



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



In the matter of:)
)
) ISCR Case No. 07-18151
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Department Counsel
For Applicant: Bobbie Henry, Esquire

February 12, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant failed to timely file state and federal tax returns from 1998 through 2007. She provided false answers on her security clearance questionnaire concerning unpaid judgments, bankruptcy filings, unpaid debts, and garnishments. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations, personal conduct, and criminal conduct. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on April 23, 2008, detailing security concerns under financial considerations, personal conduct, and criminal conduct

On July 20, 2008, Applicant answered the SOR and requested a hearing. On October 16, 2008, I was assigned the case. On October 22, 2008, DOHA issued a notice of hearing scheduling the hearing which was held on November 5, 2008. Applicant appeared at that hearing and requested a continuance. For good cause the continuance was granted. The SOR was amended; and on November 19, 2008, Applicant answered the amended allegations. On November 25, 2008, DOHA issued a notice of hearing scheduling a second hearing which was held on December 3, 2008.

The government offered Exhibits (Ex.) 1 through 13, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through L, which were admitted into evidence. The record was held open to allow additional information from Applicant. On December 10, 2008, 12 pages of additional material were submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. M. Transcripts (Tr.) were received on December 12, 2008 and January 12, 2009.

Findings of Fact

In her Answer to the SOR, Applicant denied the factual allegations in ¶¶1.b, 2.b, 2.c., 2.d, 3.a, 3.b, and 3.c of the SOR. She admitted the remaining factual allegations, with explanations.

Applicant is a 59-year-old senior systems engineer who has worked for a defense contractor since October 2001, and is seeking to maintain a top secret security clearance. Applicant has a master's degree in divinity and a PhD in counseling. (Tr. 117)

From January 1970 through October 2001, Applicant worked for a government agency, retiring as a systems engineer. While employed, Applicant claimed zero exemptions on her employee exemption form (W 4), which resulted in her employer taking the maximum amount of tax from her bi-weekly pay. (Tr. 49) Applicant's retirement pension was approximately \$37,000 in 2002, has increased slightly each year, and was \$40,000 in 2007. No taxes were ever withheld from her pension. Applicant's taxable income nearly doubled from 2001 (\$68,000) to 2002 (\$126,000) when she acquired her new job. She started her new job two days after her retirement. She retired on a Friday and started her current job on a Monday. (Tr. 46)

Applicant married in 1976 and separated in September 2001. (Tr. 56) During the marriage, her husband handled the family's finances. (Tr. 47) From mid-1980s to mid-2001, Applicant's husband operated a general contracting business. (Tr. 124) Applicant's husband was hired to work on an individual's home. That individual obtained a \$23,000 default judgment against Applicant and her husband. Applicant first became aware of the problem in July 2000. A number of letters were sent to her home

concerning this action. (Tr. 60) Applicant's husband told her not to worry about it. Following the entry of the judgment, when her wages were garnished, Applicant hired an attorney to assist her. She was distraught and annoyed money was being taken from her pay check. (Tr. 95)

From 1998 or 1999 until the date of the second hearing, Applicant failed to file either federal or state income tax returns or pay income taxes, penalties, or interest due. It is a misdemeanor to fail to file state and federal income tax. (Ex. 13) During a January 2007 interview, Applicant stated that every two years or so, she received letters from tax authorities concerning her nonpayment of taxes. (Ex. 9) She said she received letter, opened them, and read them. (Tr. 52) The letters stated how much she owed in taxes. She asserts the letters never mentioned tax liens, but did state the outstanding balance owed. (Tr. 105) She assumed, once her taxes were filed, she would receive a refund.

Over the years, Applicant employed three accountants to help her file her taxes. She never showed the letters from the tax authority to either of the first two accountants who were helping her with her taxes. (Tr. 80)

In November 1994, the state obtained a tax lien against Applicant in the amount of \$33,381. (Ex. 5) In July 2000, an individual obtained a \$23,080 judgment against Applicant. (Ex. 2) In November 2000, a homeowners association obtained a \$617 judgment against Applicant. (Ex. 3) The action had been filed in October 1999. Applicant was advised by a foreclosure specialist she needed to apply for bankruptcy protection in attempt to forestall the foreclosure on her home. In June 2000 and April 2001, Applicant filed for Chapter 7 bankruptcy protection. (Ex. 6, 7, 8) On October 2002, the state filed a \$69,954 tax lien against Applicant. (Ex. 4) In 2001, the home went to foreclosure.

In late 2001 or early 2002, after the foreclosure on the home and the garnishment of her wages, Applicant came to believe she could not trust what her husband told her. (Tr. 96) Applicant's wages were garnished from January 2001 until October 2001. Approximately \$100 was garnished from her bi-weekly pay. When she changed jobs, the garnishment stopped. (Tr. 97) She has made no additional payments on this judgment after the last garnishment payment in 2001. Applicant believes this is not her obligation, but her husband's obligation. However, Applicant stated she would do what she needed to do to clear up her record. She asserted, if she has to pay this judgment to do so, she would pay it. (Tr. 92, 99) No evidence of payment was presented.

