



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



In the matter of: )  
)  
) ISCR Case: 10-00313  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

September 29, 2011

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On August 23, 2005, Applicant submitted an Electronic Questionnaire for National Security Positions (SF 86). On April 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On May 2, 2011, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On June 8, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing ten Items, and mailed

Applicant a complete copy the same day. Applicant received the FORM on April 18, 2011, and had 30 days from its receipt to file objections and submit additional information. She timely submitted additional information to Department Counsel, who had no objection. I marked said documents as Applicant Exhibits (AE) A, B, and C. On August 3, 2011, DOHA assigned the case to me.

### **Findings of Fact**

In her response to the SOR, Applicant denied the allegation in ¶ 1.a and admitted the remaining three allegations. Those admissions and her statements in response to DOHA interrogatories are incorporated in the following findings.

Applicant is a 57-year-old employee of a defense contractor, where she began working in 1989. She is a quality engineer. She is married and has two children. She has no military service but has held a security clearance since 1995. (Item 5.)

In October 2009, a government investigator interviewed Applicant about delinquent debts and unpaid state and federal income taxes for tax years 2005, 2006, 2007, and 2008.<sup>1</sup> She indicated that from 2005 to 2006 and part of 2007 her husband underwent substance abuse treatment. As a consequence he was unemployed and unable to work in his painting company for periods of time. Their income decreased and they choose to pay their mortgage and other bills rather than their income taxes. (Item 6.) Sometime in 2005 her husband filed a Chapter 11 Bankruptcy Petition that was closed in April 2007. (AE C.) Applicant indicated that she hired a tax firm in March or April 2009 to resolve their outstanding tax issues. (*Id.*)

The April 2011 SOR alleged that Applicant failed to file a Federal income tax return for tax year 2008 and failed to pay taxes for 2005, 2006, and 2007, totaling \$67,086. The 2008 tax return was filed in 2010 and contains evidence of \$24,000 in gambling income. (Item 4 at 4.) None of the taxes for the four years are paid or resolved. As of September 2010 the tax firm continues to pursue a resolution. (Item 4 at 6; AE A.) The Applicant has not participated in credit counseling. Applicant submitted no character references or other evidence tending to establish her good judgment, trustworthiness, or reliability.

### **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 (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> Applicant admitted that she owes taxes for 2008 and 2009. While those facts are not alleged as security concerns, they will be considered in the whole-person analysis.

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.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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."

## **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 evidence established security concerns under two Financial Considerations guideline DCs: AG ¶ 19(a) an "inability or unwillingness to satisfy debts;" and AG ¶ 19(c) "a history of not meeting financial obligations." Based on her statements, Applicant has been unable or unwilling to satisfy outstanding tax issues for the years 2005, 2006, 2007, and 2008. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut or prove mitigation of those security concerns. The guideline includes four conditions that could mitigate security concerns arising from financial considerations in AG ¶ 20. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's outstanding income tax problems started in 2005, continued into 2008, and remain unresolved to date. Because the ongoing problems are not isolated and there is no evidence that the delinquent indebtedness is unlikely to recur, this condition does not apply.

AG ¶ 20(b) states that it may be mitigating where "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." Applicant attributed her financial problems to her husband's periods of unemployment, while undergoing substance abuse treatment during 2005 to 2007. Those may have been circumstances beyond her control. However, she admitted that she chose to pay her living expenses and not taxes. She provided no evidence that she attempted to act responsibly while the taxes were accruing or becoming due by having sufficient withholdings taken from her income. This MC marginally applies.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant established no mitigation under these two provisions. She failed to present evidence that she received credit counseling and/or that her outstanding tax liabilities are under control, as required under AG ¶ 20(c). She provided minimal evidence that she is attempting to establish a repayment plan for the taxes, as she has been engaged in negotiations since March or April 2009. AG ¶ 20(d) has little application.

## 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). They include the following:

- (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 is a mature individual, who is responsible for her voluntary choices and conduct that underlie the security concerns set out in the SOR. She demonstrated a five-year history of not meeting income tax obligations from 2005 to 2009, as well as a lack of good judgment and reliability. Despite learning of the Government's concerns in October 2009 (which began in 2005), none of the unpaid taxes have been resolved to date. Applicant failed to demonstrate financial rehabilitation, so the likelihood of continuation or recurrence of income tax issues remains a concern. The record contains insufficient other evidence about her character, trustworthiness, or responsibility to mitigate these concerns.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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|-------------------------------|-------------------|
| Paragraph 1, Guideline F:     | AGAINST APPLICANT |
| Subparagraph 1.a:             | For Applicant     |
| Subparagraph 1.b through 1.d: | 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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SHARI DAM  
Administrative Judge