



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 09-07121
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Mr. Jake West, Union Representative

May 25, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Applicant accrued nearly \$30,000 in delinquent federal and state tax debt by claiming excessive exemptions from withholdings for which she did not qualify. She also accrued about \$8,000 in delinquent commercial credit debts through poor management of her personal finances. Finally, she deliberately omitted her past-due debts from a recent clearance application. Based upon a review of the pleadings, exhibits, and transcript, Applicant's request to renew her security clearance is denied.

Statement of the Case

On September 20, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for her job with a defense contractor. She also submitted an e-QIP on March 9, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office

of Hearings and Appeals (DOHA) issued to Applicant interrogatories¹ to clarify or augment information obtained in her background investigation. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On September 2, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ for financial considerations (Guideline F) and personal conduct (Guideline E).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on December 23, 2010. Pursuant to a Notice of Hearing issued on February 3, 2011, I convened a hearing in this matter on February 22, 2011. The parties appeared as scheduled. DOHA received a transcript of the hearing on March 3, 2011.

The Government presented 17 exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 17. Applicant testified and submitted four exhibits that were admitted without objection as Applicant Exhibits (Ax.) A - D. (Tr. 44 - 53) She also presented two witnesses. Additionally, I left the record open after the hearing so that Applicant could submit additional relevant information. (Tr. 152 - 153) The record closed on March 7, 2011, when I received additional information that has been admitted into the record without objection as Ax. E.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$28,978 to the Internal Revenue Service (IRS) for tax liens filed in October 2008 and December 2009 for unpaid taxes from each tax year between 2004 and 2008, inclusive (SOR 1.a); that in November 2009, her wages were involuntarily garnished by the IRS (SOR 1.b); that she owes \$462 for a delinquent medical account referred for collection (SOR 1.c); that she owes \$4,283 for a delinquent credit card account referred for collection (SOR 1.d); that she owes \$2,376 for unpaid taxes on a timeshare account (SOR 1.e); that she owes \$600 for unpaid state taxes from 2006 (SOR 1.f); that she owes \$300 for unpaid state taxes from 2009 (SOR 1.g); and that the tax debt at SOR 1.f is being satisfied through an involuntary wage garnishment levied by the state in May 2010 (SOR 1.h).

Under Guideline E, the Government alleged that the debt alleged in SOR 1.a arose when Applicant claimed nine dependent exemptions from withholding each year, but listed no dependents when she filed her annual tax returns (SOR 2.a); that she

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

deliberately made false statements in her September 2007 e-QIP when she answered "no" to e-QIP question 28.a (debts greater than 180 days past due in the previous seven years) (SOR 2.b); and that she deliberately made false statements in her September 2007 e-QIP when, in response to question 28.b (debts currently more than 90 days past due), she answered "yes," listed a delinquent student loan, but omitted the IRS debts alleged in SOR 1.a (SOR 2.c).

Under Guideline F, Applicant denied the allegations at SOR 1.c and 1.h, and admitted the remaining SOR 1 allegations. Under Guideline E, she admitted SOR 2.a, but denied the remaining SOR 2 allegations. Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 55 years old and has worked for the same defense contractor since August 1984 in a position that requires a security clearance. She enlisted in the U.S. Navy in 1975, but was discharged for medical reasons before she completed boot camp. She has never been married, but she has one child who is now age 35. (Gx. 1)

Applicant has held a security clearance since at least June 1989. (Gx. 13) In June 1992, she submitted a National Agency Questionnaire (DD Form 398) to renew her security clearance. In that form, she disclosed that her pay was being garnished to satisfy a delinquent debt of \$2,899 owed to a commercial credit company. On May 13, 1992, her employer had submitted an Adverse Information Report (AIR) when the order to garnish her wages was received. (Gx. 13) On May 18, 1992, Applicant filed a Chapter 7 bankruptcy petition seeking to discharge debts and liabilities of approximately \$28,000. Included with her Chapter 7 petition was a Motion to Quash the aforementioned wage garnishment. She received a Chapter 7 discharge on August 18, 1992. (Gx. 14; Gx. 15)

