



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



In the matter of: )  
)  
) ISCR Case No. 08-11885  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

March 30, 2010

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On February 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F. 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 March 24, 2009, and requested an expedited hearing before an administrative judge. The case was assigned to me on February 1, 2010. DOHA issued a Notice of Hearing on February 4, 2010. I convened the hearing as scheduled on February 16, 2010. Applicant waived her right to 15 days

notice. The government offered Exhibits (GE) 1 through 11. Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through O, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 22, 2010.

### **Procedural Matters**

Department Counsel moved to amend the SOR by adding allegation ¶ 1.h, to wit: “failed to file her annual federal income tax returns, as required, for 2001, 2002, 2003, 2004, and 2005.” Applicant did not object. Applicant was given the opportunity to postpone the remainder of hearing for at least 15 days to provide her with proper notice and time to prepare her response to the additional allegation. She understood her rights and agreed to proceed. The record was held open until March 3, 2010, to allow her to submit any additional information or documentation. She provided AE P through II.<sup>1</sup>

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, and 1.c. She denied SOR ¶¶ 1.d, 1.e, 1.f, and 1.g. At her hearing she admitted SOR ¶1.h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 55 years old. She is not married and has no children. She is a college graduate and has completed some post-graduate courses. She worked 19 years for the federal government and resigned in June 1999, due to health reasons. She held a secret security clearance while employed by the federal government. She then began a career as a real estate agent. She worked for a company from 1999 to 2002. She changed companies and worked for a new employer from March 2002 to March 2008. In March 2008, she left the real estate business and began working for a federal contractor until April 2009. She was unemployed from April 2009 to September 2009. She stated she did not terminate her employment under adverse conditions, but rather it was a job that did not suit her expertise and she was “involuntarily let go.”<sup>2</sup> She obtained new employment with a federal contractor in September 2009, and worked until January 2010. She was offered a better job in December 2009, but it is contingent upon her obtaining a security clearance.<sup>3</sup> Applicant stated that although she was employed after 2002, her income was reduced due to the economic climate of the real estate market.<sup>4</sup>

Applicant broke her ankle in 2001, and she required three and a half months to recover. She did not earn any income while she was convalescing. In 2002, she had

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<sup>1</sup> Tr. 126-135.

<sup>2</sup> Tr. 83.

<sup>3</sup> Department Counsel provided information that Applicant is properly sponsored for a security clearance and there is proper jurisdiction in this case.

<sup>4</sup> Tr. 40-42, 77-88; AE J.

medical issues that required two surgeries and she could not work most of the year because she was physically unable. In 2003, a ten-year relationship with a partner she lived with ended, and she had to establish a separate household. She stated this negatively impacted her finances. In 2005 and 2006, she stated the real estate market was declining and it affected her finances. She decided to leave the real estate business sometime in 2008.<sup>5</sup>

Applicant did not file her 2001 federal income taxes on time. She explained that she broke her ankle and had surgery in March 2001, and then got “sidetracked” from filing.<sup>6</sup> Applicant did not file her 2002, 2003, 2004, and 2005 federal income tax returns on time. She explained, “I will say that it was like an ostrich with the head in the sand. I felt overwhelmed.”<sup>7</sup> She also explained, “I was so overwhelmed with my illness and the real estate market wasn’t doing well.”<sup>8</sup> Due to her illness she was trying to stabilize herself. She admitted she did not address her delinquent taxes until she was attempting to file for bankruptcy in 2007, so she could save her house from foreclosure.<sup>9</sup>

Applicant first attempted to file for bankruptcy in early 2007, and the IRS objected to the filing until Applicant filed her delinquent federal tax returns for 2001, 2002, 2003, 2004, and 2005. She had not addressed her delinquent taxes before then. She understood that she was required to file her taxes each year, and had done so before 2001. She did not have money withheld from her income during the years she did not file. As part of her answer to the SOR, she provided a document from the IRS dated February 6, 2009. It stated that Applicant, through her attorney, submitted all personal financial disclosure documents on December 29, 2008. Her case was then assigned to a revenue officer for processing. The matter was being reviewed in order to make payment arrangements. The letter noted Applicant was cooperative and had some extenuating circumstances.<sup>10</sup>

Applicant provided a letter included with her answer to the SOR, and attached to Interrogatories to DOHA, dated September 12, 2008.<sup>11</sup> She stated:

My finances have been stabilized since I secured a full-time position at [Company] on 31 March 2008. Prior to this I was self-employed as a Real Estate Associate Broker. The [r]eal [e]state market suffered through the

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<sup>5</sup> Tr. 37-40 AE C.

<sup>6</sup> Tr. 92-94; Federal income taxes are required to be filed by April 15<sup>th</sup> of the following tax year.

<sup>7</sup> Tr. 97-98.

<sup>8</sup> Tr. 43.

<sup>9</sup> Tr. 37-43, 90-98, 119-121.

<sup>10</sup> Tr. 43-50, 94-98.

<sup>11</sup> GE 6.

failure crisis of the sub-prime market. With the loss of income, I searched for full-time employment and my savings depleted.

\* \* \*

With a stable income I have been able to effectively meet my monthly obligations and begin to save in [Company's] 401K and investment programs.

Thank you for reviewing my financial status as I have accomplished correcting and stabilizing my financial future with capturing a great employment opportunity with [Company] working on [military] [s]ystems.

In the same letter, Applicant also mentioned two accounts that were listed on her credit report. She made a hand written notation that arrangements were made to pay one account and the other was paid. She did not mention or address her delinquent tax debts.

In Applicant's answer to the SOR dated March 24, 2009, she stated:

I found myself in a situation owing back taxes. I experienced illness that required several surgeries. Once I got back to work I found myself trying to catch up on my bills. I later was diagnosed with diabetes and required constant medical monitoring and expensive drugs to maintain my health. Paying my back taxes is one of the most important actions that face me. I contacted the Internal Revenue Services to initiate a payment arrangement. I have enclosed a letter from [the] Internal Revenue Service dated February 6, 2009, expressing my efforts to resolve this matter and establish a payment arrangement. Payment arrangements should be finalized during the week of March 30, 2009.

Applicant stated she set up a voluntary payment plan in April 2009, with the IRS. She was unable to implement the plan because she was unemployed until September 2009. She stated she made a payment of \$100 in 2008 to the IRS and another \$50 payment some other time.<sup>12</sup> Applicant's case was temporarily closed by the IRS on April 29, 2009, and listed as "currently not collectible." She was advised that she still owed the delinquent taxes and penalties, and interest would continue to accrue. In addition, she was advised that offsets of future tax refunds would be applied and her case was subject to re-opening if her situation improved.<sup>13</sup> Applicant did not contact the IRS to begin payments when she got a job in September 2009 because she did not think she would be staying in the job.<sup>14</sup> She contacted the IRS in January 2010, to obtain a new

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<sup>12</sup> Tr.106.

<sup>13</sup> AE D.

<sup>14</sup> Tr. 108.

balance on the amount of delinquent taxes she owes. A balance was not provided because the case is currently closed. She has not made any other payments.<sup>15</sup>

SOR ¶ 1.c listed a delinquent balance for Applicant's federal income taxes of \$62,802. She believes the amount is about a \$61,000, but did not provide documentary proof. Applicant was collecting unemployment benefits, when she was not working. Applicant stated she filed her 2006, 2007 and 2008 tax returns on time.<sup>16</sup> Applicant provided proof she filed her 2007 and 2008 federal tax returns on time. Her 2006 federal income tax return was filed on July 16, 2007.<sup>17</sup> She provided documentation to show she filed her 2001 and 2003 federal income tax returns on August 3, 2007. She filed her 2002 federal income tax return on August 11, 2007. She filed her 2004 and 2005 federal income tax returns on July 16, 2007.<sup>18</sup>

Applicant was delinquent in filing her state income tax returns for tax years 2001, 2002, 2003, 2004, and 2005. She did not file her state income tax return for 2006 until July 16, 2007, when the deadline for filing was April 15<sup>th</sup>. Applicant provided copies of her 2001 through 2008 state income tax returns. She filed her 2001 and 2003 state income tax returns on August 3, 2007. She filed her 2002 state income tax return on August 11, 2007. She filed her 2004, 2005, and 2006 state income tax returns on July 16, 2007. Her 2007 and 2008 state income tax returns were filed on time. She did not provide proof that she has paid the state income tax she owes.<sup>19</sup>

Applicant's Chapter 13 bankruptcy was filed in June 2007 and dismissed in August 2007. She filed another petition on September 17, 2007. She completed the mandatory credit counseling. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, she listed consumer debt as \$31,522.<sup>20</sup> She filed an Amended Chapter 13 plan on February 18, 2008. The Chapter 13 bankruptcy was dismissed on April 9, 2008. Applicant stated she has also participated in credit counseling with a private enterprise that has helped her file the delinquent taxes returns. Applicant stated that she has settled or paid the creditors that were listed in the bankruptcy.<sup>21</sup>

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<sup>15</sup> Tr. 47, 108.

<sup>16</sup> Tr. 103.

<sup>17</sup> Tr. 103-105; AE AA, BB, CC, DD, EE, FF, GG, HH, II.

<sup>18</sup> Tr.52-54, 105.

<sup>19</sup> Applicant's failure to file and pay her state income taxes is not alleged and I have not considered it for disqualifying purposes. However, I will consider it when analyzing her credibility, her financial situation, and the "whole-person."

<sup>20</sup> GE 2.

<sup>21</sup> Tr. 113-114.

Applicant purchased a house in 2003. The cost was \$311,000. She paid \$9,000 for the down payment. She stated she also paid the closing costs on the house, which was 6% of the cost of the house. She did not explain whether she actually paid \$18,660, or if it was included in the financing. She explained that she had the funds for the payments from the equity in a house she had sold. When asked why she bought a home in 2003, instead of renting and paying her taxes, she stated, "I've always owned a house ever since I was 29 years old. And I've always lived in a house."<sup>22</sup>

Applicant stated she withdrew the balance of her 401(k) retirement account. She paid the taxes and penalty associated with the withdrawal. She used the money from the account to pay her mortgage and for another debt not listed on the SOR.<sup>23</sup>

The debt in SOR ¶ 1.d (\$786) was incurred in approximately 2007. Applicant stated she contacted the creditor twice in July 2008. She admitted she owes the debt and it is not paid.<sup>24</sup>

The debt in SOR ¶ 1.e (\$845) was for a membership to a direct buying service. Applicant advised the creditor she would pay \$50 a month on the debt beginning on February 26, 2010. No payments have been made at the time of the hearing.<sup>25</sup>

The debt in SOR ¶ 1.f (\$178) was for medical services. Applicant stated she did not have health insurance for a period of time and paid many medical debts, but she is discovering other ones. She explained she would contact the credit bureau to determine what company owns this debt. She has not yet done so. The government conceded they did not know the name of the creditor.<sup>26</sup>

The debt in SOR ¶ 1.g (\$299) was incurred in September 2006, when Applicant purchased two 32-inch flat screen televisions at a cost of \$1,799 for both. She stated the debt is no longer on her credit report and she paid the remaining balance. Applicant provided evidence, in her answer to the SOR, that there is a remaining balance of \$75 owed on this debt. She purchased the item when the real estate market was depressed and she was not earning significant income.<sup>27</sup>

Applicant provided a copy of her work performance evaluation for the period of November 1997 to May 1998. It stated she was a dynamic professional who

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<sup>22</sup> Tr. 98-100, 107.

<sup>23</sup> Tr. 48-49.

<sup>24</sup> Tr. 54-57.

<sup>25</sup> Tr. 58-61.

<sup>26</sup> Tr. 61-63.

<sup>27</sup> Tr. 63-71; Answer to SOR.

demonstrated intelligence and poise.<sup>28</sup> Character letters described her as trustworthy, hard working, and capable of interacting with all levels of the command. She was respected for her honesty and integrity, consistently showing good judgment and maintaining a high ethical standard.<sup>29</sup>

Applicant explained that she has handled the financial aspects of real estate transactions and she has high standards. She maintains a budget on a spreadsheet. She owes some personal loans from her family, but does not owe any other delinquent debts, nor does she have any new delinquent debts. She intends to pay her delinquent debts.<sup>30</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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<sup>28</sup> Tr. 73-76; AE K.

<sup>29</sup> Tr. 73-76; AE L, M.

<sup>30</sup> Tr. 73-76, 111-118, 122-125.

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**

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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Appellant has delinquent debts that remain unpaid. She failed to timely file her federal tax returns for tax years 2001, 2002, 2003, 2004, and 2005. She filed them in 2007. Her delinquent federal taxes remain unpaid. I find there is sufficient evidence to raise the above disqualifying conditions.



The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 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;
- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because her delinquent debts remain current and unpaid. They are not isolated. I find mitigating condition (a) does not apply.

Applicant broke her ankle in 2001 and was unable to work for three and a half months. In 2002, she experienced other medical problems. In addition, the real estate market was depressed and her ten-year personal relationship ended. These events impacted her finances and she fell behind in paying her bills. These circumstances were beyond her control. She subsequently addressed and paid some of the bills. From 2001 to 2005, she failed to file her federal and state income tax returns on time. She did not address her tax problems until she attempted to file bankruptcy and they became an issue. She eventually filed her delinquent returns in 2007. Some of the conditions regarding her finances were beyond her control and raise the application of mitigating condition (b). However, her failure to file her federal income tax returns was within her control. In order for mitigating condition (b) to be fully applicable, Applicant must have acted responsibly under the circumstances. Applicant continued to ignore her obligations to file her federal tax returns for six years. She did not address her taxes until she was thwarted from filing for bankruptcy. Her conduct continued for years, despite her admission that she was aware of her legal obligation to file her taxes on time. Exacerbating the problem was the fact she did not have any taxes withheld from her income while she was employed. Although she has been working with the IRS to resolve her problems, she did not notify them when she went back to work in September 2009, to begin payments. She owes more than \$61,000 with interest and penalties continuing to accrue. Applicant has other debts that also have not been resolved. Applicant did not act responsibly under the circumstances because she

ignored her tax obligations for six years. Therefore, I find mitigating condition (b) only partially applies.

Applicant stated she received financial counseling and she has a budget. Applicant has delinquent debts that are not resolved and her federal tax debt remains significant and unpaid. I find there are not clear indications the problem is being resolved. Although she has been cooperative with the IRS and mentioned a payment plan, nothing has been implemented and no payments have been made, other than two previous payments totaling \$150. Applicant was working for several months and did not begin making payments. At this juncture, she has not made a good-faith effort to resolve her delinquent debts or made progress in reducing her tax debt. It is too early to conclude that the problem is resolved or under control. I find mitigating conditions (c) and (d) 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant left federal employment and entered the real estate business. Due to economic conditions, the sale of real estate decreased and affected her financial stability. She also experienced serious medical issues that prevented her from working for a period of time, along with the termination of a ten-year relationship and incurrence of additional living expenses. These factors impacted her ability to pay her debts on time. The most serious and significant debt is her delinquent taxes. Applicant failed to act responsibly in filing her federal and state income tax returns for six years. Although, her personal situation may have contributed to an initial delay, she later failed to comply and ignored her responsibility after she obtained employment and her health improved. At this time, 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 under the guideline for 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge