



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



In the matter of: )  
)  
) ISCR Case No. 07-16143  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. Delaney, Esquire, Department Counsel  
For Applicant: *Pro se*

April 30, 2008

**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on March 9, 2007. On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on January 30, 2008. DOHA issued a notice of hearing on March 4, 2008, and the hearing was held on March 26, 2008. At the hearing, three exhibits (GE 1 through 3) were admitted in evidence without objection to support the government's case. Applicant's two exhibits (AE A and AE B) were received in evidence without objection. She also testified. In the time allowed for Applicant to submit additional documentation, she submitted AE C (in two parts) containing her

requests to the state tax authority for her tax records, and their response. DOHA obtained a copy of the hearing transcript on April 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The SOR contains two allegations under the financial considerations guideline that Applicant admitted. She is 57 years old, divorced, with four adult children. She has been employed as a functional/business analyst by her employer since August 2005. She seeks a security clearance.

At the present time, three of Applicant's four adult children are no longer living with her. The fourth child is attending community college, and will be leaving the household in September 2008 when he meets his educational objectives. (AE A1) Applicant's mother lived with her for about a year following a stroke in 2004, but is currently living in a nursing home, with Applicant's brother providing most of the monetary assistance. (Tr. 43-45) Applicant has paid for her father's medical prescriptions since 2002. (AE B; Tr. 42-44)

From 1989 to June 2005, Applicant was a software consultant for an organization established to monitor currencies throughout the world. She trained individuals on various software applications. Her tax problems resulted from not understanding the immediate federal tax consequences of her job position status as an "independent consultant," that required her to make quarterly rather than yearly tax payments. The employment practice in the early 1990s was that employers did not hire full-time employees to train other employees. Instead, hiring independent consultants meant the employers did not have to pay them full benefits they had to pay full-time employees. (Tr. 84-86)

When she realized in 1991 or 1992 that she had to commence paying taxes quarterly as an independent contractor, she talked to an Internal Revenue Service (IRS) agent, and was given quarterly payment vouchers to pay the current and also delinquent debt that had already accrued. (Tr. 23) Though the record does not reflect how delinquent she was in 1991 or 1992, Applicant recalled her persistent difficulties in keeping up-to-date on her current taxes while consistently paying off any tax arrearage. (Tr. 24) She participated in periodic payment plans or tried to increase quarterly payments when she could, but sometimes the fluctuation in quarterly amounts occurred simply because she was earning less money. (Tr. 53) Also, the amount of tax payments she was making was impacted because she was still raising three of her four children at home in the early 1990s. (*Id.*)

In the three college school years between 1996-1997, 1997-1998, and 1998-1999, Applicant decided to pay for her daughter's tuition when Applicant's former, common law husband indicated he was not going to underwrite the tuition after the daughter's first year. (Tr. 28) Applicant even took out some loans to help her pay the

daughter's tuition. (Tr. 57) She paid the tuition even though she was aware her tax debt was continuing to accumulate. (Tr. 58) Her federal tax payment history (AE A3) was regular throughout the three-year period she was paying her daughter's tuition.<sup>1</sup> However, the payment history revealed no payments for the years 1993, 1994, 1995, and 1996, either on a quarterly or monthly frequency.

As AE A3 shows, her payment plan for the existing liens ended in April 2000 with her lump sum payment of \$3000.00. She continued to make lump sum payments until April 2005; her total payment between 1996 and June 2005 was approximately \$83,585.00. (AE 3) Applicant was advised in January 2008 that new liens had been filed (or periods had been assessed but liens had not been filed) for tax years 1995, 1996, 1997, 1998, and 1999, and the total amount of her tax liability would be \$150,027.92.

Applicant testified she made tax payments to the IRS even before the documented payment history (1993-2005). (AE A3) While she was not certain about the frequency of the payments she made, she was positive she was making payments before 1993 of as much as \$800.00 a month toward her current tax obligation or arrearage. (Tr. 89-98) She stated, "Right. I remember those significantly, because I couldn't make that payment." (Tr. 97)

In November 2002, Applicant submitted her first offer-in-compromise (OIC) to settle her outstanding debt with the IRS. (AE A10) She knew the \$2,196.00 offer was insufficient, but she was seeking guidance on the overall process, and willing to negotiate. She was informed in December 2003 that her offer was rejected as too low because a larger amount was deemed to be collectible. She could not pay approximately \$900.00 a month for 105 months under the deferred payment plan offer, either.

Between June and August 2004, Applicant made a second OIC. (AE A8) She offered approximately \$16,000.00 (Tr. 29), but the IRS wanted a lump sum of \$70,000.00. (Tr. 68) She hired counsel, and appealed. (AE A8) Her appeal of the IRS decision was denied.

After receiving an IRS collection notice in June 2005 (AE A9), Applicant decided to obtain a full-time job because independent consultant work was disappearing. She submitted a financial statement to the IRS. They subsequently recommended she resubmit an OIC when she had full-time employment. Even though she began full-time employment in August 2005, her plans were to build a sizeable savings account and retirement account before she approached the IRS with another offer. Then, in September 2008, she planned to return to the IRS with her third OIC proposal. (Tr. 32) After receiving the SOR in December 2007, Applicant moved up the timetable for the OIC by arranging for a \$32,000.00 loan with her credit union (Tr. 33) that she has already begun to repay. She filed the OIC on March 7, 2008 to settle the IRS tax lien of approximately \$150,000, including penalties and interest. (Tr. 68; AE 4) If the IRS accepts her offer, Applicant would have bank payments of about \$1000.00 a month for

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<sup>1</sup> Even though there is no documentation showing what tax years the payments were being applied.

three years to satisfy the bank loan. (Tr. 69) Even after learning that she had filled out Form 433-A (Collection Information Statement for Wage Earners and Self-Employed Individuals, part of the OIC presentation package) incorrectly by failing to include her monthly tax payments on line 43 of page 4 of the form, Applicant was confident that through more budgeting and part-time work, she would be able to make the monthly \$1,000.00 payments on the bank loan. (Tr. 71-77)

The federal tax lien of \$15,520.00 that was filed in December 1995 (for tax years 1993 and 1994), and identified in SOR 1.b. was released on January 28, 2008. Though Applicant is certain she made some payments for the delinquent tax years covered by the lien (Tr. 50), she did not know what the figure was because her documentation did not break down the release into how much had been paid before the limitations statute extinguished the remainder of the debt altogether. (Tr. 54)

On reflection, Applicant is aware she made some poor decisions regarding her finances. (Tr. 79) Though payment of her daughter's tuition exemplified poor judgment, Applicant is gratified she provided the tuition so her daughter could be where she is today. (Tr. 81) The federal tax liens are the only tax problems Applicant has remaining. In the past she had state tax problems, but the problems have been resolved. See, AE C. Her current federal and state taxes have been up-to-date since 2002. (AE B, AE C; Tr. 34)

### **Character Evidence**

Applicant considers herself a law-abiding citizen who does not have unhealthy habits. (Tr. 35) For the appraisal period ending in July 2007, Applicant's performance evaluation was rated as superior, triggering a raise in her salary. (AE A11) Her retirement account carries a vested balance of \$5,254.93. (*Id.*) She has kept her overall card balances at manageable levels through regular payments (AE A6), while providing the necessary documentation requiring another credit card company to issue a credit of approximately \$638.00 to Applicant's closed account due to mistakes or changes made to her closed account. See, AE A12.

AE 13 contains documentation showing Applicant's timely repayment of loans over the years beginning with: (1) a bank loan for \$3,366.00 that she repaid in May 1993 (AE 13); a student loan she repaid in June 1989; and, another bank loan for \$4589.24 that she successfully repaid in May 1991.

Considering the evidence as a whole, including Applicant's demeanor and conduct during the course of the hearing, I found her testimony credible.

### **Policies**

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 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.

### **Analysis**

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The record shows that Applicant made a serious mistake in the early 1990s by not paying her tax obligations on a quarterly basis as required by her position as an independent consultant. While she indicated that after she found out in 1991 that she was required to pay quarterly because of her job status, she exercised seriously poor judgment in not devising a more effective way to pay her current taxes as she was managing the arrearage. Financial considerations (FC) disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) applies based on her inability, not unwillingness to pay her back taxes. FC DC 19.c. (*a history of not meeting financial obligations*) applies due to her 18-year history of financial difficulties.

There are four mitigating conditions that apply to overcome the adverse evidence under the FC guideline. FC MC 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*) applies. Though she is still dealing with the federal liens in SOR 1.a. and more recent liens (AE 4), Applicant has brought her current state and federal taxes to a current status as of 2002. Moreover, the chances of her falling into the same kind of tax quandary in the future is implausible because of her decision to terminate her independent consultant status in June 2005, followed by her acceptance of her current full-time position in August 2005. Though the federal tax problems are still present, the circumstances under which they occurred does not cast doubt on Applicant's good judgment and reliability.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) has no application to the origin of Applicant's financial problems because she clearly made the decision to become an independent consultant in 1991, but failed to investigate the tax consequences of her decision. Applicant's ability to pay the IRS in the early to middle 1990s was complicated by raising three of four children as a single mother. Applicant receives limited mitigation for these familial challenges.

When Applicant's common law husband declined to pay tuition after her daughter's first year in 1996, Applicant faced a choice of either "picking up the slack" or continuing to deal with her own federal tax problems. She chose to help her daughter so that she would not have to suspend her education at a critical time in her life. Applicant even obtained loans to ensure the daughter's tuition was paid. Although she knew the federal liens would continue to increase, she still feels she made the right decision. Applicant's monetary assistance to her father since 2002, and her mother since her stroke in 2004 cannot be overlooked either. Applicant receives additional mitigation under FC MC 20.b.

Though the record does not indicate Applicant has ever received formal financial counseling, her long-term relationship with the IRS between approximately 1991 and today, coupled with the financial challenges associated with raising her four children as a single parent for much of the time, has sharpened her financial habits and practices. She receives limited mitigation under FC MC 20.c. (*the person has received or is receiving*

*counseling for the problem and/or there are clear indications the problem is being resolved or is under control)*

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant recognizes she made a mistake with her taxes that has cost her dearly. Rather, than abandon her efforts to resolve her federal lien problems, she has made documented efforts to repay what she owes. Though her first OIC in 2002 may have been unreasonably low, she has continued to make documented efforts to satisfy the liens. Even though it is impossible to determine what part of the lien in SOR 1.b was actually paid off before the lien was extinguished by the statute of limitations, I conclude from her payment history that some of the money was applied to the lien. Having weighed and balanced all the evidence, Applicant's payment history and her commendable efforts to repay the remaining liens, the FC guideline is resolved in her favor.

### **Whole Person Concept (WPC)**

I have weighed the circumstances of this case under the general factors of the whole person concept. Applicant's failure to address her federal tax problems was serious. Applicant was almost 40 years old when she became an independent consultant. She should have done her homework to find out about the tax consequences of her position. However, her tax lien payment history between 1991 and 2002 demonstrates she was not trying to shirk her tax responsibilities. In 2002, her yearly federal and state taxes became current, even though the arrearage relating to previous tax years continues to grow via penalties and interest. In June 2005, she terminated her independent consultant status, and took a full-time job with her current employer. She received a superior rating at her job in 2007. Based on her documented actions in trying to resolve the federal tax liens, Applicant has met her burden of persuasion under the FC guideline.

### **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 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 1.a.

For Applicant

Subparagraph 1.b.

For Applicant

## **Conclusion**

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

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Paul J. Mason  
Administrative Judge