On March 25, 1996, Applicant's employer submitted another AIR reflecting that the IRS had garnished Applicant's wages to satisfy a \$3,647 debt for unpaid taxes in 1991, 1992, and 1993. This was also disclosed on Applicant's April 28, 1996, security clearance application. (Gx. 16; Gx. 17)

On February 23, 2009, Applicant's employer submitted another AIR indicating that the IRS had garnished Applicant's wages to satisfy a \$23,406 debt for unpaid taxes in 2004, 2005, 2006, and 2007. Applicant made monthly payments in varying amounts on this debt from 2004 until September 2008. Thereafter, the IRS demanded increased monthly amounts, which the Applicant could not afford. The IRS then resorted to involuntary garnishment. This debt is still being repaid and accruing interest and penalties. Applicant estimates she currently owes about \$30,000 in unpaid taxes to the federal government. (Answer to SOR; Gx. 3; Gx. 4; Gx. 5; Gx. 6; Ax. A; Tr. 71 - 75)

Applicant filed her tax return for 2008 after the April 15, 2009, filing deadline. She owes \$4,439 for 2008 taxes, but she has not yet paid them. She qualified for a tax refund of about \$3,800 from her 2010 taxes, but that refund was claimed by the IRS and credited toward her tax debt. (Gx. 4; Ax. A; Tr. 74 - 75)

Applicant's tax debt for tax years 2004 through 2008 resulted when she claimed nine exemptions from withholding on her W-4. When she filed her tax returns, she correctly listed zero dependent credits. However, not enough tax had been withheld throughout each tax year, and she could not afford to pay the taxes due. Applicant averred that she did this to help pay medical expenses for her mother, who became sick in 2005 and eventually died in 2009. When she was asked at the hearing about her tax debts for 1991, 1992, and 1993, Applicant acknowledged that she claimed too many exemptions during those years as well, but that she did so simply to have more cash in her paycheck each week. (Tr. 68 - 69)

Applicant has had difficulty repaying her debts, in part, because of medical reasons related to cardiac and kidney conditions. Attendance records indicated she was on sick leave and other extended absences from December 2008 until October 2009. (Ax. E)

On May 18, 2009, another AIR was issued because the state where Applicant lives and works garnished Applicant's wages to satisfy a debt for unpaid taxes in 2006 (\$600) and in 2009 (\$300). This debt has been satisfied through involuntary wage garnishment. (Answer to SOR; Gx. 6; Gx. 7; Ax. D; Tr. 66 - 68)

Credit reports obtained during Applicant's most recent background investigation (Gx. 2; Gx. 9; Gx. 10) attributed to her an unpaid \$462 medical bill referred for collection (SOR 1.c) and an unpaid \$4,283 credit card bill referred for collection (SOR 1.d). Applicant has paid the medical debt (Ax. B) and is making regular monthly payments on the credit card bill. (Ax. C)

Applicant also owes a \$2,376 debt for unpaid taxes on a timeshare she and her niece co-own. This debt remains unpaid and Applicant expected her niece to pay, but she did not do so. The debt has been delinquent since 2008, and Applicant has not made any attempt to resolve it. (Gx. 4; Tr. 65 - 66, 79 - 80)

In January 2009, Applicant enlisted the services of a credit counseling and debt management company. However, she stopped using their services in May 2009 because she disagreed with the fees they charged. (Gx. 4) She also used a credit counseling service at some point before 2009, but it was unclear from her testimony what, if anything, was accomplished through this action. (Tr. 115 - 117)

In Applicant's September 2007 e-QIP, she responded "no" to question 28.a (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*), In the same questionnaire, in response to question 28.b (*Are you currently 90 days delinquent on any debt(s)?*), she answered "yes," but listed only a past-due student loan debt that is now in deferral. In response to DOHA interrogatories, and in her testimony, she averred that she did not list her IRS debts because she did not understand the questions. (Gx. 2; Gx. 4; Tr. 69 - 70, 97 - 100)

Applicant has been a good and faithful employee of the same company since 1984. Some of her co-workers and supervisors who have known her for most of her

tenure there testified that she is honest, dedicated, and of good character in every respect. (Tr. 122 - 147)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ Directive. 6.3.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Financial

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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.

Available information supports all of the allegations at SOR 1.a - 1.h. Applicant accrued over \$28,000 in unpaid federal tax debt for tax years 2004 through 2008. Despite making some payments during 2004 and 2005, she was unable to comply with the IRS' required terms of payment, and the debt is now being satisfied through involuntary wage garnishment. She also had to repay \$900 in state taxes for 2006 and 2009. Those debts were paid, albeit through involuntary wage garnishment. Applicant also had debts in 1992 and 1996 that had to be satisfied through garnishment. All of her tax debts arose through improper claims of exemptions from withholding for dependents she never had. Her 35-year-old daughter has not been her dependent since at least 1996. Finally, Applicant's credit history reflects numerous delinquencies and a bankruptcy. The facts established require application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant claimed that her recent debts arose from medical conditions for herself and her mother over which she had no control. This claim requires consideration of the mitigating condition at AG ¶ 20(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*). However, AG ¶ 20(b) does not apply because Applicant did not establish that her misuse of exemptions from tax withholding was a consequence of her mother's health. To the contrary, it appears this has been a regular practice by the Applicant dating back to 1991. Additionally, taken as a whole, all of the available information about Applicant's finances since about 1989 shows she has been largely irresponsible when it comes to managing her finances. She only pays the larger of her commercial credit debts begrudgingly, and her tax debts, involuntarily.

Applicant's delinquent tax debts continue to be resolved through wage garnishment, her debt for unpaid taxes on a timeshare has not been addressed, and a large credit card delinquency is being slowly resolved. Further, Applicant has not followed through on previous debt management and credit counseling opportunities, or established that she has changed the way she manages her personal finances so they will not be a problem in the future. Accordingly, none of the other AG ¶ 20 mitigating

conditions apply here. On balance, Applicant has mitigated the security concerns about her finances.

Personal Conduct

The Government's information also supported the SOR allegations in SOR 2. At the outset, Applicant's attempts to have more cash on hand through improper manipulation of her exemptions from withholding, while at the same time accruing debts she would not or could not pay, reflects significant defects in her judgment with respect to her finances. Her inability or unwillingness to properly manage her finances is sufficient to invoke the general security concern expressed at AG ¶ 15 as follows:

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.

Additionally, despite Applicant's claim that her omission of her tax and other debts from her 2007 e-QIP was unintentional, I conclude from all of the information probative of this issue that it was. Applicant has completed other versions of the same questionnaire since she was first cleared in 1989. She knew, or should have known, that she had past-due debts within the meaning of questions 28.a and 28.b. Thus, the disqualifying condition at 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*) applies.

By contrast, Applicant did not establish that she made a good-faith effort to correct her omission, or that she was advised by competent officials to answer her e-QIP as she did. Finally, deliberately making a false statement to the Government is not a minor infraction. It is potentially a violation of federal law, and it is inconsistent with basic tenets of DoD's personnel security system. Accordingly, this record does not support application of any of the mitigating conditions listed at AG ¶ 17. Applicant has failed to mitigate the adverse security concerns raised by the Government's information about her personal conduct.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 55 years old, and she has been employed by the same company for over 26 years. Her professional stability and good reputation in the workplace are commendable. However, the positive information in the record is far outweighed by her protracted history of financial problems and her recent deliberate falsification in her e-QIP. A fair and

commonsense assessment of all of the available information shows that Applicant has not resolved any of the doubts about her suitability for access to classified information raised by this record. Because protection of the national interest is the paramount consideration here, those doubts must be resolved for the Government.

Formal Findings

Formal findings 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
Subparagraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.e:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Request for continued eligibility for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge