October 10, 2017, which was admitted as AE E. The transcript (Tr.) was received on October 3, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is an employee of a Department of Defense contractor seeking to maintain a security clearance. She has worked for her current employer since January 2014. She has worked for various DoD contractors for thirty years. She has held a security clearance since 1990. She has a master's degree and has done some work towards her doctorate. She is married and has four daughters, ages 19, 17, 15, and 12. (Tr. 60-61; Gov 1; Answer to SOR)

In 2013, Applicant submitted a security clearance application for access to Sensitive Compartmented Information (SCI). In her application, she disclosed tax issues from 2007 to 2010 and 2012. Her access to SCI was granted in 2013 as a "cross over" clearance. (Tr. 23, 64-65; Gov 1, section 26)

On August 17, 2014, Applicant submitted an electronic questionnaire for investigation processing (e-QIP) as part of a periodic reinvestigation for her security clearance. In response to section 26 of the e-QIP application, Applicant listed that she owed federal income taxes for 2007, 2008, 2009, 2010, and 2012. Applicant's security clearance background investigation resulted in the the following SOR allegations: failure to file Federal and state income taxes for tax years 2007, 2008, 2009, 2010, 2013, 2014, and 2015 (SOR ¶ 1.a: Gov 2 at 26); a \$130,905 debt owed to the Internal Revenue Service (IRS) for tax year 2007 (SOR ¶ 1.b: Gov 2 at 6-8); a \$72,311 debt owed to the IRS for tax year 2008 (SOR ¶ 1.c: Gov 2 at 9); a \$211,100 debt owed to the IRS for tax year 2009 (SOR ¶ 1.d: Gov 2 at 10); an \$85,124 tax debt owed to the IRS for tax year 2010 (SOR ¶ 1.e: Gov 2 at 11); a \$56,384 debt owed to the IRS for tax year 2012 (SOR ¶ 1.f: Gov 2 at 14); a \$30,557 debt owed to the IRS for tax year 2014 (SOR ¶ 1.g: Gov 2 at 49); and a \$788 debt owed to the IRS for tax year 2015 (SOR ¶ 1.h: Gov 2 at 2. 68-78).

Additional delinquent accounts include: a \$3,516 state tax debt for tax year 2015 (SOR ¶ 1.i: Gov 2 at 2, 68-78); a \$229 state tax debt for tax year 2015 (SOR ¶ 1.j: Gov 2 at 103); a \$13,808 car loan past due in the amount of \$489 (SOR ¶ 1.k: Gov 4 at 2); a \$620 medical account that was placed for collection (SOR ¶ 1.l: Gov 4 at 2); a \$448 collection account (SOR ¶ 1.m: Gov 4 at 2); a \$324 medical account that was placed for collection (SOR ¶ 1.n: Gov 4 at 2; Gov 5 at 7); and a \$304,000 tax lien entered against Applicant in March 2012 by the IRS. (SOR ¶ 1.m: Gov 5 at 2).

Applicant and her husband were active in purchasing undervalued residential properties, fixing them up and selling them at a profit. They successfully profited with the purchase and sale of three residential properties between 1994 and 2002. In 2002, they purchased a 7-acre property at a good price because of a house fire. Their plan was to tear down the fire-damaged house and build their dream home. They were paying a mortgage on the residence that they were living in, a mortgage on the newly purchased land, and a construction loan. (Response to SOR; Gov 1, section 26)

Construction began on the new home in 2004. An occupancy permit was issued in 2006, and Applicant and her family moved into the new home. Applicant's ability to sell the residence they were living in prior to moving into the new home was severely affected by a downturn in the real estate market. The house stayed on the market for months longer than anticipated. This resulted in Applicant and her husband making double mortgage payments for longer than anticipated. The new home they recently moved into was underwater. It took Applicant 18 months to convert the construction loan to a mortgage. The mortgage was about \$1.7 million. The downturn in the real estate market resulted in the sale of Applicant's previous residence at a loss; having a higher than anticipated mortgage payment on Applicant's new residence, and Applicant becoming late on payments towards other creditors. (Tr. 31-35; Gov 1, section 26 at 45-47; Gov 2 at 3; Gov 3 at 2; Response to SOR)

Applicant earns about \$170,000 annually. She usually receives a bonus of approximately \$70,000 annually. Her income totals approximately \$240,000 a year. She did not receive a bonus during the sequestration in 2013. Applicant's husband was laid off in February 2011. Since that time, her husband has not earned much income. He has been trying to set up his own business. His current business is going well and they anticipate it will soon generate significant income. Applicant's husband handles all of the financial accounts. (Tr. 30, 56-60, 63, 73, 83; Gov 3 at 2; AE C; AE E at 6)

In order to maintain their mortgage payments, Applicant and her husband used all of their savings including their 401(k) accounts, which resulted in tax penalties. They attempted to modify their loan. When that was not successful, they attempted a short sale. The lender did not approve the short sale. They moved out of the residence in August 2014 and it went to foreclosure in November 2014. (Tr. 31-34; Gov 3 at 3)

In 2009, Applicant and her husband consulted a commercial tax business to help them to reduce their tax debts through an offer in compromise. This was unsuccessful. In 2012, they hired a tax attorney who advised them an offer in compromise would not be successful. He recommended a payment plan. They submitted an installment agreement request (IRS Form 433A) to the IRS on June 6, 2012, with an offer to pay \$3,500 a month. Having never heard from the IRS, Applicant and her husband did not think the tax attorney was progressing in resolving their tax debts. They hired another tax professional recently who is helping them prepare a request for an amended IRS Form 433-A repayment agreement. The proposed offer would be to pay \$5,200 a month towards the federal tax debt. (Tr. 26-29, 31, 66-68, 72; Gov 1, section 26; Gov 3 at 3; Response to SOR; AE E at 2-8)

Applicant states that her household finances are more manageable now that they have a lower house payment. They no longer use credit cards and only pay with a debit card. They have taken financial classes through their church. She also attended financial counseling sessions arranged through her Employee Assistance Program. (Tr. 41-42; Gov 3 at 4; AE C)

The status of the SOR debts are:

SOR ¶ 1.a: Failure to file federal and state income tax returns for tax years 2007, 2008, 2009, 2010, 2013, 2014 and 2015: All federal tax returns were filed as indicated by the IRS transcripts, dated September 25, 2017, submitted by Applicant during the hearing. The returns for tax years 2007-2009 were filed in October 2010. The return for tax year 2010 was filed in February 2012. The return for tax year 2012 was filed in October 2013. The returns for tax years 2014 and 2015 were filed in November 2016. The return for tax year 2016 was filed in August 2017. Applicant owes \$21,801 for tax year 2016. The 2016 tax debt was not alleged in the SOR, and will not be considered for disqualification purposes, but will be considered as a matter in extenuation and mitigation. (AE B)

SOR ¶ 1.b -1.h: Past due federal income taxes for tax years 2007-2010, 2012, 2014 and 2015, total approximate balance, \$587,169: In a letter dated October 3, 2017, Applicant's tax professional concluded that Applicant could afford to pay \$5,202 a month toward a payment plan with the IRS. An amended IRS 433-A was created indicating the new figure and adding the additional tax years. Applicant anticipates that the amended 433-A will be signed and sent to the IRS within 30 days. At the close of the record the IRS had not approved the payment plan and no payment plan has been established. (Tr. 29, 72, 74; AE E at 2-8)

SOR ¶ 1.i: \$3,516 state tax debt for tax year 2014: Applicant is making payments toward this tax debt. (Tr. 36-37; AE B at 2; AE E at 9-11)

SOR ¶ 1.j: \$229 state tax debt for tax year 2015: Applicant paid this debt in 2017. (Tr. 36-37; AE B at 1; AE E at 12, 18)

SOR ¶ 1.k: \$13,808 car loan that is past due in the amount of \$489: Applicant is making payments on this debt. (Tr. 37; AE E at 15)

SOR ¶ 1.l: \$620 medical account placed for collection: The debt is paid in full. (Tr. 38; AE E at 16)

SOR ¶ 1.m: \$448 collection account: The debt is settled and paid. (Tr. 38-39; AE E at 17)

SOR ¶ 1.n: \$324 medical account placed for collection: Applicant claims this debt is paid, but did not provide a receipt or other proof that the debt was paid. (Tr. 39; AE E at 19)

SOR ¶ 1.o: \$304,000 Federal tax lien entered against Applicant in March 2012: This lien is related to the federal income tax debts alleged in SOR ¶¶ 1.b – 1.h. It is unpaid.

### **Whole-person Factors**

Applicant is successful in her field as shown in her resume. (AE D) An official with the Office of the Assistant Secretary of Defense, Energy, Installations and Environment states that “[Applicant is absolutely one of the few Industry experts I can consistently count on for thoughtful leadership and corporate partnership in my role as a Cybersecurity Program Manager within the Department of Defense.” He describes Applicant as “an industry thought leader: and skillful collaborator who participates in several professional councils.” He has no concerns about her ability to protect sensitive unclassified information or classified information. (AE A at 1)

A retired Air Force Lieutenant Colonel has served as Applicant’s supervisor for nearly 20 years with five different companies. He describes Applicant as a leading subject matter expert in her field. She has worked on a number of vital government security missions. He is aware of Applicant’s financial issues and states that Applicant disclosed her financial situation to him as well as the corporate security staff. He has never had any concerns about her dedication and commitment to protecting classified information. (AE A at 2-3)

Applicant’s current reporting official states that Applicant has proven herself to be a capable business leader and expert in her field. He describes her as “a highly-analytical and well-spoken professional who is called on regularly by company leadership and key clients to advise on important issues. Applicant disclosed her financial issues to corporate leadership and the security office. Her financial issues have not affected her performance in the workplace and she continues to excel in her career without security incidents. (AE A at 4)

Applicant prides herself on having built a solid reputation on leading organizations with integrity and always doing the right thing. She states she is not prone to criminal acts, espionage or any other negative activity to generate funds. She has never compromised classified information. Her marital and family relationships are stable. She is active in her church and her children’s school. She takes her obligations seriously. She states she and her husband have worked hard to prioritize and fulfill their financial obligations. Applicant believes her financial situation is beginning to improve. She claims the Statement of Reasons allegations are not the product of irresponsible behavior, but the result of prioritizing and working through their financial obligations. (Tr. 85; Response to SOR; AE E at 19)

## 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 useful 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 over arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 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.

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 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 the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 encountered financial problems resulting from her real estate investments and the downturn of the housing market in 2006. She and her husband also owe delinquent federal income taxes for tax years 2007, 2008, 2009, 2010, 2012, 2014, and 2015, with an approximate balance of over \$587,000. She also incurred delinquent state income taxes for tax years 2014 and 2015, with an approximate total of \$3,745. She also incurred four delinquent debts, with an approximate total of \$ 1,881. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified information. Behaving 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. 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 not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

With regard to Applicant's federal tax debts, the recent emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed). See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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, 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 source, such as a non-profit credit

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 owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. Including the 2016 tax debt that was not alleged in the SOR, Applicant owes over \$600,000 to the IRS for delinquent federal taxes for eight tax years. Having had a security clearance for over 30 years, Applicant should have been aware of her duty to file and pay federal income taxes in a timely manner. She is given credit for disclosing her tax issues on her security clearance application in 2014 and during an SCI investigation in 2013. However, she was not proactive in seeing that her federal tax debts were being resolved. In fact, she continued to incur federal tax debts for tax years 2014, 2015 and 2016. Applicant's neglect of her duty to file and pay federal income taxes raise questions about her reliability, trustworthiness and good judgment.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by the housing market downturn in 2006, her husband's job loss in 2011, and the 2013 sequestration period. These were all matters that were beyond Applicant's control. However, this mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. Although Applicant's husband's job loss resulted in the loss of \$150,000 to the household income, Applicant earned over \$240,000 based on her salary and bonus. This should have been sufficient to pay the household bills as well as the tax debts, but Applicant incurred delinquent tax debts over an eight year period.

AG ¶ 20(c) partially applies because Applicant has attended financial counseling through her church and through her employee assistance program. Most of her consumer debts have been resolved. However, the federal tax debts remain unresolved. For this reason, the mitigating condition is given less weight.

AG ¶ 20(d) applies towards the debts alleged in SOR ¶¶ 1.i – 1.m because Applicant resolved or is resolving these debts. However, I cannot conclude that she has made a good-faith effort regarding her tax debts. Even after submitting a repayment agreement to the IRS in 2012, Applicant continued to incur delinquent federal tax debts. While Applicant recently retained another tax professional, I cannot conclude that she demonstrated a good-faith effort to resolve her federal tax debts because more tax debts were incurred each year and no payment arrangement has been reached with the IRS.

AG ¶ 20(g) does not apply. While Applicant has sought the assistance of a new tax professional and an amended repayment agreement was prepared. At the close of the record, it had not been submitted to the IRS and no payment agreement was established. It is unclear whether Applicant actively pursued the initial payment agreement with the IRS that was submitted in 2012. While she claims her attorney was nonresponsive, she could have taken action to terminate his services and to pursue an agreement with the IRS earlier than she did. If Applicant had actively pursued this agreement, made timely payments toward the agreement, and timely filed and paid her income tax returns for subsequent tax years, this mitigating condition would apply.

### **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 considered Applicant's successful career, as well as her 30 years of possessing a security clearance without incident. I considered the favorable reference letters of her supervisors and senior officials within her career field who praise her capabilities, work ethic, and trustworthiness. I considered that she is a loving wife and mother.

I considered that the downturn in the housing market and her husband's unemployment and underemployment since 2011 has adversely affected the household finances. However, Applicant earns a good income. A question remains about how Applicant and her husband continued to incur delinquent federal tax debts covering eight tax years between 2007 and 2016. Applicant claims that their first tax professional was not responsive. However, Applicant was not proactive in bringing her federal tax situation under control. Applicant is given credit for her honesty. She is also given credit for resolving her state tax debts and several consumer debts. Yet, she continued to have federal income tax issues and just recently sought the assistance of a tax

professional. No repayment agreement was resolved at the close of the record. While Applicant's husband's business may begin to generate income this year, such an assertion is speculative and does not account for incurring federal tax debts when the household annual income was on average \$240,000. The issues related to unresolved \$600,000 federal tax debts remains. Security concerns under financial considerations are not mitigated.

### **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:	AGAINST APPLICANT
Subparagraphs 1.b -1.h, 1.n, 1.o:	Against Applicant
Subparagraphs 1.a, 1.i – 1.m:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge