



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



In the matter of: )  
)  
) ISCR Case No. 08-02818  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 20, 2008

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline E, Personal Conduct and Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On April 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct and Guideline F, Financial Considerations. 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 answered the SOR in writing on April 30, 2008 and May 9, 2008. She elected to have her case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on June 12, 2008. The FORM was

sent to Applicant by mail and it was received on June 17, 2008. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on August 15, 2008.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR with qualifiers. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 57-year-old employee of a defense contractor. She was married from 1995 to 1998 and 1981 to 1991 and divorced twice. She has two grown children, ages 37 and 29.

Applicant has 33 delinquent accounts totally approximately \$6,800. In answering each allegation she stated "I agree but to the extent." She did not elaborate on what "to the extent" actually means. She did not provide any proof of payment or resolution toward any of the accounts. The accounts have been referred for collection or charged off between one and six years ago. It appears some of the debts are for medical bills, but no explanation was provided. She did make the following statement in the section "Additional Comments" of her security clearance application (SCA): "There is a Worker's Comp case still pending for an injury that occurred when I was employed at [Company]. I have not been billed for treatment because the case has not yet been resolved, so no payment has been made yet." Applicant failed to further elaborate on the status of the medical bills alleged.

Applicant also has a federal tax lien in the amount of approximately \$35,000 that was entered against her in April 2003. In response to the allegation she stated "When the lady came to ask me questions I told her she ask[ed] me something about the IRS and I told her I paid \$10,000 and have been keeping my income tax each year that was the last I heard." It is unclear exactly what this explanation means, but it does indicate Applicant was aware of a debt to the Internal Revenue Service (IRS). She did not provide proof that she paid \$10,000 to the IRS, has a payment plan or that the tax lien has been satisfied.

Applicant responded "no" to inquiries on her SCA when asked is she had debts in the last seven years that were over 180 days overdue, and if she had debts that were currently 90 days overdue. She also answered "no" to an inquiry on her SCA asking if in the last seven years she had a lien placed on her property for failing to pay taxes or other debts.<sup>1</sup> Her response for why she failed to accurately reflect her financial situation was that she did not remember the questions, she tried to answer everything "the best she could," she had never filled out any of the papers for a job before, and had everything messed up. She further stated that she is now attempting to get a credit

---

<sup>1</sup> Item 6, Quesitons 27 (c) and 28 (a) and (b).

report so she can contact the creditors.<sup>2</sup> It is simply not believable that Applicant did not know that she had any delinquent debts or that she had a tax lien. Applicant has 21 delinquent debts for medical accounts. Four of the other delinquent debts are to four different telephone service companies. One delinquent debt is for cable services. One delinquent debt is for Direct TV. It appears four delinquent debts are for some type of utilities. One delinquent debt is to a cash store, presumably for a short term loan. Under the circumstances of these facts, I find it inconceivable that Applicant was unaware that she had any delinquent debts. She mentions paying on an IRS debt, which gives credence to the fact she was aware that one existed. I find Applicant intentionally and deliberately falsified information on his SCA by failing to divulge her financial delinquencies.

### **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.

---

<sup>2</sup> Item 5.

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**

AG ¶ 18 expresses the security concern pertaining to financial considerations: “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 over-extended 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.”

I have considered all of the disqualifying conditions under AG ¶ 19 for financial considerations that could raise a security concern and have especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has a history of delinquent debts that have remained unpaid for several years. She admitted she owes the delinquent debts. No information was provided that she has paid the debts or attempted to resolve them. I find both AG ¶ 19 (a) and (c) apply.

AG ¶ 20 provides conditions that could mitigate financial considerations security concerns. I have considered all the mitigating conditions and especially considered (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”).

Applicant failed to provide any information about any of the delinquent debts. Although many of them appear to be medical debts she did not provide information as to why they were beyond her control or that she acted responsibly toward them. She also alluded to having some type of worker’s compensation claim, but again failed to provide any amplifying information as to when she suffered an injury and if the debts listed are even related to the medical issue. Even if the medical debts were beyond her control she still has a number of other delinquent debts that she has not addressed. I find Applicant has failed to raise any of the mitigating conditions.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct: “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.”

I have considered all of the personal conduct disqualifying under AG ¶ 16 and especially considered (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”). Applicant alludes in her answer that she answered the questions on her SCA honestly. I do not find these statements credible. Applicant has 34 debts; some are for medical services, others for utilities and other expenses. She owes a tax debt of \$35,000. It is inconceivable that she would be totally unaware that she had any debts past due 90 days or delinquent for more than 180 days. She stated she has paid the IRS \$10,000. It is clear she knew she owed a substantial debt to the IRS. She claims she made a payment, although she failed to provide proof of it. Some of Applicant’s delinquent debts are several years old and others are not. I find Applicant intentionally and deliberately falsified information on her SCA by not listing any of her delinquent debts or that she had a delinquent tax debt.

I have considered all of the personal conduct mitigating conditions under AG ¶ 17. I have especially considered (a) (“the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”) and (c) (“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").

Applicant did not promptly report her omissions before being confronted with them. Her finances are a serious security concern and the intentional concealment of them creates an elevated concern. This omission is not minor and the circumstances were not unique. Applicant had 34 delinquent debts, one of which was a tax lien. The SCA specifically asked her about her delinquent debts and she denied she had any. Her actions cast doubt on her reliability, trustworthiness and good judgment. I find none of the 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. Applicant is 57 years old. She has numerous delinquent debts and failed to provide any information that she has attempted to pay or resolve any of them. In addition, she intentionally failed to divulge her delinquent debts on her SCA. She has not presented sufficient evidence to mitigate the security concerns raised. Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the Financial Considerations and Personal Conduct guidelines.

### **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-1.ah:

Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a-2.c:

Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge