



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-00957

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

03/26/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On August 21, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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* (January 2, 1992), as amended (Directive); and DoD 5200.02, Procedures for the DoD Personnel Security Program (PSP).

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, in accordance with the guiding principles governing fair process proceedings in Exec. Or. 10865, and subject to the updated substantive changes in the AGs, effective June 8, 2017.

Applicant responded to the SOR on November 25, 2017, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on October 17, 2017, interposed no objections to the materials in the FORM, and supplemented the FORM within the time permitted with additional information. The case was assigned to me on January 16, 2018.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to timely file federal tax returns for tax years 2010-2016; (b) failed to timely file state returns for tax years 2010-2016; (c) incurred a state tax lien in 2015 in the approximate amount of \$5,710; and (d) accumulated 16 delinquent student loan and consumer debts cumulatively exceeding \$25,000. Allegedly, the listed tax lien, student loan, and consumer debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted most of the allegations with explanations. She claimed that all of her delinquent federal and state tax returns for tax years 2010-2016 have since been filed. She claimed that she entered into a payment agreement with her state tax creditor (SOR ¶ 1.c) and rehabilitation payment plan with her student loan creditor ¶¶ 1.e-1.h. She further claimed that alleged SOR creditors ¶¶ 1.d, 1.i, and 1.q are included in a debt consolidation agreement of August 2017.

Applicant denied the allegations covered in SOR ¶¶ 1.l-1.p and 1.r-1.s for the stated reason that these debts no longer appear on her credit report of August 2017. Applicant attached copies of her September 2017 payment agreement with her state taxing authority, her debt consolidation agreement covering her consumer creditors, and an August 2017 credit report.

In her November 2017 response to the FORM, Applicant supplemented her response with attachments: a signed November 2017 retainer agreement with a tax defender service who will represent her in her dispute with the state over an amount owed under a 2015 state tax lien; a US Department of Education (ED) rehabilitation agreement of November 2017 with acknowledged first payment; a debt consolidation agreement of November 2017 with an included payment plan and credited first three \$226 payments made under the terms of her agreement; and an August 2017 credit report with another credit reporting company. Applicant confirmed again that all of her federal and state tax returns for tax years 2010-2016 have been filed (citing a claimed receipt included in her FORM response)

## **Findings of Fact**

Applicant is a 51-year-old financial business analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant never married and has three children. (Item 3) She attended college between June 2012 and October 2012, but earned no degree or diploma. (Item 3) Applicant never served in the military. (Items 3 and 4)

Since January 2014, Applicant has worked for her current employer. (Items 3 and 4) Between June 2013 and January 2014, she was employed by a non-DoD employer as a program analyst. She reported unemployment between January 2013 and June 2013. Previously, she worked for other non-DoD employers in various technical positions. (Items 3-4)

### **Applicant's finances**

Federal and state tax records confirm that Applicant failed to timely file her federal and state tax returns for tax years 2010-2016. (Items 3-4) She attributed her failures to timely file her federal and state tax returns to a custody issue without specifics. (Items 2 and 12) In her response to the FORM, she claimed again that all of her federal and state tax returns have been filed (citing to a receipt attached to her answer), but failed to provide any corroborating proof of filing her back tax returns for the years in issue. (Item 12) DOHA requests for IRS transcripts for tax years 2010 through 2016 were not furnished by Applicant. Without these transcripts or other documented proofs of filing for the covered years, no factual determinations can be made whether she filed her tax returns for tax years 2010-2016, when she filed them, whether the IRS approved the filings, if late, and how much back taxes are owed (inclusive of late filing penalties and accumulated interest).

In the retainer agreement Applicant arranged with a tax defender group in November 2017, she agreed to fees totaling \$2,450 in return for the tax firm's commitment to use its best efforts to investigate and resolve any federal or state tax filings and debts that might be due or owing to either or both of the tax jurisdictions. (Item 12). If applicable, the engaged tax defender, among its agreed commitments, was authorized to file appropriate power of attorney forms, negotiate compromise offers with the tax authorities, prepare or amend Applicant's federal and state returns for tax years 2005-2016, and release/modify wage garnishment orders and/or bank levies. Scheduled monthly payments of \$204 to the tax firm that were to begin in November 2017 have not been documented. (Item 12) Her cover letter and attached retainer agreement contain neither federal and state tax transcripts corroborating her tax filing for the years in issue,

nor other probative evidence of her filing her returns in issue with the appropriate taxing authorities.

