



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



In the matter of: )  
)  
) ISCR Case No. 17-01660  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2018

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate financial consideration security concerns under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 20, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) On March 9, 2017, and March 15, 2017, Applicant provided a personal subject interview (PSI) to a security investigator from the Office of Personnel Management. (OPM) After reviewing the background investigation and the summary of the PSI, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.<sup>1</sup> On September 11, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February

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<sup>1</sup> In the response to the interrogatories, Applicant acknowledged that the summary of the PSI was accurate and true.

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 in the DOD on June 8, 2017. On November 13, 2017, Applicant responded to interrogatories sent to her by the Defense Office of Hearings and Appeals (DOHA). In her response to the interrogatories, Applicant also adopted as accurate the PSI summary. (Item 4)

Applicant answered the SOR on November 13, 2017. She admitted four of the debts (SOR 1.a, 1.f, 1.h and 1.i); denied four debts (SOR 1.b, 1.c, 1.d, 1.e); and could not admit or deny one debt since she had no information about the debt (SOR 1.g). She requested that the matter be decided on the written record. (Item 2) Department Counsel submitted the Government's written case on December 28, 2017. (Item 7) Applicant received a complete file of relevant material (FORM) on January 9, 2018, and she was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided a response to the FORM that was received at DOHA on February 2, 2018. (Item 8) Department Counsel had no objection to consideration of the material. (Item 9) I was assigned the case on April 13, 2018.

### **Findings of Fact**

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 59 years old. She graduated from high school in June 1977. She has been a mechanical engineering technician for a defense contractor since June 2005. She married in July 1979 and has two adult children. She received her first clearance for access to classified information in January 1988. (Item 3, e-QIP, dated January 20, 2016)

The SOR alleges, and Applicant admits, that she did not timely file her federal income tax returns for tax years 2009 through 2016. (SOR 1.a) The SOR alleges and credit reports (Item 5, dated April 21, 2017; Item 6, dated February 12, 2016) confirm that Applicant owes the Internal Revenue Service (IRS) \$14,576 for past-due federal income taxes (SOR 1.b); and a state \$4,683 for past-due income taxes (SOR 1.c). The SOR also alleges Applicant has a past-due mortgage of \$11,134 on a balance of \$132,296 (SOR 1.d); a charged-off credit card debt of \$1,335 (SOR 1.e); a debt in collection for \$127 (SOR 1.f); a judgment for a computer equipment purchase for \$328 (SOR 1.g); a traffic ticket in collection for \$200 (SOR 1.h); and a debt in collection for \$127 (SOR 1.i) to the same creditor as listed for the debt at SOR 1.f. Applicant claims that the \$127 debts at SOR 1.f and 1.i are duplicates. I find that this is the same debt as SOR 1.f, so SOR 1.i is found for Applicant. The total amount of the non-tax debts is \$2,106. (Item 2, Response to SOR, dated November 13, 2017)

Applicant admitted on her e-QIP, in the PSI, and in her response to the SOR that she failed to timely file her federal income tax returns for tax years 2009 through 2016. She attribute her failure to timely file the tax returns to not having the funds to pay the taxes due. She stated on the e-QIP that she did not know that she could negotiate a

payment plan with the IRS or request a tax return filing extension. IRS tax transcripts provided by Applicant with her response to the SOR, reveal that she filed her 2009 and 2010 tax return on October 15, 2012; her 2011 tax return on July 11, 2017; her tax year 2012 tax return on December 9, 2015; and her tax years 2013 and 2014 tax returns on December 11, 2015. She stated that the tax year 2015 federal tax return was filed electronically but was rejected. She filed a paper tax return for tax year 2015 on July 29, 2017. Applicant provided copies of the tax return forms which show that she owes about \$1,228 in federal income taxes for tax year 2015. She provided documentation that she filed her tax year 2016 tax return late on July 3, 2017. (Item 4, pp. 15-30)

On August 31, 2017, Applicant reached a tax payment plan for past taxes with the IRS by payment of \$225 per month. Her first payment to the IRS was due on September 15, 2017. Applicant did not present information showing payments made under the plan. (Item 4, pp. 13-14)

The information provided by Applicant indicates that she also filed her state income tax returns late for tax years 2009 to 2016. She filed the state returns in August 2017. In response to the FORM, Applicant provided information that her state income tax debt has been resolved as of August 29, 2017 by a payment of \$357.82. (Item 4, pp. 32-50; Item 9, Response to FORM, State Department of Revenue Letter, dated August 29, 2017)

Applicant reached a payment plan with her mortgage company to bring her mortgage current. (Item 4, at pp. 51-52) She claims that she is making timely payments under the plan and her mortgage will be current as of December 2017. Applicant did not present any information concerning payments made on the mortgage or the status of her mortgage account. The account is still listed as past due on the credit reports. (Items 5 and 6) SOR 1.d is resolved against Applicant.

Applicant denies that she has a credit card debt. (SOR 1.e) In her response to the SOR, Applicant claims she would have the debt removed from her credit report. The credit reports show that a settlement was accepted and the account closed. (Item 5 and 6) The debt is resolved for Applicant.

The debt at SOR 1.f and 1.i are duplicate debts to a water delivery company. Applicant claims the debt to the water delivery company was paid, but she did not provided any documents that the debt is paid or resolved. The credit reports list this debt as still unresolved. SOR 1.i as a duplicate debt is resolved for Applicant, but SOR 1.f is resolved against Applicant.

Applicant reports that she has no knowledge of the judgment on a debt for computer equipment. (SOR 1.g) She contacted the creditor and was told that the account was closed 13 years ago. However, it is still listed as unsatisfied on credit reports. (Item 6) Applicant did not present any information concerning payment of the debt. Applicant has not presented sufficient information to show that the debt is resolved.

Applicant admits to the traffic camera ticket debt. (SOR 1.h) She believes that the ticket was paid. She did not present any proof of payment. This debt is still listed on the credit reports. (Item 6) It is not resolved.

## **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 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(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 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 for 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations**

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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

A person's relationship with his or her 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's admissions in her responses to the SOR and the interrogatories establish that she failed to timely file federal and state income tax returns for tax years 2009 and 2016. This led to delinquent federal and state taxes. Information contained in credit reports establishes the delinquent mortgage, credit card, and other debts noted in the SOR. The evidence of record is sufficient to raise the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

- (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's tax debts caused by her failure to timely file federal and state tax returns for 2009 through 2016, and her failure to resolve other debts exhibits an inability and unwillingness to satisfy debts and meet her financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration 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 problems 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 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.

The mitigating conditions do not apply. The information provided by Applicant in response to the SOR and the FORM shows that the tax debts were incurred by late filing of tax returns but the tax debts have been resolved or being resolved. There is a more fundamental issue for security clearance purposes than just failing to pay taxes. Applicant admits she did not timely file her federal and state tax returns for at least eight tax years because she did not have the funds to pay the taxes. The lack of funds to pay taxes does not relieve a person from timely filing tax returns. Applicant's lack of action to file the returns resulted in her financial problems being ongoing and recent, and not incurred under circumstances making recurrence unlikely.

Applicant has to establish her good-faith efforts to meet her financial obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant must act responsibly given her circumstances. She must establish that she has a reasonable plan to resolve financial problems, and that she has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling financial obligations. Applicant must establish a meaningful track record of filing tax returns and resolving debts. A meaningful track record of tax return filing and resolving debt can be established by evidence of actually filing tax returns and establishing a plan to pay debts. A promise to file tax returns and pay debts is not a substitute for a track record of filing returns in a timely manner and acting in a financially responsible manner.

Applicant filed her federal tax returns for tax years 2009 and 2010 in October 2012; federal tax returns for tax year 2011 in July 2017; for tax years 2012, 2013, and 2014 in December 2015, and for tax year 2016 in July 2017. She has yet to file her

2015 federal tax returns. She filed all of her state tax returns in August 2017. All of the above tax returns were filed late, and not when due.

Applicant knew when she completed her e-QIP in December 2015 that she had not timely filed her federal and state tax returns from 2009 to 2014. Her knowledge about not timely filing the tax returns was reinforced by her answers to the security investigator in March 2017, and her responses to interrogatories in August 2017. After completing her e-QIP and talking to a security investigator about timely filing income tax returns, Applicant completed filing her tax returns.

Failure to timely file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. It is well known that federal tax returns for a particular tax years are to be filed by April 15 of the following year. Voluntary compliance with government rules and systems is essential for protecting classified and sensitive information. A person who fails to fulfill his or her legal obligation to timely 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. An applicant's failure to timely file tax returns is a strong indication that the individual will not follow the rules and guidance concerning safeguarding classified and sensitive information.

Applicant has now filed and paid or is paying her past due taxes. Even if an applicant attempts to correct the tax return problem, there must still be careful consideration of the applicant's trustworthiness in view of his or her longstanding prior behavior evidencing irresponsibility by failing to timely file income tax returns. There are procedures available to a tax payer to file tax returns even if they do not have the funds to pay the taxes due. Applicant did not follow the established government rules and procedures and contact federal and state tax authorities for help to understand the actions she must take. She just simply failed to file the tax returns. By failing to timely file state and federal tax returns for at least eight years, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified or sensitive information

Applicant presented no evidence that she received financial counseling. Applicant did not provide enough details about what she did to address the tax return allegations in the SOR. It is a requirement of good citizenship to timely filing income tax returns. The fact that she did not timely file returns because she did not have sufficient funds to pay the taxes due does not indicate that the Applicant was acting responsibly and reliably. Applicant did not provide sufficient documentation to show that she diligently resolved the tax return filing issue that was ongoing for at least eight years. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving her tax return problem. There is adequate evidence to show that she is now resolving the tax debts from her federal and state taxes. But there is insufficient evidence that she is paying or resolving some of the other SOR debts. There is insufficient assurance that her tax filing and financial problems are being resolved, are under control, and will not recur in the future. Her lack of reasonable and responsible

actions towards her tax returns and her debts are a strong indication that she will not protect and safeguard classified or sensitive information. Under all these circumstances, Applicant failed to mitigate financial security concerns.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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):

(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 access to classified information must be an overall common-sense 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. Applicant did not provide sufficient credible documentary information to establish that she took reasonable and responsible action to resolve her tax and financial obligations. Applicant did not demonstrate appropriate management of her finances. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial situation.

### **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
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant



Subparagraph 1.e:	For Applicant
Subparagraphs 1.f to 1.h:	Against Applicant
Subparagraph 1.i:	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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge