



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-03449  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie Mendez, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

06/11/2018  
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**Decision**  
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CERVI, Gregg A., Administrative Judge

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

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86)<sup>1</sup> on January 6, 2015. On January 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.<sup>2</sup> Department Counsel withdrew SOR ¶ 1.a. SOR ¶ 1.b was renumbered as 1.a.

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

<sup>2</sup> The action was taken 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on February 7, 2017, provided documentary evidence in mitigation, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on February 14, 2018, and the hearing was convened on February 21, 2018. Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through H, were admitted in evidence without objection. The record was held open to permit Applicant time to submit additional documentary evidence. She submitted AE I, which was admitted into evidence without objection.

### **Findings of Fact**

Applicant is a 38-year-old service coordinator for a defense contractor, employed since 2014. She was previously employed full time since 2005. Applicant earned an associate's degree in 2005. She married in 2006 and divorced in 2015. She has custody of her seven-year-old child. She has not served in the military or previously held a security clearance.

The SOR alleges under Guideline F, that Applicant is indebted to the Internal Revenue Service (IRS) for approximately \$27,988, with a tax lien entered in 2014. Applicant admitted the allegation, and provided a statement explaining the circumstances of the debt.

While Applicant was married, her spouse was responsible for preparing annual joint tax returns and paying taxes. Applicant believed that they used a family friend that was an accountant, to prepare returns, that she signed and assumed were mailed to the IRS. In 2011 or 2012, Applicant discovered that they were delinquent on tax payments. Applicant overheard her husband on the phone with an IRS representative, discussing a payment plan that he later confirmed was for \$750 per month. She assumed payments were being made as required, but later learned that her spouse missed two payments and the agreement was cancelled. Despite this, Applicant's spouse claimed that he continued the payments, but would not provide her with supporting documents. She learned that they owed delinquent taxes for tax years 2009–2011 after her husband withdrew money from a retirement plan, resulting in an increased tax obligation.

Applicant separated from her spouse in November 2013, and they divorced in April 2015. There was no recitation of tax responsibilities in the divorce decree. Applicant filed tax returns as a single filer for tax years 2013-2016. Applicant's annual tax refunds were captured by the IRS to apply toward the debt. In or about 2014, Applicant learned from the IRS that a lien for \$27,988 was placed against her, and notices of tax delinquencies were sent to her in October 2015. As late as January 2018, Applicant's ex-husband claimed that he was making monthly payments toward the debt, but admitted that in December 2017, he used the money for something else.

In a post-hearing submission, Applicant stated that she contacted the IRS in February 2018, obtained tax statements for tax years 2009–2011, and discussed a resolution of her debt. She confirmed that there is no monthly payment plan agreement

in place and the account is in a collection status. She discussed resolution of the debt with the IRS through an innocent spouse claim and a mirrored account. Since she is not denying responsibility for at least a portion of the debt, she is not claiming innocent spouse status, but did apply for a mirrored account that separates joint taxpayer accounts so that she will be responsible for taxes on her share of the joint income. Applicant determined that she may be liable for \$30,000 in taxes, based on her portion of gross income of about \$150,000 out of over \$650,000 in total joint income over three years. No final resolution of the mirrored account application or other payments toward the debt were submitted.

Applicant stated that she is current on her tax return filings and other monthly expenses. She has a savings account valued at about \$1,000, a checking account valued at about \$600, and a retirement account valued at approximately \$7,000-\$8,000. She owes about \$30,000 on a car loan, and has monthly day-care expenses for her son. She receives \$1,350 per month in child support. She noted a desire to hire a tax attorney, but is unable to afford the fees.

### **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 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. . . .

The relevant disqualifying conditions under AG ¶ 19 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 . . . pay annual Federal, state, or local income tax as required.

Applicant's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the above disqualifying conditions.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) 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 claimed that she was unaware of the tax delinquencies until about 2012. She relied on her spouse and a family accountant to file and pay all taxes that were owed. Applicant claimed to be unaware that her spouse withdrew significant retirement funds, which increased their joint tax obligations, despite her signing annual tax returns. She does not contest that she owes at least \$30,000 in delinquent taxes, assuming that her mirrored account request is approved. However, she has not shown sufficient progress toward resolving her tax obligation since discovering the delinquency in 2012, nor has she made any payments toward the debt except for tax refunds involuntarily intercepted by the IRS. I believe that Applicant may have been taken advantage of by her spouse, but she is expected to take appropriate action to address the debt once she became aware of it. Based on her income, expenses, and child-care costs, Applicant may not have

the financial resources to pay the debt. However, she has not shown any installment payments toward resolution of the debts since becoming aware of them in 2012.

Applicant's years of inaction with regard to her tax obligations raise significant concerns about her financial responsibility; raising concerns about the requisite judgment expected of those who enter into a fiduciary duty with the U.S. for the protection of national secrets. The DOHA Appeal Board has noted that a person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 15- 06707 at 3 (App. Bd. Aug. 15, 2017).

Despite recent efforts to contact the IRS and discuss a resolution of her tax debt, she has not shown sufficient responsibility toward her tax obligations since becoming aware of them in 2012. In addition, no good-faith payments have been made toward her admitted tax debt, and she has been slow to research her obligations until recently. The record does not support full application of any mitigating condition.

### **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's delinquent tax debt remains an ongoing concern, and her past practices with regard to her tax obligations have been unacceptable. She has not shown sufficient efforts to resolve her tax liability before it became a security clearance issue, and no voluntary payments toward her debt have been made. Applicant's financial condition with regard to her tax obligations has not reflected the judgment and reliability expected of a person entrusted with 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:

Against Applicant

Subparagraph 1.a:

Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

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Gregg A. Cervi  
Administrative Judge