



**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. 14-06279

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

08/14/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges three delinquent or collection accounts totaling \$19,353. SOR ¶¶ 1.d through 1.f allege she failed to pay her 2009 city, state, and federal income taxes as required by law. She successfully mitigated five of the six SOR allegations; however, she failed to make sufficient progress resolving her delinquent federal income taxes for 2009. Financial considerations concerns are not mitigated at this time. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 28, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Government Exhibit (GE) 1) On January 24, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleges security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On February 24, 2015, Applicant responded to the SOR allegations, and she requested a hearing. (GE 3) On June 29, 2015, Department Counsel was ready to proceed. On July 13, 2015, the case was assigned to me. On July 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting Applicant's hearing for August 3, 2015. (HE 1) Applicant waived her right to 15 days of notice of the date, time, and location of her hearing. (Transcript (Tr.) 13) Applicant's hearing was held as scheduled. Department Counsel offered four exhibits into evidence, and Applicant provided four exhibits. (Tr. 15-18; GE 1-4; AE A-D) All exhibits were admitted without objection. (Tr. 15, 18; GE 1-4; AG A-D) On August 11, 2015, DOHA received the transcript of Applicant's hearing.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, she admitted SOR ¶¶ 1.a and 1.d, and she denied the remainder of the SOR allegations.<sup>2</sup> She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 58-year-old program manager, who has worked for a defense contractor since December 2013.<sup>3</sup> (Tr. 6, 20-21) In 1975, she graduated from high school, and in 1980, she received a bachelor's of science degree in comparative religions. (Tr. 6-7) She has never married, and she does not have any children. She has never served in the military. (Tr. 7) Since December 2013, she has received \$57,000 from DOD. (Tr. 21) She also has other employment. (Tr. 22) She was unemployed from August 2013 to December 2013 and from March 2006 to May 2007. (Tr. 23; GE 4) From 2010 to August 2013, she earned about \$50,000 annually. (Tr. 24)

### **Financial Considerations**

Applicant's credit reports, SOR response, Office of Personnel Management personal subject interview (OPM PSI), and hearing record show a history of three delinquent or collection accounts totaling \$19,353 and that Applicant failed to pay her 2009 city, state, and federal income taxes when required by law.

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<sup>1</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>2</sup>The source for the information in this paragraph is Applicant's SOR response. (HE 3)

<sup>3</sup>Unless stated otherwise, Applicant's April 28, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) is the source for the facts in this paragraph. (GE 1)

The debt in SOR ¶ 1.a is a collection account for \$12,577. Applicant borrowed \$15,000 from a bank and paid it to a well-known business expert to assist with her career. (Tr. 27-28) The business expert did not provide the promised assistance to Applicant. (Tr. 28) Applicant did not seek return of her payment from the business expert. She made payments to the bank for several years; however, the debt went into collections in 2014. (Tr. 30-31) Applicant maintained contact with the bank creditor. (Tr. 31) She started paying the creditor \$100 monthly five months ago. (Tr. 28-30)

The bank-collection debt in SOR ¶ 1.b for \$5,516 resulted from expenses used to move to a different state. (Tr. 32) She made payments until 2010. (Tr. 33) She resumed making \$200 monthly payments a year ago, and the current balance is \$2,516. (Tr. 34; AE D at 2)

The delinquent-bank debt in SOR ¶ 1.c for \$1,260 resulted from living expenses incurred in 2009. (Tr. 34) She made payments until 2010. (Tr. 35) By October 2014, the debt had increased to \$3,066. (AE D at 4) She made monthly payments of \$180 or \$214 from December 2014 to present. (AE D at 4) As of July 2015, the debt was reduced to \$1,497. (Tr. 36-37; AE D at 4)

SOR ¶ 1.d alleges unpaid federal income taxes for 2009. In 2009, Applicant took \$175,000 out of her 401(k) retirement account to fund her move to the state where her father lived because he was ill. (Tr. 38) She did not have federal income taxes withheld. (Tr. 38) She filed her 2009 federal income taxes on time; however, she owed a \$33,913 tax debt. (Tr. 39-40; GE 4) She has been making monthly payments of \$350 to \$500 for most months. (Tr. 40) She currently owes \$35,000 to the Internal Revenue Service (IRS), which includes penalties and fees. (Tr. 40, 60)

Applicant underpaid her federal income taxes for tax years 2010 through 2013. (Tr. 41) She has been paying the IRS about \$6,000 annually. (Tr. 41) From 2010 through 2012, she under withheld or owed about \$8,000 or \$9,000 each year. (Tr. 42) In 2013, her under payment to the IRS was a small amount. In 2014, she did not owe any federal income taxes.

SOR ¶ 1.e alleges unpaid city income taxes for 2009. Applicant owed \$2,724 to a city for her 2009 taxes. (Tr. 43; GE 4) She made monthly payments under a payment plan. (Tr. 46) In 2013 or 2014, she paid her city income taxes. (Tr. 44; GE 4)

SOR ¶ 1.f alleges unpaid state income taxes for 2009. Applicant's July 29, 2015 credit report shows a state tax lien filed in 2011 for \$2,832. (AE D) Applicant paid this debt in 2012; the lien was released in 2013; and no state income taxes are owed. (Tr. 44-45; SOR response; AE D; GE 4)

Applicant has about \$3,000 in her checking account. (Tr. 47) She maintains a budget. (Tr. 48; AE B) Her vehicle is paid off. (Tr. 49) Her medical insurance,

mortgage,<sup>4</sup> utilities, and other expenses are current. (Tr. 49-52) In 2013, she spent \$2,000 to stay for two weeks in Paris for a vacation. (Tr. 53; GE 4)

There is no evidence of security violations, criminal conduct, abuse of alcohol, or use of illegal drugs. Applicant disclosed her delinquent debts and state, city, and federal income tax problems on her April 28, 2014 SF 86.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, Section 2.

Eligibility for a security clearance 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, these guidelines are applied 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 all available, reliable information about the person, past and present, favorable and unfavorable.

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865, Section 7. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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

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<sup>4</sup>Applicant’s friend loaned \$80,000 to Applicant for her mortgage at a nine percent interest rate to purchase her residence. (AE A) The friend indicated the debt was current, and she was willing to extend the loan. (AE A)

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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts”; “(c) a history of not meeting financial obligations”; and “(g) failure to file annual Federal, state, or local income tax returns as required . . .” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, SOR response, OPM PSI, and hearing record. They establish three delinquent or collection accounts totaling \$19,353 became delinquent in 2009, and those creditors have not been fully paid. Applicant failed to pay her 2009 city, state, and federal income taxes when required by law. The Government established the

disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>5</sup> and

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government

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<sup>5</sup>The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant’s conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all of her SOR debts. She did not provide sufficient information about her finances to establish her inability to make greater progress paying her SOR creditors. Underemployment, unemployment, need to move to a different state to support her father, and federal income tax debt resulting from early withdrawal from her 401(k) retirement account are circumstances partially or largely beyond her control that adversely affected her finances; however, she did not provide proof that she acted responsibly under the circumstances.

Applicant has mitigated five of the six SOR allegations. She is credited with mitigating the debts in SOR ¶ 1.a through 1.c because she established payment plans for the three debts. She mitigated her 2009 city and state tax debts in SOR ¶¶ 1.e and 1.f by paying these two debts. She is also credited with maintaining contact with her creditors.<sup>6</sup>

Applicant failed to pay her federal income taxes as required for tax years 2009 through 2013. The only federal tax year alleged in the SOR is for 2009, and if she had not underpaid her taxes for the next four years, SOR ¶ 1.d could be mitigated because she made monthly payments to the IRS and she had a good reason for the underpayment. She substantially under withheld her taxes for tax years 2010 through 2012, resulting in a current federal income tax delinquency of over \$30,000.<sup>7</sup>

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<sup>6</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>7</sup>Applicant’s SOR does not allege that she failed to pay her federal income taxes in full for tax years 2010 through 2013 as required by law. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Applicant's failure to prove that she has made more substantial steps to resolve her federal tax debts shows a lack of judgment and responsibility that weighs against approval of her security clearance. There is insufficient evidence that she was unable to make greater progress resolving her federal tax debts; her finances are under control; and delinquent debts will not recur in the future. Under all the circumstances, she failed to establish that financial consideration concerns are mitigated.

### **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(a):

(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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance; however, this mitigating evidence is not sufficient to fully mitigate security concerns. Applicant is a 58-year-old program manager, who has worked for a defense contractor since December 2013. She was awarded a bachelor's of science degree in comparative religions. She was unemployed from August 2013 to December 2013 and from March 2006 to May 2007. This unemployment, underemployed for several years, move to a different state to support her sick father, and federal income tax debt resulting from early withdrawals from her 401(k) retirement plan are circumstances partially or largely beyond her control, which contributed to her financial problems. There is no evidence of security violations, criminal conduct, abuse of alcohol, or use of illegal drugs. Applicant established payment plans for the three SOR debts in SOR ¶¶ 1.a through 1.c, and she paid the delinquent state and city tax debts in SOR ¶¶ 1.e and 1.f. Applicant disclosed

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*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Applicant's SOR does not allege that she failed to pay her federal income taxes in full for tax years 2010 through 2013 as required by law will be considered for (b) through (e) and not for credibility.

her delinquent debts and state, city, and federal income tax problems on her April 28, 2014 SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. She failed to pay her federal income taxes as required for tax years 2009 through 2013. She substantially under withheld her taxes for tax years 2009 through 2012, resulting in a current federal income tax delinquency of over \$30,000. She failed to provide sufficient evidence of progress to resolve her federal tax problems and this failure shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay her federal taxes or documented financial progress is necessary to fully mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns 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.a through 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	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 a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge