



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 06-10209  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

January 10, 2008

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on October 31, 2003 (Government Exhibit 1). On April 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 24, 2006, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on June 12, 2007. The case was assigned to another Administrative Judge on August 22, 2007. I received the case assignment on August 27, 2007. DOHA issued a notice of hearing on September 6, 2007, and I convened the hearing as scheduled on September 25, 2007. The government offered Government Exhibits 1 through 6, which

were received without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits A through C, without objection. DOHA received the transcript of the hearing on October 3, 2007. I granted Applicant's request to keep the record open until October 9, 2007, to submit additional matters. On October 9, 2007, she submitted Applicant's Exhibit D, without objection. The record closed on October 9, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 49, married and has a high school diploma. She is employed by a defense contractor as a janitor and seeks to retain a security clearance previously granted in connection with her employment.

### **Guideline F, Financial Considerations**

Beginning in 1997, and through 2000, the Applicant began to have serious problems paying her Federal income taxes in a timely manner. The primary reason for this difficulty was because the Applicant and her husband were financially over-extended because of the house they owned. Because of these problems, the Internal Revenue Service filed various levies and tax liens against the Applicant and her husband. (Government Exhibits 2 and 3, Applicant's Exhibit A.) By 2003, the Applicant owed approximately \$15,187.00 in taxes, interest and penalties. (Government Exhibit 5.)

The Applicant began paying off her back taxes in 2003. (Transcript at 32-39, Applicant's Exhibit A.) While she was able to reduce her indebtedness somewhat, she was not able to get firmly ahead with the IRS. In May 2007, the Applicant withdrew \$2,000.00 from her 401(k) retirement account to pay down part of her back taxes. (Applicant's Exhibit A at 5.)

After making this payment, the Applicant was still indebted to the IRS in the amount of approximately \$8,635.29. In early September 2007, the Applicant's daughter found out about her parents' indebtedness to the IRS. This daughter insisted that the Federal tax debt be paid in full, by having the debt put on her credit card. (Transcript at 42-44, Applicant's Exhibit B.) The Applicant submitted documentation from the IRS showing that they received the payment, applied it to pay the Applicant's back taxes in full, and that the tax lien for tax years 1997 through 2000 has been released. (Applicant's Exhibit D.)

The Applicant's most recent credit bureau report, dated June 22, 2007, reveals no past due debt by the Applicant. Her primary debt is for her house. (Government Exhibit 6.)

## Policies

Security clearance decisions are not made in a vacuum. When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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. Security clearance decisions include, by necessity, consideration of the possible risk that the Applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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. The Applicant was unable to pay her tax debts for several years, resulting in the filing of a Federal tax lien. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 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.” Applicant’s financial worries arose between about 1999 and 2003. There is no evidence that she has been unable to pay her taxes in a timely manner since then. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

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.” The Applicant never denied she owed these tax debts. To the best of her ability over several years she attempted to pay them off. Unfortunately, her financial situation did not allow her to pay them off at once. The debt has now been paid in full by the Applicant’s daughter. Therefore, the tax debt has been successfully resolved. I conclude these potentially mitigating conditions apply.

## **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) 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant, by her own admission, chose making house payments ahead of making tax payments before 2003. Since then, it appears that her taxes have been paid in a timely fashion and she is current on her house payments. Of course, the issue is not simply whether all the Applicant's debts are paid - it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Under AG ¶ 2(a)(3), this conduct is not recent. While it would have been better if she had paid her tax debt earlier, she has paid it off now. The Applicant's daughter's action to pay off the tax debt in full makes the future debt situation regarding the Applicant easier. Under the particular circumstances of this case, this complete payment indicates that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)8)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

## **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: FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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WILFORD H. ROSS  
Administrative Judge