DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF SHEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

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

03/15/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On August 19, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On June 23, 2011, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on July 27, 2011.[2] On October 31, 2011, DOHA issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

[1] Item 5 (SF 86), dated August 19, 2010.

[2] Item 6 (Applicant's Answers to Interrogatories, dated July 27, 2011).

Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 14, 2011. In two nearly identical statements, one dated November 8, 2011, and the other undated,[3] Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on December 22, 2011, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on January 6, 2012, but as of February 24, 2012, she had not submitted any further documents or other information. The case was assigned to me on February 27, 2012.

Findings of Fact

In her Answer to the SOR, Applicant admitted 12 (¶¶ 1.a.-1.c., 1.g.-1.n., and 1.r.) of the factual allegations pertaining to financial considerations of the SOR. She either denied or was nonresponsive to the remaining allegations pertaining to financial considerations and personal conduct (¶¶ 1.d.-1.f., 1.o.-1.q., and 2.a. and 2.b.) of the SOR. Applicant's admissions and other comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 62-year-old employee of a defense contractor who, since August 2009, has been serving as a quality control manager. She was previously employed as a technical writer from July 2004 to August 2009; a lead data entry technician from January 1998 until July 2004; and a clerk typist from February 1975 until March 1993.[4] No further information was provided pertaining to other periods. She has held a Secret security clearance since August 2000.[5] Applicant has never served in the U.S. military.[6] A 1967 high school graduate, Applicant attended college for two years, but she did not receive a degree.[7]

[3] Item 3 (Applicant's Answer to the SOR, dated November 8, 2011); Item 4 (Applicant's Answer to the SOR, undated). The date on Item 3 is suspect, for if accurate, the Answer occurred before the SOR was received by Applicant.

[4] Item 5, *supra* note 1, at 15-20.

[5] *Id.* at 47.

[6] *Id.* at 21-22.

[7] *Id.* at 13.

Applicant was married in August 1969 and divorced in February 1977.[8] She married her second husband in October 1977.[9] She has three children, born in July 1971, October 1972, and August 1978, respectively.[10] She also has three stepchildren, born in July 1972, August 1974, and September 1976, respectively.[11]

Financial Considerations

It is unclear when Applicant first started to experience financial difficulties, but it appears that they may have commenced sometime around 1999, when the first of a number of tax liens was filed against her.[12] In addition to an August 1999 state tax lien, in the amount of $1,996, (SOR ¶ 1.f.), there were four federal tax liens and one state tax lien filed against her.[13] Among them were an April 2009 federal tax lien, in the amount of $8,075 (SOR ¶ 1.e.), an April 2009 state tax lien, in the amount of $236 (SOR ¶ 1.o.), and a January 2010 federal tax lien, in the amount of $1,929 (SOR ¶ 1.d.). Those tax liens, according to Applicant, are also "being paid thru wage garnishment,"[14] and Applicant has submitted documentation to support her claim.[15] Applicant acknowledged that every time she and her husband file their tax returns, they do not always have the money to pay their taxes.[16]

Applicant stated that she and her spouse make "good money," but they also have a "large amount of expenses."[17] She attributed those expenses to supporting a son, a grandchild, and a mother-in-law, each of whom had moved into her residence.[18] Other than that general comment, she never described any conditions beyond her control that might have led to her financial difficulties. Applicant added that she takes care of her family first, and whatever money she has left over she uses to pay past-due debts and

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[8] *Id.* at 26.

[9] *Id.* at 24-25.

[10] *Id.* at 29-30.

[11] *Id.* at 31-32.

[12] Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 26, 2010), at 6. While Applicant did not answer the allegation directly, she acknowledged that her 1999 tax lien was "being paid thru wage garnishment." *See* Item 3, *supra* note 3, at 2. The SOR alleges the lien was a federal tax lien, but the credit report refers to the lien as a state tax lien filed by the state department of revenue. *See* Item 7, at 6.

[13] Item 7, at 5-8.

[14] Item 3, *supra* note 3, at 2-3.

[15] Item 6 (Earnings Statements, various dates), attached to Applicant's Answers to Interrogatories, wherein a tax levy of $389.58 is being taken from Applicant's pay every two weeks.

[16] Item 6 (Personal Subject Interview, dated September 8, 2010, at 2), attached to Applicant's Answers to Interrogatories.

[17] *Id.*

[18] *Id.*

current bills.[19] As a result of the unspecified expenses, Applicant has insufficient funds to pay her taxes and a number of accounts. As a result, accounts became delinquent and were placed for collection or charged off. One delinquent account for an auto loan (SOR ¶ 1.g.) resulted in the vehicle being repossessed.[20]

In addition to the tax liens, Applicant has a number of delinquent accounts, totaling $11,698, for which she has made no payments. She admitted the allegations set forth in SOR ¶¶ 1.a. ($111), 1.b. ($40), 1.c. ($143), 1.g. ($3,368), 1.h. ($845), 1.i. ($818), 1.j. ($542), 1.k. ($1,095), 1.l. ($411), 1.m. ($300), 1.n. ($572), and 1.r. ($92). She claims to be unaware of the two remaining delinquent accounts (SOR ¶¶ 1.p. for $988, and 1.g. for $2,373), although she indicated in September 2010 that she would follow up on those accounts to arrange payments if she owes them.[21] There is no evidence that she ever contacted the creditors or their respective collection agents in order to resolve those accounts.

Applicant's son was employed some time before September 2010, and that has alleviated some of her financial hardship.[22] While Applicant has not submitted a personal financial statement reflecting a total annual net income, it appears from her earnings statements that she is receiving a net salary between $1,639 and $1,675 every two weeks.[23] She has submitted no evidence pertaining to her husband's net income, their monthly expenses, or money remaining for discretionary spending or savings. Applicant stated she would turn her attention to her delinquent accounts once her tax liens were resolved.[24]

There is no evidence to indicate that Applicant has ever received financial counseling in money management, debt management, debt repayment, or budgeting.

In March 2007 and October 2009, despite her financial delinquencies, Applicant took vacations of unspecified lengths to the Bahamas and Mexico, respectively.[25]

Personal Conduct

On August 19, 2010, when Applicant completed and submitted her SF 86, she responded to several questions set forth in the SF 86. The SOR alleges Applicant deliberately failed to disclose complete information in response to the following financial

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[19] *Id.*

[20] Item 3, *supra* note 3, at 2.

[21] Item 6, *supra* note 16, at 2-3.

[22] *Id.* at 4.

[23] Item 6, *supra* note 15.

[24] Item 6, *supra* note 2, at 6.

[25] Item 5, *supra* note 1, at 43-44.

questions: § 26c - (*Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance*?) (SOR ¶ 2.a.), and § 26m – *(Have you been over 180 days delinquent on any debt(s)?* (SOR ¶ 2.b.). Appellant answered "no" to both questions.[26] She denied intentionally falsifying the material facts, and contended the first question was "confusing," and that the second question only brought to her memory the repossessed vehicle, "because it was the only active account."[27] Applicant claimed she was unaware of the tax liens and was also unaware "of much of it," referring to the other delinquent accounts.[28] She did not list any of her tax liens which came within the scope of the question (SOR ¶¶ 1.d. through 1.f., and 1.o.). As for the second question, Applicant did acknowledge having accounts that were "currently over 90 days delinquent," but she did not list any other delinquent accounts which came within the scope of the question. Considering the known status of the various delinquent accounts, Applicant's responses to the questions are difficult to accept or align with the truth, and therefore, I conclude that she did deliberately falsify her responses.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[29] 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[30]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider

[26] SF 86, *supra* note 1, at 48-49.

[27] Item 3, *supra* note 3, at 3.

[28] Item 6, *supra* note 16, at 4.

[29] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[30] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[31] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[32]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[33]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[34] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

[31] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[32] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[33] *Egan*, 484 U.S. at 531

[34] *See* Exec. Or. 10865 § 7.

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. 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. As noted above, on numerous occasions between 1999 and 2010, Applicant failed to pay the required income taxes with her federal or state income tax returns, and both the IRS and the state were forced to file tax liens and take garnishment actions in order to obtain the delinquent balances. In addition, several accounts became delinquent, and remain, to this day, unresolved. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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*." Also, under AG ¶ 20(b), financial security concerns may be mitigated 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*." 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 "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*."[35]

[35] The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that she or she relied on a legally

AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties and failures to pay federal and state income taxes between 1999 and 2010, as well as numerous other accounts, make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant offered only a comment about insufficient funds causing her inability to pay her income tax in a timely manner. In light of her lengthy period of continuing financial problems, and still owing the federal and state income taxes, despite the continuing garnishments, it is unlikely that they will be resolved in the short term. Accordingly, Applicant failed to mitigate her financial situation, and under the circumstances, her actions do cast doubt on her current reliability, trustworthiness, and good judgment.[36]

AG ¶ 20(b) minimally applies because there is very little evidence that Appellant's financial situation was, in any way, caused by circumstances that were beyond her control. Her sole explanation was that because she was also supporting her son, grandson, and mother-in-law, she had insufficient funds, but she never explained how or why those conditions existed or how they impacted her finances.

AG ¶ 20(c) does not apply as there is no evidence to indicate Applicant has ever received counseling in money management, debt management, debt repayment, or budgeting.

AG ¶ 20(d) partially applies. Applicant had her salary garnished by the IRS and the state government, but those actions do not qualify as "good-faith" efforts. Her tax liens and other delinquent accounts are still pending, and there is no evidence that Applicant has generated any effort to resolve them. Applicant's statements regarding her future intent to resolve her liens and other delinquent accounts, without any affirmative efforts by her, or without corroborating documentary evidence, are entitled to little weight.[37] Those promises do not qualify as "good-faith" efforts.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

> 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

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> available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

[36] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

[37] *See* ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008).

> and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), a "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*," is potentially disqualifying.

Applicant's omissions in her SF 86 responses to the inquiries pertaining to financial delinquencies, provide sufficient evidence to examine if her submissions were deliberate falsifications, as alleged in the SOR, or were the result of reliance on a poor memory, as she contends. Applicant was aware that she was not paying her federal and state income tax at the times she filed her returns; that she did not have sufficient money to pay her monthly bills; that there were delinquent accounts, a repossession, and income tax liens; and that there were garnishments taking funds from her paycheck twice a month. After examining her responses and explanations, it seems unreasonable for her to take the position she has taken. Under those circumstances, I find Applicant's explanations are not credible in her denial of deliberate falsification. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of them apply.

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 the 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. Moreover, I have evaluated the various

aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[38]

There is some evidence in favor of mitigating Applicant's conduct: Although she did not pay her income taxes during a multi-year period, she did file her federal or state income tax returns, and through garnishment, is in the process of resolving several federal and state tax liens.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has a long history of not paying federal or state income tax and generating other financial delinquencies. Her claims of insufficient funds because of having increased expenses due to her son, grandchild, and mother-in-law, are unsubstantiated, and given her recent foreign vacations, Applicant could have made some efforts to resolve her accounts in a more timely fashion. Applicant's actions indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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. through 1.r.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.:	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.

ROBERT ROBINSON GALES
Administrative Judge

[38] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).