



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



In the matter of )  
)  
) ISCR Case No. 10-01209  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel

For Applicant: James S. DelSordo, Esquire

February 8, 2011

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

**Statement of the Case**

On April 20, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required for her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and

Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On July 16, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).<sup>2</sup> In her Answer to the SOR, signed and notarized on August 4, 2010, Applicant admitted allegations 1.a. and 1.c. under Guideline F and denied the remaining allegations. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on September 1, 2010, and the case was assigned to me on September 7, 2010. DOHA issued a Notice of Hearing on September 15, 2010, and I convened the hearing as scheduled on October 14, 2010. During the hearing, I admitted six Government exhibits (GE 1-6). Applicant and one witness testified. She also offered eight exhibits, which I admitted as Applicant's Exhibits (AE) A through H. I held the record open to allow Applicant to submit additional documentation. She timely submitted eight documents, admitted without objection as AE I through P. DOHA received the transcript on October 21, 2011.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 62 years old, completed a bachelor's degree in 1972 and a master's degree in 2005. She married in 1988, and has a 27-year-old daughter and a 37-year-old son. She divorced in 2002. Applicant worked as an office manager for approximately five years between 1998 and 2003. She was unemployed for almost one year between 2003 and 2004. She worked for federal contractors between 2004 and 2006. She obtained her current position with a federal contractor (employer A) in October 2006. She is a senior technical writer and developer. Applicant accepted a position as an adjunct college professor at employer B in 2005, and a second teaching position at employer C in 2006. Applicant continues to work part-time for employer B. This is her first application for security clearance. (GE 1; Tr. 20-22; 72, 99, 108)

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's daughter has been diagnosed with bipolar disorder. She lives with Applicant and works intermittently for short periods, when her medication does not interfere with her performance. Applicant's daughter is not covered by Applicant's health insurance. Applicant's son was unemployed from May 2008 to at least May 2009. She helps him with his expenses. She took care of her mother when she became ill in about 2004. She paid her mother's medical bills and home care costs. Her sisters did not contribute to their mother's support. Applicant paid for medical expenses during her mother's terminal illness in 2006, and the funeral and burial. (GE 2; Tr. 20, 67, 100)

Applicant has filed her income tax returns every year. However, starting in about 1995, two of her employers withheld insufficient amounts from her pay, resulting in a tax debt. (Tr. 63, 101) Applicant testified,

I'm not quite sure of the year, but I was working for a contractor, and that contractor did not take out enough taxes, so the taxes became to get more and more. I paid the first one. I noticed that they weren't taking out enough. But the second one and the one in 2006, I wasn't able to pay it, basically because my mom was terminally ill, and I had to help her. So I was unable to pay. (Tr. 19)

In the years when Applicant's income tax obligation was relatively small, approximately \$400 to \$500, she paid it. When it was more, she could not afford to pay it all, but sometimes sent a partial payment with her return. Applicant tried reducing her exemptions to increase her withholding. She has not requested that an additional amount be withheld from her salary. In 2003, Applicant requested a payment plan from the IRS, and started paying \$300 per month. She then lost her job and was unemployed for about 10 months. She found employment in June 2004, and started her adjunct teaching positions in 2005 and 2006. She no longer made the IRS payments. In about 2008, the IRS garnished \$1,200 per pay period from Applicant's salary from employer A. As a result, in January 2009, she satisfied a lien of \$12,634, which covered tax years 1996, 1997, 2002, and 2003.<sup>3</sup> Applicant was due refunds in 1997 and 2003, but the IRS applied them to her delinquent tax debt. It also seized approximately \$1,500 from her bank account. (GE 3; AE F, G; Tr. 41-42, 46-50, 58-59, 63-66, 85-92)

The SOR alleges the following additional federal liens, which total \$29,455:

a lien of \$4,800, filed in 2001, for tax years 1993 and 1995; and

a lien of \$24,555, filed in 2009, for tax years 2006 and 2007.

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<sup>3</sup> This satisfied lien is not alleged in the SOR and, therefore, will be considered only as part of the whole-person analysis.

Applicant testified she did not receive a notice of the \$4,800 lien, and called the IRS to request one “a couple of years ago.” She did not pursue the request since then. After her May 2009 security interview, Applicant contacted the IRS and was advised to complete a form requesting an installment plan. In April 2010, Applicant made one payment of \$503 toward the IRS liens. In September 2010, one month before the hearing, she contacted the IRS and requested a installment plan. She expected a response within 30 to 60 days. She did not provide evidence of a response during or after the hearing. (GE 1, 3, 4; AE F – I; Tr. 19-20, 58-62, 92, 96-97)

Applicant attempted to refinance her mother’s house, in order to obtain additional funds to pay off her IRS liens and other debts. She did not qualify for the loan because of her low credit score. She may attempt to qualify in the future, when her score improves. In 2004, Applicant paid a tax advice company \$1,500 to review her taxes, ensure the amounts owed were correct, and to negotiate a payment plan or an offer in compromise with the IRS. The company reviewed her taxes, but required an additional \$1,500 to continue, and Applicant could not afford to pay it. Several years later, in about 2006, Applicant contacted a CPA for assistance, but could not afford the \$3,000 fee. She has never been advised to increase the amount of tax withheld from her pay. (Tr. 93-96) (GE 3; Tr. 39-40)

Applicant’s monthly net pay as of mid-2010 was \$6,550 (including her teaching salary). Her monthly expenses and debt payments total \$5,600, leaving a monthly net remainder of \$950.<sup>4</sup> She does not have a savings account, but does contribute to a retirement plan. (GE 3; Tr. 39-40)

The nine debts listed in the SOR total almost \$43,000. The delinquencies appear in Applicant’s credit reports of May 2009 and January and June 2010. (GE 4-6, AE P) The status of the SOR debts, other than the IRS liens discussed previously, follows.

- **State tax lien: \$8,504, PAID (allegation 1.c)** – After her father died in 1996, Applicant assumed responsibility for her mother’s medical care. As a result, she could not afford to pay her income taxes in state A, and a lien was filed in 1997. Applicant testified that she only became aware of the state lien about four years ago. She contacted the state tax office at that time. She did not pay it because she believed it was incorrect. She did not live in state A in 1997, having left in 1992, and she never worked in state A. She did not contact the state A tax office since the security investigation began. Although she testified that the state A lien had not been resolved,

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<sup>4</sup> Applicant testified that she made only one payment of \$503 to the IRS, rather than regular monthly payments of this amount listed on her personal financial statement. Without that monthly payment, her net monthly remainder is \$1,450. (GE 3)

she provided a Release of Lien after the hearing showing that the debt was satisfied in 2003.<sup>5</sup> (GE 2, 4; AE J; Tr. 22-23, 54-55, 97)

- **Credit card: \$1,169, UNPAID (Allegation 1.d.)** - Applicant opened this credit card account to pay for her mother's expenses. At her May 2009 security interview, she stated she had contacted the creditor and negotiated an agreement to pay \$800 by June 2009, noting that the account would be paid within a few months. She did not pay the debt in 2009. Between 2006 and 2010, she made two payments. In April 2010, Applicant offered a \$100 payment to settle the account. On September 1, 2010, she requested the creditor validate the debt. On September 15, 2010, the creditor notified her of the original creditor, account number, and the balance due of \$1,190. As of September 15, 2010, the creditor was investigating to determine if the amount owed is correct. Applicant did not submit documentation during or after the hearing showing the balance had been determined or the account had been paid, and the debt appears on Applicant's November 2010 credit bureau report. (GE 2, 5; AE A, B; K, P; Tr. 25-31, 39, 74-76)
- **Medical debts totaling \$510, PAID (allegations 1.e. and 1.f)** – At her May 2009 security interview, Applicant was unsure about the source of these medical debts. On September 1, 2010, she asked the creditor to validate that they were her debts. On September 15, 2010, the creditor confirmed that the debt stemmed from hospital services for her daughter. Applicant provided documentation showing that she paid both debts through deduction from her bank account on October 22, 2010. (GE 2; AE A, L, M; Tr. 25-26)
- **Wrecker service, \$1,788, UNPAID (allegation 1.g.)** At her May 2009 security interview, Applicant stated she paid \$200 for towing service after her car was totaled in an accident. The car was sold and the proceeds applied to the debt. Applicant was unaware that she owed anything further. The debt became delinquent in 2003. In about 2008, she contacted the credit reporting agencies to dispute the debt. She did not receive a response. She testified that the debt did not appear on her credit bureau report, but then re-appeared. On April 6, 2010, Applicant offered the creditor \$100 as a settlement. On September 1, 2010, she asked the creditor to validate the debt. She did not receive a response. The debt appears on her 2009 credit bureau report, but not the 2010 credit bureau reports. (GE 2, 4, 5, 6; AE A, N; Tr. 25, 68-71)

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<sup>5</sup> Applicant was married in 1988 and divorced in 2002. As of April 2009, her ex-husband lived in state A. The record does not indicate if it was Applicant's husband who paid the lien in 2003. (GE 1)

- **Telephone: \$119, UNPAID (allegation 1.h.)** – In her May 2009 security interview, Applicant stated she was not aware of this debt, and would investigate it within 30 days. In May 2010, she contacted the creditor, and was told the debt would be removed from her credit bureau report, because it was not her debt. She provided a letter showing that a phone account with the creditor listed in the SOR had been deleted from her credit bureau report. However, the account number and the balance (\$500) shown on Applicant's exhibit are not the same as those reflected in the Government's 2009 credit bureau report. Therefore, it appears that Applicant's exhibit does not refer to the same account that appears in the SOR. The SOR debt does not appear in Applicant's January or June 2010 credit bureau reports. (GE 3, 4, 5, 6; AE C; Tr. 31-34, 76-80)
- **Credit card: \$1,427, DISPUTED (Allegation 1.i.)** - Applicant opened this credit card account in 2006 to help her son with his expenses. The creditor sold the account to a collection agency in 2008. After falling behind in her payments, Applicant negotiated a new payment arrangement in April 2009 of \$60 per month.<sup>6</sup> She told the security investigator in May 2009 that it would be paid off within a few months. She testified that she believes she paid the debt in full. In September 2010, Applicant disputed this account with the creditor. She provided evidence that the creditor requested this account be deleted from Applicant's credit bureau report. The debt does not appear on Applicant's November 2010 credit bureau report. (GE 2, 4, 5, 6; AE A, D, E, K, O, P; Tr. 25, 36-38, 71-74, 81-83)

Applicant's friend testified that she has known Applicant since 1977, when they were both young teachers. They see each other about twice per month, and are in phone or email contact every day. She has been to Applicant's home, and notes that Applicant lives frugally and is careful with her money. Applicant was the emotional and financial support for her mother during her terminal illness. The witness has known Applicant's daughter since she was born. She testified that, because of the daughter's mental condition, Applicant is her sole financial support. She attested to Applicant's strong sense of integrity. (Tr. 105-113)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>7</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept.

<sup>6</sup> The report of Applicant's interview notes that she stated she was paying \$600 per month. Applicant corrected this amount at the hearing, testifying that the arrangement was for \$60 per month. (GE 2; Tr. 72)

<sup>7</sup> Directive 6.3

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>8</sup> for an applicant to either receive or continue to have 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.<sup>9</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the judgment, reliability, and trustworthiness to 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.<sup>10</sup>

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern about 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

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<sup>8</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>9</sup> *Id.* at 528, 531.

<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges \$37,859 in unpaid back taxes owed to the federal and state governments. The state tax lien, \$8,504, was paid in 2003, though the record is unclear about whether it was Applicant who paid it. The federal liens, totaling \$29,355, remain unpaid. Applicant's history demonstrates a failure to meet financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(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's debts are both recent and frequent. They have been accruing for years. They are not in the distant past, as approximately \$29,000 in federal income taxes remains unpaid. Her inattention to her financial obligations may recur in the future. Her failure to make consistent attempts to resolve her debts over the years, until recently, raises questions as to her reliability and judgment. AG ¶ 20(a) does not apply.

Only partial credit is available under AG ¶ 20(b). Applicant has had circumstances that affected her ability to pay her debts. She was unemployed for almost one year. She supports her daughter, who cannot remain consistently employed. She supported her mother financially for years, and helps her son with his expenses. However, these situations have been spread over the past ten years, and during most of this time Applicant was gainfully employed, even receiving extra income for several years from additional jobs. She has almost



\$1,000 remaining at the end of the month. Applicant has not acted responsibly toward her debts by using these funds to consistently pay her debts.

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant testified that she made payments on her IRS tax liens in the past. However, the liens that were resolved were primarily paid through garnishments of her pay and seizure of her tax refunds. Such payments do not constitute a good-faith effort. Although the state lien is paid, it does not appear to have been through Applicant's efforts, as she testified that it was not paid, even though it had been paid in 2003. She paid two medical debts of about \$500 about one week after the hearing. She successfully disputed a credit card debt, but not until one month before the hearing. Applicant's actions have been recent, and occurred shortly before the hearing. She receives some credit under AG ¶ 20(d) for making payments in 2003 to the IRS.

Applicant successfully disputed a telephone debt and it was removed from her credit report, although it was not the account that was alleged in the SOR. She provided documentation showing she disputed one credit card debt listed in the SOR, which was removed from her credit report. AG ¶ 20(e) applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature and educated adult, who has demonstrated character in her personal life by assisting her adult son financially, caring for her mother's medical needs, and supporting her adult daughter who suffers from a mental condition. Applicant's non-tax delinquencies amount to about \$3,000, which is not security-significant, given her income. However, more than \$29,000 in past-due federal income tax liens remains unpaid. Applicant recently satisfied an additional \$12,634 federal lien, but it was paid primarily through garnishment and seizure of her refunds, rather than her own efforts. Her failure to stay abreast of her debts over the past several years can be ascribed in part to bearing family financial burdens. But her lack of diligence about her obligations to the federal government is a serious concern. Her independent actions to resolve her tax debts have been inconsistent. Many of her steps were taken shortly before the hearing, indicating that she was responding more to the security process than to her legitimate obligations. Applicant failed to act responsibly when she did not rectify her persistent under-withholding, which started in the 1990s. Her lack of attention to her federal tax debt, and sporadic efforts on other debts, do not demonstrate reliability and good judgment.

A fair and commonsense assessment of the available information shows that Applicant has not satisfied the doubts raised about her suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

### **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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraphs 1.a. – 1.h.	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge