



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-02003
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

January 31, 2011

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant had four tax liens and nine other delinquent accounts totaling approximately \$26,000. During the last year, she has documented paying less than \$1,000 on these accounts. Applicant has failed to rebut or mitigate the security concerns under financial considerations. Clearance is denied.

**Statement of the Case**

Applicant contests the Department of Defense's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a Statement of Reasons (SOR) on October 7, 2010, detailing security concerns under financial considerations.

Applicant in her undated SOR answer elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated November 15, 2010. The FORM contained seven attachments (Items). On November 23, 2010, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

On November 30, 2010, Applicant responded to the FORM. Department Counsel did not object to the material. Applicant's response was admitted into the record. On January 6, 2010, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, she denied the debts listed in ¶¶ 1.f, 1.g, 1.h, 1. j, 1.k, 1.l, and 1.m of the SOR. She admitted owing the two Federal tax liens, ¶¶ 1.a and 1.c; the two state tax liens, ¶¶ 1.b and 1.e; and two additional debts, ¶¶ 1.d and 1.i, of the SOR. She also provided additional information to support her request for eligibility for a security clearance. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 42-year-old engineer who has worked for a defense contractor since December 2007, and is seeking to obtain a security clearance. Applicant was unemployed for two months from April 2007 through June 2007, three months from July 2006 through October 2006, and three months from December 2005 through February 2006.

Two federal and two state tax liens were incurred because Applicant's husband was doing work and insufficient taxes were withheld from his pay to cover the income tax. In the summer of 2009, Applicant asserted she began making \$100 monthly payments to the state and \$300 monthly to the federal government. Applicant and her husband have changed the number of withholding they claim on their W-2, thereby allowing more taxes to be taken from their pay. (Item 5)

In December 2009, Applicant was interviewed about her finances. She did not dispute the \$1,334 and \$1,802 state tax liens or the \$6,973 federal tax lien. At that time, she believed the state liens would be paid by December 2012 and the federal liens by December 2013. In early 2009, Applicant's wages were garnished in the amount of \$384 for a tax lien. (Item 5) Applicant did not know the nature of the lien. (Item 5) In May 2009, the state levied on Applicant's wages to recover \$2,066 owed for tax year 2005. (SOR Answer)

In May 2009, the state issued a Notice of Levy on Wages, Salary. Applicant owed \$2,066 for state income tax for tax year 2005. (SOR Answer Item 3) An October 14, 2010 update indicated Applicant owed state income tax of \$1,252. (SOR Answer Item 3) The form lists a tax due date of April 15, 2009, but does not list the tax year for this tax debt. The record contains no additional information showing payment by Applicant.

Applicant admitted the October 2008 Federal Tax Lien of \$6,973 (¶ 1.c) and the December 2009 Federal Tax Lien of \$5,214 (¶ 1.a). The two amounts total \$12,187. On April 23, 2010, Applicant made a \$150 payment to the U.S. Treasury. (Item 5) For the tax period ending December 31, 2009, Applicant owed \$4,430.50 for income tax. (Item 5) In her SOR Answer (Item 3), Applicant submitted a September 2010 letter from the IRS indicating she and her husband owed the following amounts: \$4,035 for tax year 2005, which included a \$150 payment; \$3,682 for tax year 2006; \$2,384 for tax year 2008; and \$4,532 for tax year 2009. The four years total \$14,634. The form indicated Applicant's next payment of \$265 was due on September 28, 2010. (Item 3)

At the time of her December 2009 interview, Applicant did not dispute owing a credit collection service for two separate accounts. The collection service was attempting to collect two debts; a \$1,289 credit card debt (¶ 1.f, \$578) and a vehicle repossession debt of \$8,204 (¶ 1.d, \$9,133). (Item 6) The vehicle was repossessed following a two-month period of unemployment in 2007. (Item 4, 5) Applicant made \$50 monthly payment on the first debt and, in May 2010, Applicant paid \$255 to settle the debt. (SOR Answer)

As to the second debt, the creditor offered to settle the account for an amount Applicant was unable to pay. The account was transferred to a new collection agency. (Item 5) During the December 2009 interview, Applicant asserts the creditor agreed to accept \$100 monthly payments. On July 26, 2010, the SOR creditor sent Applicant a letter reminding her that her account would be debited \$100 on July 30, 2010. The balance due as of July 26, 2010 was \$9,133. Between December 2009 and July 2010, the amount due on the account had increased by \$929. As of September 20, 2010, the balance owed was \$8,943. (SOR Answer) This indicates \$100 payments were made in July 2010 and August 2010. In her November 2010 FORM Answer, she asserts this debt will be paid in full by the end of December 2010. There is no evidence of payments on this debt other than the two \$100 payments.

As of 2010, Applicant and her husband's monthly income was \$4,300. Their monthly expenses were \$2,052, and their net monthly remainder was \$1,383. She had \$8,000 in her 401(k) retirement plan. (Item 5) In November 2010, they made the final payment on their 2000 Dodge. (FORM Answer)

The FORM page 6 informed Applicant she had provided insufficient documentation to evidence the current status of her debts. Her FORM Answer asserts she is still making payments to the IRS, but provided no documentation establishing the amount she has paid to the IRS or the state tax authority. She asserts she will continue

making \$100 payments on the vehicle repossession debt and asserts that debt will be paid in full by the end of December 2010. Again, she provided no documentation as to how much she had paid the creditor or when.

A summary of Applicant's accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Federal Tax lien filed December 2009	\$5,214	Applicant asserts, but failed to document, she is making monthly payments on the debt.
b	State tax lien filed in February 2009.	\$1,802	Applicant asserts, but failed to document, she is making monthly payments on the debt.
c	Federal tax lien filed in October 2008	\$6,973	Applicant asserts, but failed to document, she is making monthly payments on the debt.
d	Debt incurred following vehicle repossession.	\$9,133	Applicant has made limited payments on this debt. In December 2009, Applicant asserted the creditor was willing to accept \$100 monthly payments on the debt. As of September 20, 2010, the balance owed was \$8,943. (SOR Answer)
e	State tax lien filed July 2009.	\$1,344	Applicant asserts, but failed to document, she is making monthly payments on the debt.
f	Credit card account placed for collection.	\$578	Settled and paid. Account settled for \$225 on May 20, 2010. (SOR Answer)
g	Medical account placed for collection.		
h	Account placed for collection	\$102	Unpaid. Applicant did not recognize this debt, but asserted in her August 2010 response (Item 5) she would pay it by January 2010, if it was her debt.

	Creditor	Amount	Current Status
i	Credit card account placed for collection.	\$593	Paying. Applicant is making payments on this account. Applicant contacted creditor and agreed to pay \$85 in January 2010 and \$50 monthly thereafter. (Item 5) The balance as of October 4, 2010 was \$379. (Item 5, SOR Answer)
j	Book club account placed for collection.	\$40	Paid. Applicant asserted she had returned the books and owed nothing on this account and the following account. Applicant accepted creditor's settlement offer and paid \$106 on this account and the following account. Applicant's credit bureau report (CBR) as of December 2009 was to reflect a zero balance owed on this account. (Item 5)
k	Book club account placed for collection.	\$35	Paid. See j. above. As of October 14, 2010, this account was "Satisfied in Full." (SOR Answer)
l	Rent-to-own account for a computer.	\$372	Paid. Applicant had this account in 2001, when she lived in Florida. The creditor was paid as agreed. Creditor agreed to remove it from her CBR by December 2009. (Item 5) As of October 2010, the account was deleted from her CBR. (SOR Answer)
m	Cable account placed for collection.	\$192	Paid. Applicant made a \$92 payment in October 2009 and paid \$100 in February 2010. (Item 5, SOR Answer)
	Total debt listed in SOR	\$26,476	

### Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

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 to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. The SOR alleges 13 tax liens and debts placed for collection totaling in excess of \$26,000. Those debts included taxes owed the IRS and state taxing authority, and owed as the result of vehicle repossession. 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," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶20 are potentially applicable:

- (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.

The mitigating conditions listed in AG ¶ 20(a) do not apply. The tax liens and repossession were incurred a number of years ago, but remain unpaid. Between December 2005 and June 2007, Applicant was unemployed for eight months, which is a factor beyond her control. However, the mitigating conditions listed in AG ¶ 20(b) have limited applicability because Applicant has been employed since July 2007. The mitigating conditions in AG ¶ 20(c) do not apply, because there is no evidence Applicant received financial counseling or that her financial problems are under control.

The mitigating conditions in AG ¶ 20(d) have limited applicability. Applicant paid the debts listed in ¶ 1.f (\$578), ¶ 1.g (\$98), ¶ 1.j (\$40), ¶ 1.k (\$35), ¶ 1.l (\$372), and ¶ 1.m (\$192). She provided documentation establishing that she is making payments on ¶ 1.i (\$593), which as of October 2010 had a balance of \$379. I find for her as to these debts. AG ¶ 20(d) applies to these debts she has paid. AG ¶ 20(d) does not apply to the remaining debts.

The record evidence establishes the vehicle repossession debt (¶ 1.d, \$9,133) has been reduced to \$8,943 as of September 2010. Since being questioned about this debt in December 2009 she has made two payments of \$100 each. She asserted, but failed to document, that she was making \$100 monthly payments on this debt. She has failed to document a good-faith effort to repay this debt. In December 2009, Applicant owed the IRS approximately \$13,000. As of September 2010, she owed approximately \$14,600. She asserted, but failed to document, she was making monthly payments on this debt. As of December 2009, she had two state tax liens totaling approximately \$3,000. As of October 2010, she owed at least \$1,252 for tax year 2005. She again asserted, but failed to document, she was making monthly payments on this debt.

The FORM clearly informed Applicant she had provided insufficient documentation to evidence the current status of her debts. In her FORM response, she provided documentation that her 2000 Dodge had been paid off ahead of schedule and the \$98 medical debt (¶ 1.g) was being removed from her CBR. No documentation as to the tax liens or the vehicle repossession debt was received. Applicant has failed to sufficiently document a good-faith effort to address her debts.

The mitigating factors in AG ¶20(e) do not apply to the taxes owed or the repossession debt. Applicant did dispute a number of the SOR debts and I have previously found for her on the debts she paid, but had earlier disputed.

### **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. Since being questioned about her finances in December 2009, Applicant has documented payment of approximately \$900 on the debts totaling \$26,000. She asserted, but failed to sufficiently document, that she made additional monthly payments. The issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) In the past year, she has made insufficient progress in addressing the financial concerns.

Overall, the record evidence leaves me with questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not fully mitigate the security concerns arising from 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, Financial Considerations: **AGAINST APPLICANT**

Subparagraph 1.a —1.e:	Against Applicant
Subparagraph 1.f and 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i —1.m:	For Applicant

## **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge