



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



In the matter of: )  
)  
) ISCR Case No. 11-02196  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Kataukas, Esq., Department Counsel  
For Applicant: *Pro se*

05/07/2012

**Decision**

MASON, Paul J., Administrative Judge:

Applicant has not filed state tax returns from 2005 through 2010. She fraudulently filed federal tax returns from 2007 through 2009 by not reporting her husband's retirement fund withdrawals on the returns. Though she hired a tax service to assist her in marshaling the appropriate information to resolve her federal and state tax problems, she produced no evidence that establishes she filed the missing state tax returns for tax years 2005 through 2010. While she has made six payments under the federal repayment plan, she has furnished no documentation of additional monthly payments after August 2011. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed and certified her Electronic Questionnaire for Investigations Processing (e-QIP, Item 5) on July 27, 2010. She provided interrogatory responses (Item 6) to adjudicators from the Defense Office of Hearings and Appeals (DOHA) on

September 24, 2011. Applicant responded to several questions regarding the status of her delinquent federal and state taxes. (Id. at 8-12)

On November 3, 2011, DOHA issued the Statement of Reasons (SOR) (Item 1) detailing security concerns under financial considerations (Guideline F). 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 (AG).

Applicant furnished her answer to the SOR on December 7, 2011. (Item 4) A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on December 27, 2011. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation or extenuation. She received the FORM on January 5, 2012. Her response was due by February 4, 2012. No response was received by DOHA. The case was assigned to me on March 30, 2012.

### **Findings of Fact**

The SOR contains eight allegations under the financial considerations guideline. SOR ¶ 1.a alleges Applicant did not file her 2010 federal tax return. SOR ¶ 1.b through 1.g alleges Applicant did not file state returns from 2005 through 2010. SOR ¶ 1.h alleges Applicant owes \$39,466 in federal taxes for 2007 through 2009. The Internal Revenue Service (IRS) filed a tax lien for the amount of the taxes. (GE 6 at 12) Applicant admitted all allegations. She noted that she had hired a tax service to resolve the outstanding tax issues and planned to retain the service to avoid similar problems in the future. She attached a letter from the tax service dated December 7, 2011, predicting that if all the requested information was received from the federal and state tax authorities, that her returns would be submitted by December 17, 2011. (Answer to SOR, attachment)

Applicant is 47 years old. She has been married since December 1984, and has three children, 27, 25, and 22 years old. She attended college for two years between 1982 and 1984, but received no degree. She has been employed as personnel/physical officer by a defense contractor since August 2005. She received a top secret security clearance in March 2003. Her employment background indicates that she worked for the Department of State from January 1999 to August 2004.

In her interview summary in August 2010, Applicant's explained that her delinquent federal tax taxes, which arose in 2007, 2008, and 2009 (SOR ¶ 1.h), were caused by not reporting money her husband withdrew from his retirement fund to keep their home mortgage current. Applicant could not pay the taxes on the amount withdrawn. Her wages were garnished in 2009 and 2010 for \$6,700. In April 2010, she hired a tax service to negotiate the remaining amount, and the garnishment was

rescinded. In October 2010, the Internal Revenue Service (IRS) notified Applicant that her payments for tax year 2007 would be \$685 a month, to begin in November 2010. (Item 6 at 31)<sup>1</sup> She provided documentary proof of six payments made to the IRS between November 29, 2010 and August 1, 2011. (*Id.* at 22-30) There is no indication in the record of payments after August 1, 2011.

Applicant has held a top secret security clearance while working at several jobs for the Department of State between 1999 and 2004. She would never use her security clearance against the United States.

Though not providing a clear reason why she did not file her federal and state returns for the years at issue, she implied that she has had trouble paying her home mortgage for some time. She also mentioned a poor understanding of terms of the adjustable rate mortgage when she originally purchased the home. (*Id.* at 18) She admitted that her husband withdrew money from his retirement fund between 2007 and 2009 to pay the mortgage. In 2010, she tried to short-sell her home before completing a deed in lieu of sale and returning the home to the lender in June 2010. (GE 5 at 49)<sup>2</sup> After living in a rented home for about a year, the owner informed her that she had to move from the home in July 2011 because the owner intended to sell the home.

Applicant's personal financial statement (PFS) dated September 24, 2011, reflects that the monthly combined net earnings of Applicant and her husband were \$7,207. Their total monthly expenses were \$5,167. After spending \$997 on monthly debts, their monthly net remainder was \$1,043.

Applicant intends to pay the delinquent tax bills. She indicated she was current on all other bills except her taxes. She has never had financial counseling. (GE 6 at 18)

The record does not provide the current status of Applicant's 2010 tax return (SOR ¶ 1.a) and the current status of the state tax returns (SOR ¶¶ 1.b through 1.g). Lastly, the record does not reveal whether Applicant has continued to pay the IRS under the payment plan. (SOR ¶ 1.h)

### **Character Evidence**

A certificate of appreciation was presented to Applicant on June 15, 2011, for her dedicated and consistent support in the product manager-power enabler projection product office. (GE 3 at 14)

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<sup>1</sup> The IRS installment agreement only indicates the payments apply to tax year 2007.

<sup>2</sup> Handwritten page number appears in the center of the bottom of the page.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

## Analysis

### Financial Considerations

The security concern for financial considerations is set forth 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. 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 also a security concern. It may indicate proceeds from financially profitable criminal acts.

There are three disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); AG ¶ 19(c) (*a history of not meeting financial obligations*); and AG ¶ 19(g) (*failure to file annual Federal, state, or local income tax return as required or fraudulent filing of same*).

Applicant's failure to honor her federal tax obligations until late 2009 when her wages were garnished for \$6,700 represents an inability or unwillingness to satisfy debts as defined by AG ¶ 19(a). Her history of not meeting financial obligations began in 2005 when she stopped filing state tax returns. There is no indication in the record that she has filed the state returns for 2005 through 2010. She still owes federal taxes for tax years 2007, 2008 and 2009. AG ¶ 19(c) applies. Applicant's failure to file state taxes from 2005 through 2010, and her intentional filing of fraudulent federal tax returns for 2007 through 2009, activates AG ¶ 19(g).

Four mitigating conditions are potentially applicable: AG ¶ 20(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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); AG ¶ 20(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 AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

AG ¶ 20(a) does not apply. Though the tax preparer indicated Applicant's missing federal and state returns would be filed in December 2011, there is no indication in the record that Applicant's federal and state tax returns have been filed. In addition, Applicant did not produce information that she has continued to make installment payments to the IRS since August 2011. The recency of Applicant's failure to file federal and state tax returns continues to raise doubts about her current reliability, trustworthiness and judgment.

AG ¶ 20(b) recognizes that financial problems are occasionally caused by conditions outside the individual's control. Blaming her financial problems on not understanding her adjustable rate mortgage was an issue entirely within her control which she could have resolved by ensuring she understood the ramifications of a mortgage rate that would increase periodically. Her failure to file federal and state tax returns was a decision entirely within her control. AG ¶ 20(b) does not apply.

There is no evidence showing that Applicant has had financial counseling. Though she hired two tax services to assist her in resolving the tax issues, there are no clear indications the problems are being resolved or under control. The state returns have not been filed. The 2010 federal return has not been filed. AG ¶ 20(c) does not apply.

Applicant's payment of \$6,700 through garnishment to satisfy the federal tax lien provides limited mitigation under AG ¶ 20(d). While Applicant's six installment payments is more probative of a good-faith effort to repay the IRS, I do not know whether Applicant has continued to make payments. Having weighed all the evidence, Applicant's six payments do not overcome the adverse evidence under AG ¶¶ 19(a), 19(c), and 19(g).

## Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following 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 the participation was 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.

The final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 47 years old and married. She has held a security clearance since March 2003, and has been employed in several embassy positions around the world with the Department of State. She was recognized in June 2011 for her dedicated service to the mission of her employer.

On the other hand, Applicant exercised poor judgment when she purchased a home before obtaining a full understanding that the amount of her mortgage would increase periodically. Though she did not clearly explain why she stopped filing her state returns in 2005, the record provides a strong suggestion that she did so because she did not want to pay state taxes. She admitted filing fraudulent federal tax returns in 2007, 2008, and 2009 by not reporting the money her husband was taking out of his retirement fund. She has not filed her 2010 federal tax return. Though Applicant has taken a step in the right direction by hiring a tax service, there is no evidence to show the state and federal tax returns have been filed or that Applicant has continued to make her payments under the IRS repayment plan. Because Applicant has provided insufficient evidence to demonstrate substantial control over her tax problems, it is likely the tax difficulties will persist in the future. Applicant has not overcome the disqualifying evidence under the financial considerations guideline. 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

Subparagraph 1.a-1.h:                   Against Applicant

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge