



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-02903
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

May 20, 2011  
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**Decision**  
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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, I deny Applicant's eligibility for access to classified information.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on June 1, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on November 4, 2010, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, that provided the basis for its preliminary decision to deny her a security clearance. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR and submitted a notarized, written response, with attachments, to the SOR allegations dated December 21, 2010. She submitted a second response on February 2, 2001 and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on March 17, 2011. Applicant received the FORM on March 23, 2011. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. DOHA assigned this case to me on May 12, 2011. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record. The SOR has been marked as Item 1. Applicant's response to the SOR has been marked and admitted as Item 3.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.p and 1.s of the SOR. She admitted in part and denied in part the factual allegations in ¶¶ 1.q, 1.t, 1.u, and 1.v of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegation in ¶ 1.r of the SOR and did not answer allegation 2.a of the SOR.<sup>1</sup> She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 66 years old, works as a specification writer for a Department of Defense contractor, a position she has held since May 2004. From April 2003 until April 2004, she worked as a senior technical writer for another Department of Defense contractor. She started working for the Department of Defense in 1970 and retired after more than 30 years of service in April 2003. She was granted a security clearance in 1972.<sup>2</sup>

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Item 4 (SF 86).

Applicant graduated from high school in June 1963. She married her first husband in September 1963 and divorced him in 1970. From this marriage, she has one son, who is 46 years old. She married again in September 1970. She and her second husband divorced in December 1985. She does not have any children from her second marriage.<sup>3</sup>

In her sworn statement dated July 13, 2010, Applicant indicated that she received \$3,300 in retirement benefits, \$3,300 in salary, and \$900 from her boyfriend for a total monthly income of \$7,500. The Internal Revenue Service (IRS) deducted \$500 from her pension and garnished \$1,600 from her pay monthly. Her employer deducted \$500 in payroll taxes for total monthly deductions of \$2,600. She listed her monthly expenses at \$4,723, including debt repayment. Her bank statement for November 2010 and December 2010 show a deposit of \$3,291 in net retirement benefits and \$2,451 in net pay. The discrepancy between her statement in July 2010 and her later bank statements is not explained. Based on her bank statements and with the \$900 in income from her boyfriend each month, I find her current total net monthly household income is \$6,642. Her monthly expenses, including debt repayment, total \$4,723. The difference in net income will be discussed below.<sup>4</sup>

In 1999 and from 2001 through 2009, Applicant did not file her federal income tax returns. She has no explanation for her failure to file her tax returns. In 2007, the IRS advised her that she owed \$22,730 in delinquent taxes. She contacted the IRS about a payment plan, but the IRS requested full payment of her delinquent taxes. She lacked the money to make the payment. In June 2008, the IRS garnished her federal retirement benefit at \$503 a month, which she viewed as a repayment plan. In 2009, the IRS seized \$408 from two separate checking accounts; filed a tax lien in the amount of \$17,857 in September 2009 for taxes due for the years 1999, 2001, 2002, 2003, and 2004;<sup>5</sup> and initiated a \$800 a paycheck garnishment of her wages. In July 2010, the IRS released its \$17,857 tax lien and refunded a tax overpayment of \$1,012 to Applicant.<sup>6</sup>

Applicant hired a tax service in September 2010 to help her file her federal tax returns for the tax years 2005 through 2008. With the help of this firm, Applicant's federal tax returns for these years were prepared and signed in December 2010. Although she has not provided proof of filing, I infer that the returns have been filed through the tax service. Each return indicates that Applicant owed additional taxes to the IRS, which total \$7,958. She did not provide proof that she paid these additional

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<sup>3</sup>*Id.*

<sup>4</sup>Item 3; Item 5.

<sup>5</sup>Applicant's record reflects that the IRS filed a tax lien on September 4, 2009 and on September 9, 2009. Except for the date, the information in the tax liens is identical, and both liens have been released. Item 3.

<sup>6</sup>*Id.*

taxes. She did not provide any documentation concerning the status of her 2009 federal tax return.<sup>7</sup>

Applicant moved to her current state of residence in early 2003. She did not file state income tax returns for the tax years 2004 through 2009. In February 2007, the State revenue office notified her that she owed \$2,201 in unpaid taxes and garnished her wages. The State released its lien on March 14, 2008 after the taxes had been paid. Applicant filed the State tax returns for the tax years 2005 through 2008 in December 2010 after her tax consultant completed the tax returns. She paid her total tax debt of \$3,010 by credit card. She did not provide any information concerning the status of her 2009 state tax return.<sup>8</sup>

Applicant verified that in November 2010, she paid the \$66 debt identified in SOR ¶ 1.r and the \$69 debt in SOR ¶ 1.s. In November 2010, she negotiated a payment plan for the \$4,802 debt in SOR ¶ 1.t. She paid \$500 towards this debt on November 15, 2010 and \$650 towards the debt on December 7, 2010. Under her repayment plan, she is to pay \$650 a month through May 2011 and a single final payment of \$402 in June 2011.<sup>9</sup>

SOR ¶ 1.u identified a federal tax lien in the amount of \$22,730, which Applicant admitted. This lien is not listed on the September 30, 2010 credit report, which is the only credit report of record. In her July 2010 statement, Applicant stated that in 2008, the IRS advised her that she owed \$22,730 in unpaid taxes. By October 1, 2009, Applicant stated that this amount had been involuntarily reduced through garnishment of her pension to \$17,000. The IRS release of lien documentation indicated that all tax liens against Applicant had been released in July 2010. Based on this information, I find that SOR ¶ 1.u is the same tax lien as is alleged in SOR ¶ 1.q.

### **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 are used 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 ¶

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<sup>7</sup>Item 3.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

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, 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. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (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 failed to file her federal and state tax returns for many years, creating a substantial unpaid tax debt. As a result, the IRS filed a tax lien for taxes due for the years 1999 and 2001 through 2004. The state filed a tax lien in 2007. She also failed to pay several smaller bills. The above disqualifying conditions apply.

The Financial Considerations guideline also includes conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable:

- (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 paid her federal tax debt for 1999 and 2001 through 2004 tax years through IRS garnishments of her federal retirement benefit and current wages. She paid the 2007 tax lien filed by the State in full by March 2008 with a 2007 wage garnishment. She filed her federal and state tax returns for the tax years 2005 through 2008 in 2010, and she has paid her delinquent state taxes. She has fully resolved the allegations in SOR ¶¶ 1.a-1.n, 1.q, 1.u, and 1.v under AG ¶ 20(c).

Applicant contacted the creditors and paid the \$66 debt and the \$69 debt listed in SOR ¶¶ 1.r and 1.s by November 2010. She contacted the creditor in SOR ¶ 1.t in early November 2010 and developed a payment plan for her debt. She made her first payment in November 2010 and the second payment in December 2010. Under the terms of the payment plan, she intends to resolve this debt by June 2011. She acted in good faith when she contacted these creditors to resolve her debts. AG ¶ 20(d) applies to these three allegations.

She has not provided any information concerning the status of her 2009 federal and state tax returns nor has she verified that she paid the nearly \$8,000 in federal taxes due for the tax years 2005 through 2008. SOR allegations 1.o and 1.p are found against Applicant.

## Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes disqualifying conditions that could raise a security concern. I have considered disqualifying conditions AG ¶ 16(a) through 16(g), and the following are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations. . .

Applicant knowingly failed to file her federal and state tax returns for 10 years. She was aware of her conduct, but did not correct her situation for years. She did not provide an explanation for her conduct. Her failure to follow the laws requiring her to file her tax returns raises questions about her judgment and her ability to act responsibly. The Government has established a security concern under Guideline E.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through 17(g), and the following are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's failure to file her federal and state tax returns for a long period of time raises serious questions about her judgment and reliability. She recently hired a tax service to help with filing her past-due tax returns through the 2008 tax year. Because she has taken steps to resolve her tax issues, she is entitled to some credit for mitigation. However, considering the seriousness of her conduct, these efforts are not sufficient to outweigh her past failure to file her tax returns. Guideline E is found against Applicant.

### **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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be used as punishment for specific past conduct, but based on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant worked for the federal government for more than 30 years before she retired in 2003. She has no criminal record or problems with drugs and alcohol. She held a security clearance in the past without incident. Her failure to file her income taxes for many



years raises serious questions about her judgment, reliability, and trustworthiness. She is fully aware of her duty as a U.S. citizen to file a federal and state income tax return each year, and yet, she chose not to do so for many years. The IRS garnished her retirement and her wages to collect her taxes. Even after the IRS initiated these actions, she did not take any affirmative action to file her past-due tax returns until September 2010. She has not yet filed all her tax returns. Based on past conduct, I cannot conclude her behavior is unlikely to recur.

Overall, 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 has not mitigated the security concerns arising from her finances and personal conduct under Guidelines F and E.

### **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.p:	Against Applicant
Subparagraph 1.q-1.t:	For Applicant
Subparagraph 1.u:	Duplicate
Subparagraph 1.v:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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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MARY E. HENRY  
Administrative Judge