



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



In the matter of:)	
)	
)	ISCR Case No. 11-03486
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: *Pro se*

January 25, 2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has three unpaid tax liens entered against her totaling more than \$24,000, and five delinquent charged-off or collection accounts totaling approximately \$6,000. The delinquent accounts remain unpaid. Applicant has failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Department of Defense's (DoD) intent to deny her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on August 31, 2011, detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct.

¹ 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.

On September 19, 2011, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated October 5, 2011. The FORM contained 12 attachments (Items 1 – 12). On October 20, 2011, 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. Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on November 19, 2011. No response to the FORM was received. On January 20, 2012, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the specific debts and factual allegations in the SOR. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 50-year-old general clerk who has worked for a defense contractor since September 2010. She married in February 1982, separated in August 2004, and divorced in 2009. (Item 8) She was awarded custody of her two sons and receives \$91 weekly child support. The separation agreement incorporated into the divorce decree stated that separate income tax returns would be filed for tax years 2008 and 2009, with Applicant to claim the two children. Her ex-husband was employed as an auto detailer and failed to pay estimated income taxes. In May 1990, a tax lien was filed against Applicant and her then husband. Applicant received \$7,000 from her parents and paid the lien. (Item 9) In March 1993, a \$9,505 tax lien (SOR 1.b) was filed. (Item 9, 11) In September 2003, a \$6,611 tax lien (SOR 1.a) was filed. (Item 9, 11) In January 1996, an \$8,024 tax lien (SOR 1.c) was filed. (Item 9, 11)

In October 2010 and December 2010, Applicant was interviewed concerning her financial delinquencies. (Item 9) In May 2011, she answered written interrogatories concerning her delinquent accounts. Applicant owes \$1,136 on a telephone company collection account (SOR 1.i). (Item 9, 11) She was the guarantor on the account opened for her son in January 2010. (Item 9) She owes \$143 (SOR 1.g) and \$775 (SOR 1.f) on telephone collection accounts she guaranteed for her other son. (Item 9, 11)

In May 2010, the creditor of a charged-off credit card account (SOR 1.d) obtained a judgment against Applicant. In December 2010, she asserts she started making \$20 monthly payments on the \$2,970. (Item 11) The creditor offered to settle this delinquent account, then at \$3,080, for \$1,848 (60% of the amount due). (Item 7) The offer was conditioned on receipt of the entire sum by April 15, 2011. She provided documents that she paid \$100 in February 2011, \$30 in April 2011, and \$20 in May 2011.

An \$899 account (SOR 1.e) opened in 1999 was later charged off and remains unpaid. (Item 10, 11) She produced documents (Item 7) showing that she made a \$128 payment to a consumer education service (CES) in May 2004. That same month, the CES made a \$43 payment on the \$899 account. In April 2011, the creditor offered to

settle the matter for \$445 if the full amount was paid, if \$89 was paid immediately and \$356 within 30 days, or if three payments of \$148 were made. (Item 7) There is no showing that any payments were made. In May 2011, she sent a request to a credit bureau reporting agency challenging an account. (Item 7) The material does not list the disputed account by name. She attached a single page from her CBR showing the \$890 account was listed as a charged off bad debt.

On September 29, 2010, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). She answered “no” in response to a question in Section 22, police record, asking if she had been issued a summons, citation, or ticket to appear in court in a criminal proceeding where she was on trial or awaiting trial on criminal charges. (Item 6) She had been summoned to appear in court for the charge of larceny by check in the amount of \$50. In 2004, there were insufficient funds to cover a check she had written. The charge was dismissed after she paid restitution and the \$5 court costs. During a subject interview in 2010, when asked about the incident she stated she did not list the incident because she had never been arrested or formally charged with a crime. (Item 9) In her response to the SOR, she states her failure to disclose was unintentional.

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 interests of 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 (EO) 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

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. She has three unpaid tax liens entered against her totaling more than \$24,000, and has five delinquent charged-off or collection accounts totaling approximately \$6,000. 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.”

Since October 2010, when Applicant was interviewed concerning her finances, she has documented payment of \$150 on her delinquent accounts. She asserts that the tax liens were her ex-husband’s debts. He was employed as an auto detailer and failed to submit timely estimated income tax payments. Applicant married in 1982, separated in 2004, and divorced in 2009. The three tax liens were entered in 1993 at a time Applicant was married and for years when joint income tax returns were filed. There is no evidence that joint income tax returns were not filed for years 1982 to at least 2004. The only evidence of separate income tax returns being filed was in the divorce decree indicating separate returns would be filed for tax years 2008 and 2009. Applicant has failed to document she is not responsible for the tax liens.

She asserted she started making \$20 monthly payments in December 2010 to address the May 2010-judgment against her. As of February 2011, when the creditor offered to settle the matter, the amount was \$3,080 indicating no payments had been made between December 2010 and February 2011. The settlement offer was contingent upon payment being received by April 15, 2011. As of that date, Applicant had paid \$130. She made an additional payment of \$20 in May 2011. She provided no documentation as to payment. She did not provide any documentation showing payment on the other five charged-off or collection accounts. None of the mitigating conditions apply. She established she was divorced in 2009, which is a factor beyond her control. She failed to document how that divorce caused her inability to pay the SOR debts. Even the smallest debt of \$143 (SOR 1.g) remains unpaid.

In 2004, Applicant had insufficient funds in the account when a \$50 check was written. Restitution has since been made, the \$5 court costs paid, and the charge against her dismissed. This having occurred more than seven years ago and there being no evidence of recent conduct of a similar nature, SOR 1.i is found in Applicant’s favor.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 (a) provides a condition that could raise a security concern and may be disqualifying in regard to falsification of Applicant's security clearance application:

(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.

The SOR raised the issue about whether Applicant falsified her September 2010 e-QIP by intentionally failing to disclose derogatory information about being summoned to appear in court due to a \$50 non-sufficient fund check written in 2004. She has denied intentional falsification stating she did not list it because she was never arrested or formally charged with a crime.

The Government has shown Applicant's e-QIP answer was incorrect, but this does not prove her omission was a deliberate effort to conceal facts from the Government. She says her omission was unintentional. Her statements about her intent or state of mind at the time she completed the e-QIP are relevant and material, but not conclusive. Intent to deceive or mislead the Government does not require direct evidence and can be inferred from circumstantial evidence, but this is not the case here. Her answer to the question was not a deliberate omission, concealment, or falsification and, therefore, none of the disqualifying conditions under personal conduct apply. I find for her as to personal conduct.

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. Applicant denies owing the tax liens, but provided no documentation she did not owe the debt. Since October 2010, she has documented payment of only \$150 on her delinquent obligations. She admitted the debts, they remain unpaid, and, although there were offers of settlement by two of her creditors, there is little evidence the terms of the settlement offers were met. Even the smallest debt of \$143 remains unpaid. Of course, the issue is not simply whether all her debts are paid – they are not – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with substantial doubt 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 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

Subparagraphs 1.a – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Paragraph 2, E, Personal Conduct: FOR APPLICANT

Subparagraph 2.a:	For Applicant
-------------------	---------------

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge