



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



In the matter of:)
)
) ISCR Case No. 10-07283
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

July 28, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Statement of Case

On July 15, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On February 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations.¹ 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

¹ The caption on the SOR sent to Applicant did not spell her first name correctly. I have corrected the spelling of her first name on the caption of this decision.

amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated March 7, 2011, and requested that her case be determined on the written record. The Government compiled its File of Relevant Material (FORM) on March 30, 2011. The FORM contained documents identified as Items 1 through 10. By letter dated April 6, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on May 9, 2011. Her response was due on June 8, 2011.

Applicant filed additional information within the required time period. Department Counsel did not object to Applicant's response to the FORM. However, Department Counsel filed a Memorandum for Administrative Judge, dated June 9, 2011, in which she pointed out additional collateral matters, not alleged on the SOR, that were raised by Applicant's information. On June 21, 2011, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Item A and entered it in the record. I marked Department Counsel's Memorandum to Administrative Judge as Item 11, and I left the record of the case open and provided Applicant with additional time to respond to Department Counsel's Memorandum. Applicant did not respond to the Memorandum. I closed the administrative record on Friday, July 22, 2011.

Findings of Fact

The SOR contains two allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. and 1.b.). In her Answer to the SOR, Applicant admitted in part SOR ¶ 1.a. and provided additional information. She denied the allegation at SOR ¶ 1.b. Applicant's admission is entered as a finding of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in response to the FORM. The record evidence includes Applicant's July 15, 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;² Applicant's credit reports of February 19, 2000, July 27, 2010, and November 24, 2010; and records of the Internal Revenue Service (IRS), provided by Applicant, dated April 13, 2011. (See Items 5 through 11; Item A.)

Applicant is 52 years old and employed by a federal contractor as a business analyst. She has worked for her present employer since August 1985. She was first granted a security clearance in 2000, and she now seeks renewal of her clearance. (Item 5.)

²Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 9, 2010. After reviewing the investigator's report, Applicant signed a statement, dated January 21, 2010, in which she agreed that the investigator's report accurately reflected her August 9, 2010 interview. (Item 7.)

Applicant is the mother of two adult children. She has been married four times. She was married for the first time in 1975. She and her first husband divorced in 1980. Applicant married for a second time in 1981. She and her second husband divorced in 1983. In 1986, Applicant married for a third time. She and her third husband divorced in 1990, and Applicant filed for Chapter 7 bankruptcy in 1991. In 2001, Applicant remarried her third husband, who owns and operates a dental laboratory business. Applicant and her husband file joint federal income returns. (Item 4; Item 5; Item 10; Item A.)

In response to financial questions on her e-QIP, Applicant acknowledged that she was currently delinquent on a federal debt. She also reported that, in January 2009, she and her husband had satisfied a federal tax lien for federal taxes owed in 2005 and 2006. Applicant's credit report of July 27, 2010, confirmed that in February 2009, Applicant had satisfied a federal tax lien for \$20,879, which had been filed against her and her husband in September 2008. (Item 5, 40-43; Item 9.)

When she was interviewed by an OPM investigator in August 2010, Applicant acknowledged that she and her husband owed approximately \$40,000 to \$60,000 in federal tax delinquencies. The SOR alleges that Applicant owes the Internal Revenue Service (IRS) \$38,493 for a tax lien entered against her in January 2006 (SOR ¶ 1.a.).³ In her Answer to the SOR, Applicant admitted the unpaid tax lien. She stated that the lien arose when her husband's business declined, clients did not pay him, and he fell behind in paying his federal taxes. She stated that she and her husband were in contact with the IRS and were attempting to arrange a payment plan. To corroborate her assertion that she and her husband were in contact with IRS regarding payment, Applicant provided a letter from the IRS, dated December 13, 2010, addressed to Applicant and her husband, reporting that it was still processing information and would contact them within 45 days regarding payment of a federal tax delinquency for the tax period ending December 31, 2007. This federal tax delinquency was not alleged on the SOR. (Item 7 at 3; Item 1; Item 4 at 1; Item 6 at 5.)

In her response to the FORM, Applicant provided a letter from the IRS, dated April 13, 2011, accepting a proposal from Applicant and her husband to pay their delinquent federal taxes in monthly installments. The IRS letter identified the following tax periods as subject to the payment plan: December 31, 2004; December 31, 2005; December 31, 2007; December 31, 2008; December 31, 2009; and December 31, 2010. The IRS letter specified that Applicant and her husband would pay \$4,000 a month until the tax delinquencies were satisfied.⁴ The total amount of Applicant's federal tax delinquency was not specified in the record. (Item A.)

³ Applicant's credit report of July 27, 2010, lists an unsatisfied federal tax lien of \$38,493, filed against her in January 2006. (Item 9 at 5.)

⁴ The letter also stated that the IRS would apply any federal tax refunds due to Applicant and her husband to the reduction of their total tax liability. The record does not reflect that any payments were made under the April 2011 payment plan. (Item A.)

On January 11, 2011, in response to DOHA interrogatories, Applicant prepared a personal financial statement. She reported that her monthly net salary was \$4,685 and her husband's net monthly income was \$6,600, for a total net family monthly income of \$11,285. Applicant listed \$2,254 in monthly living expenses. Each month, she makes \$6,204 in debt payments to creditors.⁵ Applicant's net monthly remainder is \$2,827. Applicant's personal financial statement does not list payments on the federal tax lien entered against her in 2006. (Item 6 at 3-4.)

Applicant listed the following assets: real estate, \$20,000; vehicles, \$25,000; and retirement fund, \$136,000. In her answer to the SOR, Applicant stated that she planned to withdraw money from her retirement fund, identified as her Voluntary Investment Plan (VIP), to pay her federal income tax delinquencies. (Item 4 at 1-2; Item 6 at 3-4.)

In her interview with the OPM investigator, Applicant denied a \$93 debt to a communications company. She denied the debt, also alleged at SOR ¶ 1.b., in her answer to the SOR. She provided documentation establishing that she had written to the creditor to contest the debt on August 10, 2010. The debt appears on Applicant's credit report of July 27, 2010, but it does not appear on her credit report of November 24, 2010. (Item 6 at 6; Item 7 at 4; Item 8; Item 9.)

The record does not reflect that Applicant has had financial credit counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an 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 and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

⁵ On her personal financial statement, Applicant listed two loans from her Voluntary Investment Plan (VIP) with her employer. One loan was for \$24,000; the other was for \$5,000. Each month Applicant pays \$871 on the first VIP loan and \$597 on the second VIP loan. (Item 6 at 3.)

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines 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 in seeking 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 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.

The guideline notes several conditions that could raise security concerns in this case. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns.

Applicant is responsible for an unsatisfied federal tax lien of \$38,493, entered against her in January 2006. Additionally, the IRS payment plan she submitted in her response to the FORM suggests that she owes additional federal tax delinquencies. Applicant has been steadily employed since 1985, but she failed to demonstrate that she had satisfied the federal tax lien, which has existed for over five years. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)). Still other mitigating circumstances that might apply specify 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" (AG ¶ 20(c)) or "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies. Despite a substantial monthly net remainder, she made no effort for several years to satisfy a federal income tax lien of \$38,493. The lien remains unsatisfied. Applicant's failure to resolve the federal lien casts doubt on her reliability and judgment. While Applicant merits credit for contacting the IRS and working out a payment plan to resolve her federal tax delinquencies, there is no record of payment at this time. Under the terms of her payment agreement, Applicant is required to pay the IRS \$4,000 every month until her federal tax debts are satisfied. Her required monthly payments exceed her net monthly remainder. Applicant

has stated that she intends to use her retirement savings to satisfy her unpaid federal tax lien. However, the record does not reflect that she has allocated financial resources to pay or otherwise satisfy this financial delinquency. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

Applicant attributed her tax delinquency to a downturn in her husband's business. While this unfortunate reversal was beyond her control, she failed to provide documentation that when she learned of the tax lien in 2006, she informed the IRS of her financial hardship and requested forbearance or reduced payment arrangements. While Applicant may have been unable to control the effects of the economic downturn on her husband's business income, she failed to show that she acted reasonably under the circumstances.

Applicant has worked for her current employer since 1985. Despite this apparent financial and employment stability, Applicant failed to demonstrate that she made a good-faith effort to satisfy her federal tax lien. She has not had financial counseling, and there is no evidence that her husband's business has recovered or that her financial situation is under control. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply in mitigation to SOR ¶ 1.a.

Applicant denied SOR ¶ 1.b., and she provided documentation establishing that she had contested the debt. The debt does not appear on her most recent credit report. I conclude that AG ¶ 20(e) applies in mitigation to the \$93 debt alleged at SOR ¶ 1.b.

Whole-Person Concept

Under the whole-person concept, an 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult. Her husband's business was affected by an economic downturn. The record is not clear about the onset or the duration of the downturn that affected Applicant's husband's business. Applicant attributes their federal tax delinquencies to difficulties in her husband's business. It would appear from the documentation provided by Applicant that she and her husband are responsible for federal tax delinquencies that arose over several years. Applicant continues to be responsible for an unresolved federal tax lien of over \$38,000, which dates to 2006. She has had a steady job with the same employer for 26 years, and she and her husband report a net monthly income of over \$11,000. While they recently agreed to pay the IRS \$4,000 monthly to resolve their tax debts, they failed to provide evidence of timely payments.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising from her financial delinquencies.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	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.

Joan Caton Anthony
Administrative Judge