In August 2003, Applicant received the assistance of a tax preparer to help her complete her past due returns. Returns were prepared for 1998, 1999, and 2000 and signed by the accountant on August 15, 2003. (Tr. 83) All that was required was for Applicant to sign and submit the returns. Applicant failed to submit the forms. Applicant consulted a second paid tax consultant regarding her unpaid taxes. (Tr. 162) No returns were filed until after the second hearing. Applicant admits she did not file her tax returns due to her own negligence. (Tr. 158)

In November 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant answered "no" to question 27a, which asked if, during the prior seven years, she had filed a petition for bankruptcy. Applicant answered "no" to question 27b, which asked if, during the prior seven years, her wages had been garnished or any property repossessed. Applicant answered "no" to question 27c, which asked if, during the prior seven years, any lien had been placed against her property for failing to pay taxes.

Applicant answered "no" to question 27a and 27 b, which asked if, during the prior seven years, she had ever been more than 180 days delinquent on any debt or if, at the time she completed the e-QIP, she was currently more than 90 days delinquent on any debt. Applicant asserted she should have paid closer attention to the completion of the e-QIP. She also asserted she did not intentionally and willfully falsify her answers to the e-QIP. (Tr. 65, 67) In the 39 years Applicant has held a clearance, she has completed a reinvestigation every five to six years, some times with an accompanying lifestyle polygraph.

In her response to the SOR, Applicant asserted the \$23,000 judgment by an individual was not her debt, but her husband's debt; that there was no judgment by the home owner's association listed on her credit report; and she denied a tax lien had been entered against her. Her response asserted the omissions from her e-QIP were inadvertent and not deliberate. She asserted she thought the bankruptcy procedure had been started, but was never finished. (Tr. 54) She did not think of the bankruptcy as having been filed because it was not completed. (Tr. 54) She also asserted she was under the impression that she did not owe any taxes and could file at any time.

In January 2007, Applicant was interviewed and asked about her failure to file taxes, the unpaid judgments, tax liens, and her responses to the e-QIP. When asked about outstanding debts by the interviewer, Applicant volunteered she had not filed taxes and the foreclosure. (Tr. 52, 115) In January 2007, Applicant stated she was going to obtain the services of a tax consultant and correct her failure to file. (Tr. 140) In February 2008, Applicant stated in response to written interrogatories that she was still working with a tax consultant to clear up her tax filings. (Ex 10)

At the hearing, Applicant presented copies of prepared state and federal income tax returns for years 1999 through 2007. (Ex. A – H, J - L) Applicant asserted she had not had an opportunity to review the submitted tax returns. (Tr. 131, 132) No state return was provided for 1998. On December 10, 2008, following the hearing, Applicant submitted evidence she had filed Federal tax returns for tax years 1998 through and including 2007. (Ex. M) The forms are stamped as received by the Internal Revenue Service December 4, 2008, the day after the second hearing. She also submitted evidence her state tax returns were filed for tax years 1998 through and including tax year 2007. Her state returns were stamped received by the state revenue administration division and dated received December 4, 2008. (Ex. M) The material submitted consisted only of the date stamped first page of each federal and state income tax return.

At the hearing, Applicant presented copies of her state income tax returns for 1999 through 2007 and her federal returns from 1998 through 2007. Applicant had \$231,000 in federal tax withheld from her wages between 1998 and 2007. She had \$48,000 in state tax withheld. The amounts were for the following years: for 1998, \$6,757 federal and no state return (Ex K); for 1999, \$5,840 federal and \$3,965 state (Ex I, J); for 2000, \$6,492 federal and \$4,245 state (Ex I, H,,L); for 2001, \$10,434 federal and \$4,289 state (Ex I, H); for 2002, \$26,039 federal and \$0 state (Ex F); for 2003, \$28,413 federal and \$0 state (Ex E); for 2004, \$36,342 federal and \$11,718 state (Ex D); for 2005, \$36,703 federal and \$0 state (Ex C); for 2006, \$37,586 federal and \$12,320 state (Ex I, B); and, for 2007, \$36,530 federal and \$12,020 state (Ex I, A).

Applicant's state returns indicate she would receive a small refunds in 1999 (\$379) and 2000 (\$343). According to her calculations, she owed \$44,387 in past due state taxes. The amount represents: 2001 (\$1,621), 2002 (\$10,506), 2003 (\$12,977), 2004 (\$2,229), 2005 (\$14,997), 2006 (\$906), and 2007 (\$1,151). These amounts represent taxes owed less amounts withheld on Applicant's behalf from her pay checks.

Applicant's calculations indicated three years of federal income tax refunds: 1998 (\$1,655), 2006 (\$4,462), and 2007 (\$738). She owed \$23,244 in past due federal taxes. The amount represents 1999 (\$218), 2000 (\$496), 2001 (\$1,997), 2002 (\$4,013), 2003 (\$7,564), 2004 (\$3,902), and 2005 (\$5,054). These amounts represent taxes owed less amounts withheld from Applicant's bi-weekly pay checks. According to her calculations, Applicant owes \$67,631 in state and federal back taxes. Her calculations do not account for past due interest or penalties. Applicant asserted, but provided no supporting documentation, that she had the ability to immediately pay \$60,000 in past due taxes, but would not be able to immediately pay \$100,000 for past due taxes. (Tr. 138)

Filing of the returns stops the accumulations of additional penalties for failing to file, but does not impact on interest, which will continue to accrue until the taxes are paid. Once filed, Applicant intends to submit amended returns when more accurate information is known as to the amounts of state tax withheld. (Tr. 151)

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 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.

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. 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.

Section 7 of Executive Order 10865 provides that decisions shall be “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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Applicant's history of delinquent debt is documented in her credit report, her interview by an Office of Personnel Management (OPM) investigator, her SOR response, her response to interrogatories, and her testimony. Applicant failed to file her taxes for ten years. Applicant, according to her calculations, owes in excess of \$60,000 in back taxes. In 2003, she had tax returns prepared, but failed to submit them. In 2007, she stated she would obtain a tax consultant to submit her returns. She made a similar claim in February 2008. At the first hearing, she had yet to submit the returns. The returns were not submitted until after the second hearing. She has yet to pay her tax or either of the two judgments entered against her in 2000. She has provided insufficient documentation to show significant progress resolving her debts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five mitigating conditions under AG ¶¶ 20(a) – (e) 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; 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.

AG ¶ 20(a) does not apply. Ten years of state and federal tax returns were not timely filed. This is not infrequent conduct. The returns were filed after the second hearing and she has yet to make payment of her taxes. The last payment on either of the two judgments occurred in 2001. Applicant's said she was negligent for failing to file her tax returns. Her recent filing is insufficient to find this is not behavior which was occurred under such circumstances that it is unlikely to recur. It does cast doubt on her reliability, trustworthiness, and judgment.

In September 2001, Applicant separated from her husband. She has failed to show how that event seven years ago impacts on her current finances or her ability to file her returns. Applicant asserted she had enough funds to pay \$60,000 in back taxes. She did not address why she had not paid the \$600 judgment or the other unpaid judgment. AG ¶ 20(b) does not apply.

The federal and states taxes remain unpaid as does the two judgments. There is no evidence she has attended financial classes. There is no good-faith effort to repay the overdue creditor or otherwise resolve the debts. Applicant stopped paying on the \$23,000 judgment when she changed jobs and the garnishment ended. She made no payments since 2001. Neither AG ¶ 20(c) nor ¶ 20(d) apply.

Guideline E, Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph 15 of the Adjudicative Guidelines (AG) states a concern where there is 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."

Under AG ¶16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" and AG ¶16(b) "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," apply. Applicant's false answers on her e-QIP concerning her unpaid judgments, unpaid taxes, tax lien, garnishment, and bankruptcy filings tend to show questionable judgment, unreliability, and a lack of trustworthiness.

The November 2006 e-QIP, question 27, asked Applicant if during the prior seven years, which would have been since November 1999, she had any liens placed against her property for failing to pay taxes or other debts. She answered "no." The state filed a tax lien against her in 2002. Applicant asserts she was unaware of any tax liens and did not intentionally provide false information. Tax liens are routinely imposed only after a person is notified of the tax obligations and provided an opportunity to respond. Applicant knew she was delinquent on her state and federal taxes. She stated she was receiving letters about her unpaid taxes, which she had read, and knew the tax authority claimed she owed back taxes.

Bankruptcy petitions were filed in June 2000 and April 2001 in an attempt to prevent the foreclosure of her home. Despite the clear language of the e-QIP, which asked if during the prior seven years she had filed a petition under any chapter of the bankruptcy code, she answered "no." She asserts she answered this question as she did because the bankruptcy, though started, was never finished. The question asks about filings and not the about discharged debts or bankruptcies being dismissed.

In November 2000, a homeowners association obtained a \$617 judgment against Applicant. The action had been filed in October 1999. The action was filed and judgment entered against her and her husband while they still occupied their home. Foreclosure of the home occurred in late 2001.

Applicant was aware of the \$23,000 judgment against her and a garnishment of her wages because money was taken from her pay check for approximately ten months between January 2001 and October 2001. She knew of the judgment because she hired an attorney to help her address the garnishment. When Applicant completed her e-QIP, she was asked in question 27 if she had any unpaid judgments against her she failed to list either of the unpaid judgments.

Applicant had not filed taxes for ten years nor paid any past due tax. She was receiving letters from tax authorities telling her she owed back taxes. When she completed her e-QIP she was asked in question 28 if she had ever been more than 180 days delinquent on any debt or was currently delinquent on any debt. She was aware she owed taxes.

Applicant's explanations for failings to list her bankruptcy filings, unpaid judgments, past due taxes, and garnishment are not credible. Her assertion that she was not being deceptive is unpersuasive. Applicant knew she had not filed taxes for 10 years and knew she was receiving letters stating she owed past due taxes. She knew of the \$23,000 unpaid judgment and garnishment. I find Applicant deliberately falsified her answers to question 27 and 28 of the security clearance application.

Under the Directive, an applicant may mitigate the security concerns arising from questionable personal conduct under certain circumstances. AG ¶17 provides conditions that could mitigate personal conduct security concerns, including AG ¶ 17(a):

“if a person provides the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” I find this mitigating factor does not apply. Applicant has not met her burden of proving that she made good-faith efforts to correct the omissions in her security clearance application or that her efforts were prompt. She completed her e-QIP in November 2006 and was interviewed in January 2007. There is no evidence she volunteered any information before being questioned about her unpaid taxes.

AG ¶ 17(f) provides mitigation where “the information was unsubstantiated or from a source of questionable reliability.” Applicant’s failure to pay taxes for ten years, failure to list her bankruptcy filings, failure to list her unpaid judgments, and her garnishment is information pertinent to a determination of her judgment, trustworthiness, and reliability. I find this mitigating factor does not apply.

AG ¶ 17(c) provides mitigation where “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.” The security clearance application in issue was executed in November 2006. The past due taxes and two judgments remain unpaid and are therefore considered recent. The available evidence shows Applicant gave five false answers on the security clearance application. This was not a single, isolated incident. I conclude this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31(a) states it may be disqualifying where there “a single serious crime or multiple lesser offenses.” Similarly, AG ¶ 31(c) provides “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted” may be disqualifying. It is a misdemeanor to fail to file state and/or federal tax returns. Paragraph 3 of the SOR alleges Applicant violated 18 U.S.C. § 1001 by deliberately making a materially false statement on her security clearance application. For the reasons discussed above, I find Applicant deliberately made materially false statements on her SF 86 in violation of 18 U.S.C. § 1001.

Security concerns raised by criminal conduct may be mitigated under certain circumstances. AG ¶ 32(a) provides conditions that could mitigate security concerns if “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” The false statements at issue

were made on the security clearance application that is presently before us and is therefore recent. This mitigating condition does not apply. There was not showing her failing to pay taxes was due to is unusual circumstance. Her failure started three years before she changed job. There is no showing her false answers were the result of unusual circumstances.

Under AG ¶ 32 (d), criminal conduct may be mitigated if “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.” Following the hearing, Applicant filed her state and federal tax returns. However, Applicant’s evidence does not convince me that there is “clear evidence of successful rehabilitation.” This potentially mitigating condition does not apply. The other potentially mitigating conditions were carefully considered and do not 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) 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Failing to file tax returns and pay state and federal income tax for ten years indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Failing to pay judgments and providing false answers on a security questionnaire also indicates a lack of judgment or unwillingness to abide by rules and regulations. She stopped making payment on the \$23,000 judgment when she changed jobs and the garnishment of her wages stopped. She says she will pay this if she has to, but provided no evidence of having done so. She asserts she has sufficient funds to pay \$60,000 in back taxes, but failed to explain why she has not paid the \$600 homeowner’s judgment. She has known of this small

judgment since at least April 2008 when she received the SOR and the debt remains unpaid.

She did not file her taxes until after her second hearing, which again supports her claim that she will do so if she has to in order to keep her clearance. Ten years of unpaid taxes, bankruptcy filings, garnishment of one's wages, and unpaid judgments are a type of obligations an applicant is expected to remember and report on her e-QIP. According to her own calculations, she owes in excess of \$60,000 in back taxes, which makes no accounting for penalties and past due interest. She owes an additional \$23,000 for an unpaid judgment. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations and personal conduct.

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:

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| Paragraph 1, financial considerations: | AGAINST APPLICANT |
| Subparagraph 1.a – 1.e: | Against Applicant |
| Paragraph 2, Personal Conduct: | AGAINST APPLICANT |
| Subparagraph 2.a – 2.d: | Against Applicant |
| Paragraph 3, Criminal Conduct: | AGAINST APPLICANT |
| Subparagraph 3.a – 3.c: | Against 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.

CLAUDE R. HEINY II
Administrative Judge