Besides the retainer agreement Applicant executed with her tax defender firm, Applicant completed an ED rehabilitation agreement in November 2017. (Item 13) Under the terms of this agreement, Applicant agreed to make \$100 monthly payments to ED, beginning in November 2017. (Item 13) After satisfying nine monthly payment requirements of the agreement, she will be considered rehabilitated and eligible to be restored to permanent loan status. (Item 13) Because Applicant did not provide any documented monthly payments, it is unclear what kind of progress she is making on her rehabilitation agreement with ED. The retainer agreement itself provided no documentation of Applicant's payments to date under her agreement with ED. (Item 13)

To address her medical and consumer debts that cumulatively exceed \$15,000, Applicant entered into a contractual arrangement with a debt repair firm in August 2017. (Item 2) She provided an account screen of covered debts in November 2017, but no documentation of progress made in resolving the individual medical and consumer accounts covered in the agreement. (Item 14)

All told, Applicant has over 17 delinquent accounts listed in her credit reports covered in the FORM (inclusive of the state tax lien covered by SOR paragraph ¶ 1.c). To date, she has failed to resolve or demonstrate payment progress with the identified creditor debts covered by the three agreements she completed with her tax defender firm, ED, and her debt repair firm

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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 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 of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the

Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant’s failure to timely file her federal and state tax returns for tax years 2010-2016; her incurring an unresolved state tax lien in the amount of \$5,710; and her accumulating delinquent student loan, medical, and consumer debts exceeding \$25,000. Applicant’s failure to timely file federal and state tax returns for multiple years, her incurring of a state tax lien, and her accumulating other delinquent debts warrant the application of four of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19 b), “unwillingness to satisfy debts regardless of the ability to do so”; 19(c), “a history of not meeting financial obligations”; and 19(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’s admitted federal and state tax filing lapses, incurring of a state tax lien, and accumulation of delinquent student loan, medical, and consumer debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted untimely filing of her federal and state tax returns, unresolved state tax lien, and accumulated delinquent student loan, medical, and consumer debts are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of filing federal tax returns and resolving federal and state tax delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those

seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited extenuating circumstances (i.e., unemployment, poor professional tax advice, and insufficient income to pay his federal and state taxes when due and payable) provide some mitigation credit for her failure to timely file her federal tax returns and address her federal and state taxes due for the tax years in issue. The cited circumstances she attributes to her filing lapses and debt delinquencies are not enough to entitle her to any extenuating benefits from MC ¶ 20(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), and the individual acted responsibly under the circumstances."

Similarly, satisfaction of Applicant's evidentiary burden of providing probative evidence of her addressing her state tax lien and accumulated delinquent student loan, medical, and consumer accounts requires more than completion of repayment agreements. While her tax defender, rehabilitation, and debt relief agreements are encouraging, they are not enough by themselves to mitigate Applicant's financial delinquencies without more evidence of a seasoned payment history.

Applicant's failure or inability to corroborate her claimed filings of her 2010-2016 federal and state tax returns, provide IRS and state transcripts covering the tax years in issue, and demonstrate a good track record of compliance with terms of her agreements precludes her from fully availing herself of the benefits of any of the potentially available mitigating conditions. See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely filing of tax returns. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, her failures or inability to establish payment histories with her covered creditors after the initiation of the security clearance process are not enough to warrant favorable findings and conclusions with respect to raised security concerns over the state of her finances.

### **Whole-Person Assessment**

Whole-person assessment is unfavorable to Applicant. She has shown insufficient progress to date in addressing her federal and state delinquent tax returns. Similarly, she has provided little probative evidence of addressing her unresolved state tax lien and other delinquent debts associated with her student loans, medical accounts, and consumer debts to merit enough positive overall credit to mitigate financial concerns. What general contributions she has made to her current employer are not enough to overcome historical trust and judgment issues associated with her failure to timely file her federal and state tax returns over the course of several years (i.e., 2010-

2016), her incurrence of a state lien (still unresolved), and her accumulation of delinquent consumer loan, medical, and consumer debts. These cited tax-filing lapses, state tax lien, and accumulated student loan, medical, and consumer accounts are still not fully resolved.

Overall, Applicant's actions to date in addressing her finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that her finances are not sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Unfavorable conclusions are entered with respect to the allegations covered by SOR ¶¶ 1.a-1.s. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraph 1.a-1.s:

Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge





