



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04381

Appearances

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

04/24/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On April 8, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On September 17, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September

¹ GE 1 ((e-QIP), dated April 8, 2014).

1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators could not make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on October 2, 2014. In a sworn statement, dated October 21, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On December 15, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on January 13, 2015. A Notice of Hearing was issued on February 13, 2015. I convened the hearing, as scheduled, on March 11, 2015.

During the hearing, 3 Government exhibits (GE 1 through GE 3) and 13 Applicant exhibits (AE A through AE M) were admitted into evidence without objection. Applicant and one witness testified. The transcript of the hearing (Tr.) was received on March 25, 2015. I kept the record open to enable Applicant to supplement it. She took advantage of that opportunity. She submitted additional documents that were marked as AE N through AE X and admitted into evidence without objection. The record closed on April 6, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted four of the factual allegations in the SOR under financial considerations (¶¶ 1.a. through 1.d.), gave mixed responses to five other allegations (¶¶ 1.e. through 1.i.), and denied the factual allegation under personal conduct (¶ 2.a.). During the hearing, Department Counsel moved to amend the SOR to conform to the evidence presented. The first proposed amendment, identified as ¶ 1.j., related to financial considerations, was essentially that Applicant had failed to file her state income tax returns for the tax years 2010, 2011, 2012, and 2013.² The second proposed amendment, related to personal conduct, was to amend ¶ 2.a., by adding the words “and 1.j.,” to the existing allegation.³ Applicant admitted both allegations but objected to their inclusion into the SOR.⁴ Nevertheless, I granted the motion to amend the SOR and gave Applicant an additional period to formally admit or deny those allegations.⁵ Applicant’s admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

² Tr. at 89-91.

³ Tr. at 89-91.

⁴ Tr. at 90.

⁵ Tr. at 90-91.

Applicant is a 37-year-old employee of a defense contractor. She has been serving as a military family life counselor since November 2012.⁶ She served in the same position as a self-employed independent contractor from August 2009 until November 2012.⁷ Applicant is also an adjunct professor at a local university.⁸ A June 1996 high school graduate,⁹ Applicant received a bachelor of arts degree in psychology in June 2000 and a master's degree in social work in May 2005.¹⁰ She currently holds the designations master of social work (MSW) and licensed clinical social worker (LCSW).¹¹ She has never been granted a security clearance.¹² Applicant has never served with the United States military.¹³ She has never been married.¹⁴

Financial Considerations

There was nothing unusual about Applicant's finances until 2010. Applicant generally prepared and filed her federal and state income tax returns before the tax year 2009, either by herself or with the assistance of a nationally recognized income tax preparation service.¹⁵ With respect to her income tax return for the tax year 2009, because of her purported heavy traveling schedule, Applicant engaged the professional services of an accountant and asked for a filing extension. However, on an unspecified date, Applicant's accountant filed her federal and state income tax returns for that tax year without Applicant's authorization and retained the approximately \$4,500 refund received from the Internal Revenue Service (IRS). Applicant attempted to resolve the issue without resorting to legal action and hoped to do so before proceeding with the next year's income tax filing due-date.¹⁶ It is unclear if the issue was ever resolved.

Applicant acknowledged that she kept poor records, experienced salary changes, and was constantly moving around, so she went to new accountants for the tax years 2010, 2011, 2012, and 2013.¹⁷ Each year, timely extensions were requested to enable

⁶ GE 1, *supra* note 1, at 11.

⁷ GE 1, *supra* note 1, at 12.

⁸ GE 2 (Personal Subject Interview, dated May 20, 2014), at 4-5.

⁹ GE 2, *supra* note 8, at 3-4.

¹⁰ GE 2, *supra* note 8, at 3; Tr. at 60.

¹¹ AE A (Corrective Action Plan to Statement of Reasons, dated March 11, 2015), at 5; AE X (Letter, dated April 1, 2015; AE I (License Certification, downloaded March 11, 2015).

¹² GE 1, *supra* note 1, at 26.

¹³ GE 1, *supra* note 1, at 15.

¹⁴ GE 1, *supra* note 1, at 17.

¹⁵ Tr. at 27-28.

¹⁶ GE 1, *supra* note 1, at 27-28; GE 2, *supra* note 8, at 7; Tr. at 28-31.

¹⁷ GE 2, *supra* note 8, at 7.

her to get organized and gather the appropriate tax records.¹⁸ Applicant had intended to timely file her income tax returns herself, but she failed to do so. She attributed her failures to a variety of factors: she had a heavy work schedule; she was overwhelmed by her tax issues; her tax bracket had changed significantly; it was beyond her scope of expertise to prepare her taxes independently; she did not sufficiently dedicate time to manage her taxes; she wanted to deal with her accountants face-to-face, but could not because she was uncomfortable taking time off from work; and she lacked the education and knowledge to comply with her filing responsibilities. Her accountants kept reminding her of her deadlines and responsibilities, and gave her recommendations to follow, which she failed to do, and advised her that she was accruing significant fees and penalties.¹⁹ Applicant understood that she would owe taxes for the tax years 2010 through 2012, but not for 2013.²⁰ When she completed her e-QIP in April 2014, Applicant indicated that she expected to have her income tax issues resolved by April 15, 2014.²¹ They were not.

Applicant was temporarily assigned overseas on government business from June 2010 until August 2010, from June 2011 until August 2011, and from June 2012 until August 2012.²² She also claimed that she was “literally traveling, probably, 52 weeks out of the year.”²³ Applicant offered no documentation to support her claim of a heavy travel schedule, especially during periods when her income tax returns were required to be filed, either on the regular due dates or on the extended filing due dates.

(SOR ¶ 1.a.): On April 10, 2012, the IRS issued Applicant an inquiry regarding the non-filing of her federal income tax return for the tax year 2010.²⁴ There was no evidence that an extension of time to file the income tax return was ever filed.²⁵ On October 22, 2014 – one month after the SOR was issued – Applicant finally filed that income tax return.²⁶ In February 2015, it was determined that she owed \$9,074.15, including tax, interest, and penalty charges.²⁷ She made payments of \$4,028, \$3,000, and \$1,000, and received a credit of \$400.²⁸ As of April 6, 2015, Applicant’s balance is

¹⁸ GE 2, *supra* note 8, at 7.

¹⁹ Tr. at 34-43, 50-51, 57.

²⁰ Tr. at 42.

²¹ GE 1, *supra* note 1, at 27-29.

²² GE 2, *supra* note 8, at 6.

²³ Tr. at 34.

²⁴ AE O (Account Transcript, dated March 24, 2015).

²⁵ AE O, *supra* note 24.

²⁶ AE O, *supra* note 24, at 1. The actual filing date is unclear because the IRS has characterized two different dates as “tax return filed” and they were October 22, 2014, and November 24, 2014.

²⁷ AE T (Letter, dated February 15, 2015).

²⁸ AE O, *supra* note 24, at 1-2; AE A (Direct Pay Confirmation, dated March 9, 2015).

an overpayment of \$1,631.78, which according to Applicant will be applied to any remaining balance at a later date.²⁹

(SOR ¶ 1.b.): On April 15, 2013, the IRS issued Applicant an inquiry regarding the non-filing of her federal income tax return for the tax year 2011.³⁰ It was noted that she had previously requested an extension of time to file the income tax return on April 17, 2012.³¹ On October 6, 2014 – less than a month after the SOR was issued – Applicant finally filed that income tax return.³² In January 2015, the IRS issued a notice of intent to seize her state tax refund or other property, and demanded an immediate payment of \$11,135.82, including tax, interest, and penalty charges.³³ A refund of \$5,167 from her 2013 income tax refund was applied to her account in April 2014.³⁴ Applicant entered into a repayment plan for the remaining balance of approximately \$3,997.³⁵ She made payments of \$3,000 on March 9, 2015 and \$1,000 on March 10, 2015.³⁶

(SOR ¶ 1.c.): On September 2, 2014, Applicant finally filed her federal income tax return for the tax year 2012.³⁷ An extension of time to file the income tax return had been filed on April 15, 2013.³⁸ In January 2015, the IRS issued a notice of intent to seize her state tax refund or other property, and demanded an immediate payment of \$887.13, including tax and interest charges.³⁹ By April 6, 2015, the balance increased to \$893.27.⁴⁰ In October 2014, Applicant was informed that her balance for the tax year 2012 was determined to be \$2,398.⁴¹ She made a payment in that amount on October 28, 2014.⁴²

²⁹ AE O, *supra* note 24, at 1; AE W (Letter, dated April 1, 2015), at 1; AE N (Payoff Calculator, downloaded March 24, 2015).

³⁰ AE P (Account Transcript, dated March 24, 2015).

³¹ AE P, *supra* note 30, at 1; AE K (Email, dated April 17, 2012).

³² AE P, *supra* note 30, at 1; Tr. at 61.

³³ AE K (Notice, dated January 12, 2015).

³⁴ AE P, *supra* note 30, at 2.

³⁵ AE A, *supra* note 11, at 2; AE N, *supra* note 29.

³⁶ AE A, *supra* note 11, at 2; AE K (Receipt, dated March 10, 2015); AE A (Direct Pay Confirmation, dated October 28, 2014).

³⁷ AE Q (Account Transcript, dated March 24, 2015).

³⁸ AE L (Payment Confirmation, dated April 15, 2013).

³⁹ AE L (Notice, dated January 12, 2015).

⁴⁰ AE Q, *supra* note 37.

⁴¹ AE A, *supra* note 11, at 2.

⁴² AE A (Direct Pay Confirmation, dated October 28, 2014).

(SOR ¶ 1.d.): Applicant requested an extension of time to file the income tax return for the tax year 2013, so she could focus on her earlier delinquent income tax returns.⁴³ She anticipated filing the actual income tax return by November 14, 2014.⁴⁴ In October 2014, the IRS advised her that she would be due a refund of approximately \$2,300 for the tax year, and that amount would be applied to any remaining balances.⁴⁵ Applicant contends she finally filed the income tax return on January 10, 2015,⁴⁶ but she failed to submit any documentation to support her contention. In February 2015, she was advised that the earlier balance was incorrect, and that it was actually approximately \$5,200. That amount was purportedly applied to the remaining balances of her earlier income tax liabilities.⁴⁷

(SOR ¶ 1.j.): Applicant did not timely file her state income tax returns for the tax years 2010, 2011, 2012, or 2013.⁴⁸ The tax returns for the first three years were filed in September 2014,⁴⁹ and the return for the tax year 2013 was expected to be filed in April 2015.⁵⁰ Applicant anticipated owing the state approximately \$2,300 in unpaid state income taxes,⁵¹ and in November 2014 she entered into a payment agreement with the state department of revenue. Under that agreement, commencing on December 28, 2014, \$200 would be withdrawn from Applicant's bank account each month until the actual balance of \$1,885.74, plus any accrued interest, is satisfied.⁵² Applicant offered no documentation to indicate that her state income tax return for the tax year 2013 has yet been filed.

In addition to her delinquent federal and state income tax returns for the tax years 2010 through 2013, the issue of whether or not she expected to timely file her federal and state income tax returns for the tax year 2014 was raised since they were due to be filed approximately four weeks after the hearing was conducted. Applicant stated that she had educated herself on being able to utilize software programs to run reports pertaining to her finances to submit to her accountant.⁵³ She believed she was on schedule to have her income tax returns completed before the filing due date.⁵⁴ She

⁴³ Applicant's Answer to the SOR, dated October 21, 2014, at 2.

⁴⁴ Applicant's Answer to the SOR, *supra* note 43, at 2.

⁴⁵ AE A, *supra* note 11, at 2.

⁴⁶ AE A, *supra* note 11, at 2; Tr. at 61.

⁴⁷ AE A, *supra* note 11, at 2.

⁴⁸ Tr. at 41-42, 51-52; AE W, *supra* note 29, at 2.

⁴⁹ Tr. at 51-52.

⁵⁰ AE W, *supra* note 29, at 2.

⁵¹ Tr. at 53.

⁵² AE U (Authorization for Bank Drafted Payment Agreement, dated November 5, 2014); Tr. at 53-54.

⁵³ Tr. at 54-55.

⁵⁴ Tr. at 55.

has not submitted any documentation to indicate that the federal and state income tax returns for the tax year 2014 have yet been filed.

The SOR also identified five purportedly continuing delinquencies, as reflected by a credit report from April 2014,⁵⁵ totaling approximately \$503. Applicant offered no explanations as to how or why those particular accounts became delinquent. Those debts listed in the SOR and their respective current status, according to the credit report, other evidence in the case file, and Applicant's admissions regarding the same, are described below.

(SOR ¶ 1.e.): There is a medical account with an unidentified provider in the amount of \$160 that was placed for collection in 2012.⁵⁶ When Applicant discussed the account with an investigator from the U.S. Office of Personnel Management (OPM) in May 2014, she was not familiar with it.⁵⁷ She subsequently contended that she had resolved the account, effective October 21, 2014, and she furnished a confirmation number.⁵⁸ Other than a number, Applicant did not submit any documentation such as a cancelled check, receipt, or letter from the creditor to support her contention that the account has been resolved. Instead, she noted that the account is no longer listed in her most recent credit report.⁵⁹

(SOR ¶ 1.f.): There is another medical account with an unidentified provider in the amount of \$112 that was placed for collection in 2011.⁶⁰ Applicant was not familiar with the account when she discussed it with the OPM investigator in May 2014.⁶¹ Once again, she subsequently contended that the account had been resolved, effective October 21, 2014, and she furnished a confirmation number.⁶² Other than a number, Applicant did not submit any documentation, such as a cancelled check, receipt, or letter from the creditor to support her contention that the account has been resolved. However, it should be noted that the account is listed in her most recent credit report, and it is reflected as paid in full.⁶³

⁵⁵ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 26, 2014).

⁵⁶ GE 3, *supra* note 55, at 14.

⁵⁷ GE 2, *supra* note 8, at 6.

⁵⁸ Applicant's Answer to the SOR, *supra* note 43, at 2; AE A, *supra* note 11, at 3.

⁵⁹ Tr. at 58. See AE C (Combined Experian, TransUnion, and Equifax Credit Report, dated March 10, 2015).

⁶⁰ GE 3, *supra* note 55, at 14.

⁶¹ GE 2, *supra* note 8, at 6.

⁶² Applicant's Answer to the SOR, *supra* note 43, at 2; AE A, *supra* note 11, at 3.

⁶³ Tr. at 58; AE C, *supra* note 59, at 2, 11.

(SOR ¶ 1.g.): There is another medical account with an unidentified provider in the amount of \$125 that was placed for collection in 2011.⁶⁴ Applicant was not familiar with the account when she discussed it with the OPM investigator in May 2014.⁶⁵ During the hearing, she stated that she had been unable to identify or locate the creditor.⁶⁶ She subsequently contended that the account had been resolved, effective April 1, 2015, and she furnished a bank transaction and a confirmation number.⁶⁷

(SOR ¶ 1.h.): There is another medical account with an unidentified provider in the amount of \$72 that was placed for collection in 2013.⁶⁸ Applicant was not familiar with the account when she discussed it with the OPM investigator in May 2014.⁶⁹ Once again, she subsequently contended that the account had been resolved, effective October 21, 2014, and she furnished a confirmation number.⁷⁰ Other than a number, Applicant did not submit any documentation, such as a cancelled check, receipt, or letter from the creditor to support her contention that the account has been resolved. Instead, she noted that the account is no longer listed in her most recent credit report.⁷¹

(SOR ¶ 1.i.): There is another medical account with an unidentified provider in the amount of \$34 that was placed for collection in 2011.⁷² Applicant was not familiar with the account when she discussed it with the OPM investigator in May 2014.⁷³ During the hearing, she stated that she had been unable to identify or locate the creditor.⁷⁴ She subsequently contended that the account had been resolved, effective April 1, 2015, and she furnished a bank transaction and a confirmation number.⁷⁵

Applicant's adjusted gross income in 2010 was \$26,694;⁷⁶ in 2011 it was \$38,261;⁷⁷ and in 2012 it was \$28,866.⁷⁸ Her adjusted gross income for 2013 and 2014

⁶⁴ GE 3, *supra* note 55, at 14.

⁶⁵ GE 2, *supra* note 8, at 6.

⁶⁶ Tr. at 58-59. See AE A, *supra* note 11, at 3.

⁶⁷ AE R (Account Activity, dated April 1, 2015); AE W, *supra* note 29, at 3.

⁶⁸ GE 3, *supra* note 55, at 15.

⁶⁹ GE 2, *supra* note 8, at 6. See AE A, *supra* note 11, at 3.

⁷⁰ Applicant's Answer to the SOR, *supra* note 43, at 2; AE A, *supra* note 11, at 3.

⁷¹ Tr. at 58. See AE C, *supra* note 59.

⁷² GE 3, *supra* note 55, at 15.

⁷³ GE 2, *supra* note 8, at 6.

⁷⁴ Tr. at 58-59.

⁷⁵ AE R, *supra* note 67; AE W, *supra* note 29, at 3.

⁷⁶ AE O, *supra* note 24, at 1.

⁷⁷ AE P, *supra* note 30, at 1.

was not revealed. Nevertheless, Applicant's net worth, without describing the assets considered, is \$44,683.79.⁷⁹ It is unclear if she has any monthly remainder available for discretionary savings or spending. In February 2015, Applicant attended a one-hour webinar generally described as financial self-care for personal and professional use.⁸⁰

Personal Conduct

(SOR ¶ 2.a.): As noted above, Applicant failed to timely file her federal and state income tax returns for 2010, 2011, 2012, and 2013.

Character References and Work Performance

A coworker/friend has known Applicant for approximately 12 years, and they interact with each other on a daily basis. They also served on the ethics committee and as local chairs of a national professional organization. Applicant has been characterized as a very upstanding person with a reputation for honesty and truthfulness.⁸¹ Applicant informed her of her tax problems from the very beginning and she believes that Applicant was overwhelmed by the issue because:⁸²

she lacked the cultural capital, social capital, just to be able to work with the accountant, or . . . do it on her own. . . . She is very independent, she wants to be able to do things, on her own. . . . She just got overwhelmed with trying to compile everything, keeping up with everything.

Another LCSW has known Applicant for nearly ten years since Applicant mentored her with her MSW degree. She noted that Applicant is well respected, and she has been selected for various leadership positions, asked to participate in community activities, and given awards within the community and their profession.⁸³ Applicant was awarded recognition by military battalion commanders for her support and service to military service members and their families.⁸⁴

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

⁷⁸ AE Q, *supra* note 37.

⁷⁹ AE B (Weekly Summary, dated March 6, 2015), at 1-2.

⁸⁰ AE G (E-mail, dated February 19, 2015).

⁸¹ Tr. at 73-75.

⁸² Tr. at 76-77.

⁸³ AE H (Character Reference, dated March 10, 2015); AE J (E-mail, dated February 5, 2014); AE D (E-mail, dated November 17, 2014); AE E (E-mail, dated October 29, 2014); AE F (E-mail, dated February 14, 2012).

⁸⁴ AE A, *supra* note 11, at 5.

emphasizing, “no one has a ‘right’ to a security clearance.”⁸⁵ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁸⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁸⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁸⁸

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the

⁸⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁸⁷ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁸⁸ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

possible risk the applicant may deliberately or inadvertently fail to 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁸⁹

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.”⁹⁰ 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. In addition, a “failure to file annual Federal, state, or local income tax returns as required. . .” may raise security concerns under AG ¶ 19(g). Applicant failed to timely file her federal and state income tax returns for 2010, 2011, 2012, and 2013. She allowed five medical accounts to become delinquent and to be placed for collection. AG ¶¶ 19(a), 19(c), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or

⁸⁹ *Egan*, 484 U.S. at 531.

⁹⁰ See Exec. Or. 10865 § 7.

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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁹¹

AG ¶¶ 20(c) and 20(d) partially apply. AG ¶¶ 20(a) and 20(b) do not apply. Applicant acknowledged that she kept poor records, experienced salary changes, and was constantly moving around, so she went to new accountants for the tax years 2010, 2011, 2012, and 2013. Each year, timely extensions were requested to enable her to get organized and gather the appropriate tax records, and each year she intended to timely file her income tax returns herself. She routinely failed to do so and attributed her failures to a variety of factors: she had a heavy work schedule; she was overwhelmed by her tax issues; her tax bracket had changed significantly; it was beyond her scope of expertise to prepare her taxes independently; she did not sufficiently dedicate time to manage her taxes; she wanted to deal with her accountants face-to-face, but could not because she was uncomfortable taking time off from work; and she lacked the education and knowledge to comply with her filing responsibilities. None of those factors appeared to be beyond Applicant's control.

Applicant's accountants kept reminding her of her deadlines and responsibilities, and gave her recommendations to follow, which she failed to do, and they advised her that she was accruing significant fees and penalties. Nevertheless, Applicant procrastinated and took no action. When she completed her e-QIP in April 2014, Applicant indicated that she expected to have her income tax issues resolved by April 15, 2014. They were not. Applicant's behavior continued over the years until she finally filed her federal income tax return for the tax year 2013 in January 2015. Applicant's procrastination over the timely filing of her income tax returns started in 2009, continued after the SOR was issued in 2014, and was finally seemingly resolved in 2015. That

⁹¹ 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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

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

behavior was frequent and, notwithstanding her perceived explanatory factors, willful. In the absence of clear demonstrations that her behavior has been modified, there is nothing to indicate that it is unlikely to recur.

While Applicant has received guidance from her accountants, she essentially ignored their guidance. She attended a one-hour webinar generally described as financial self care for personal and professional use, but no other specific description of the topic was furnished. Applicant has presented some evidence showing that she may have resolved some of delinquent medical accounts and her income tax issues. She offered no explanations for her delinquent medical accounts. Even though she may have resolved some of her accounts, her efforts, generated largely by the issuance of the SOR, do not support a conclusion that they were good-faith efforts. In the absence of some indication of Applicant's current monthly net income, and a monthly remainder after paying routine monthly expenses, it is difficult to determine if Applicant's financial problems are under control. Applicant's actions under the circumstances presented continue to cast doubt on her current reliability, trustworthiness, or good judgment.⁹²

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(d), it is potentially disqualifying if there is

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations. . . .

Under AG ¶ 16(e), it is also potentially disqualifying if there is

personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . .

⁹² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

Applicant failed to timely file her federal and state income tax returns for 2010, 2011, 2012, and 2013. AG ¶¶ 16(a) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Also, AG ¶ 17(e) may apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

AG ¶¶ 17(c) and 17(e) do not apply. As noted above, Applicant's accountants kept reminding her of her deadlines and responsibilities, and gave her recommendations to follow, which she failed to do. Instead, Applicant procrastinated and took no action. In April 2014, she indicated that she expected to have her income tax issues resolved by April 15, 2014. They were not. Applicant's behavior continued over the years until she finally filed her federal income tax return for the tax year 2013 in January 2015. Applicant's procrastination over the timely filing of her income tax returns started in 2009, continued after the SOR was issued in 2014, and was seemingly resolved in 2015. They reflect Applicant's cavalier attitude towards her legal responsibilities for timely filing income tax returns, as well as her questionable judgment, unreliability, and unwillingness to comply with established rules and regulations.

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(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.

There is some evidence in favor of mitigating Applicant's behavior. Applicant is a highly-thought-of professional LCSW, who is a positive influence on her community and her colleagues. Applicant finally filed her federal and state income tax returns for 2010, 2011, 2012, and 2013. She has paid off delinquent medical accounts.

The disqualifying evidence under the whole-person concept is more substantial than the mitigating evidence. Applicant routinely failed to timely file her federal and state income tax returns over a multi-year period despite having the assistance and guidance of accountants and professional income tax return preparers – assistance and guidance she rejected. Timely extensions were usually requested to enable her to get organized and gather the appropriate tax records, and each year she intended to timely file her income tax returns herself. Instead, she procrastinated and routinely failed to do so. The IRS issued Applicant several inquiries regarding the non-filing of some of her federal income tax returns, but those inquiries were followed by Applicant's continued inaction. Likewise, the IRS issued notices of intent to seize her state tax refunds or other property, and demanded immediate payments. Most of her delinquent federal and state income tax returns were not filed until after the SOR was issued. The same is true for her delinquent medical accounts.

Applicant's behavior, consisting of a combination of consternation and procrastination, continued over several years. That behavior was frequent and, notwithstanding her perceived explanatory factors, willful. In the absence of clear demonstrations that her behavior has been modified, there is nothing to indicate that it is unlikely to recur.

Applicant has demonstrated a very poor track record of timely filing federal and state income tax returns and maintaining her medical accounts. Her explanations for those failures are simply not credible. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations and personal conduct. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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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.

ROBERT ROBINSON GALES
Administrative Judge