



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



In the matter of: )  
)  
) ISCR Case No. 11-04364  
)  
Applicant for Security Clearance )

**Appearances**

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

04/19/2012

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations, but she failed to mitigate security concerns under Guideline E, Personal Conduct. Her eligibility for a security clearance is denied.

**Statement of the Case**

On November 22, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. DOHA acted 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided an answer to the SOR, dated December 13, 2011. She also requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on January 6, 2012. The FORM contained documents identified as Items 1 through 9. On January 9, 2012, 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 January 16, 2012. Her response was due on February 15, 2012. Applicant did not file any additional information within the required time period. On March 30, 2012, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains three allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.c.), and one allegation of disqualifying conduct under Guideline E, Personal Conduct (SOR ¶ 2.a.). In her Answer to the SOR, Applicant admitted all Guideline F and Guideline E allegations. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government. The record evidence includes Applicant's 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;<sup>1</sup> and Applicant's credit reports of November 17, 2011, and December 17, 2010. (See Items 4 through 9.)

Applicant is 58 years old, divorced, and the mother of an adult son. In 1974, she earned a bachelor's degree. She is currently employed as a senior quality engineer. She has worked for her present employer, a federal contractor, since 2006. In her personal subject interview, she acknowledged that she had been awarded a security clearance by an independent government commission in 1995. (Item 4; Item 5 at 7.)

The SOR alleges that Applicant filed for Chapter 7 bankruptcy in October 2005, and her bankruptcy was discharged in March 2006 (SOR ¶ 1.a.). Additionally, the SOR alleges that Applicant owes \$12,560 on an unsatisfied federal tax lien and \$1,051 on an unsatisfied state tax lien (SOR ¶¶ 1.b. and 1.c.). Applicant's credit report of November 17, 2011, establishes that the original amount of the federal tax lien was \$16,830 and the original amount of the state tax lien was \$7,827. (Item 1; Item 6 at 1.)

In her answer to the SOR, Applicant stated that she had a payment plan in place to pay her delinquent federal tax lien. She stated that the delinquency arose in tax years 2003 and 2004. She provided a statement from the Internal Revenue Service (IRS)

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<sup>1</sup> Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on January 6, 2011. On November 9, 2011, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that she had read the summary of the interview and found it to be accurate, true, and correct. She added additional information about the current amounts of her tax liens. (Item 5.)

acknowledging a payment of \$240 in September 2011, and listing her remaining balance under her payment plan as \$12,560. (Item 2; Item 5 at 27.)

In her answer to the SOR, Applicant asserted she also had a payment plan in place for the state tax lien. She stated in her personal subject interview that the tax debt arose when her tax preparer failed to file her 2006 state income tax. Applicant provided documentation from the state taxing authority, dated November 22, 2011, establishing that the state tax lien arose from a 2003 tax debt. Additionally, Applicant provided documentation from the state taxing authority approving her request for a monthly electronic funds transfer from her account, beginning August 28, 2011.<sup>2</sup> The state taxing authority's balance summary for the account shows that Applicant made a total of \$1,850.31 in payments and owed a balance of \$1,051. (Item 5 at 23.)

Applicant completed and certified an e-QIP on November 22, 2010. Section 26a on the e-QIP asks: "[In the last 7 years], [h]ave you filed a petition under any chapter of the bankruptcy code? If 'Yes,' indicate Chapter 7, 11, or 13." Applicant responded "No" to Section 26a. She did not reveal that she had filed a petition for Chapter 7 bankruptcy in October 2005. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.a. (Item 1; Item 4.)

Section 26d on the e-QIP asks: "[In the last 7 years], [h]ave you had a lien placed against your property for failing to pay taxes or other debts?" Applicant responded "No" to Section 26d. She did not reveal the state and federal tax liens alleged at SOR ¶¶ 1.b. and 1.c. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.a. (Item 1; Item 4.)

Section 26p on the e-QIP asks: "Are you currently delinquent on any Federal debt?" Applicant responded "No" to Section 26p. She did not reveal the unsatisfied Federal tax lien alleged at SOR ¶ 1.b. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.a. (Item 1; Item 4.)

On November 22, 2010, after completing her e-QIP, Applicant signed the following certification:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the foregoing instructions to complete this form. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). I understand that intentionally withholding, misrepresenting, or falsifying information may have a negative effect on my security clearance, employment prospects, or job status, up to and including denial or revocation of my security clearance, or my removal and debarment from Federal service.

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<sup>2</sup> The record also contains a request from Applicant, dated September 29, 2010, requesting the \$150 monthly electronic funds transfer from her bank.

In January 2011, when she was interviewed by an authorized investigator, Applicant claimed her incorrect answers to financial questions on her e-QIP were the result of oversight. She did not acknowledge her financial delinquencies until after she was questioned about them by the investigator. (Item 5)

In her answer to the SOR, Applicant stated:

I admit that I was not openly honest about my financial indebtedness with the Federal Govt, Bankruptcy and . . . state taxes. I admit that during this time I admit my patience was very limited to the detail questionnaire. I admit that I was experiencing some very difficult times, I admit meaning family crisis. I admit my only sister was diagnosed with brain cancer and was given a very short life expectancy. I admit this took a tremendous toll on my entire person. I admit that by not answering all of the questions honestly is a big mistake and for that I admit that I am truly sorry.

I admit that I falsified financial obligations; I admit that I did not disclose them truefully [sic]. I admit this was a mistake I admit that I am sincerely sorry. I admit that I am indeed an honest, trustworthy, reliable, dependable, respectable, hardworking, generous person. I admit that I have [self-control] and a great [sense] of judgment. I admit that I am human and have made some unfortunate financial decisions in my life time. I admit that because of these financial downfalls I admit this should not be my punishment or judgment of who I am today. I admit that I have high standards and morals. (Item 3 at 1.)

Applicant provided a personal financial statement in response to DOHA interrogatories. She reported a net monthly salary of \$2,811 from her job as a government contractor and an additional \$600 each month from a second job. She reported monthly living expenses of \$1,325. She reported \$2,364 in monthly debt payments.<sup>3</sup> She listed a monthly net remainder of \$1,046. Applicant reported paying a financial consulting and debt consolidation company a professional fee of \$2,253 for its services. She further stated that the firm “did not do one thing to help her.” (Item 5 at 10, 14-15.)

### **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.*

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<sup>3</sup> The monthly debts identified by Applicant for payment included the delinquent federal and state tax liens alleged on the SOR. (Item 5.)

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.

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 two 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 admitted that her debts were discharged in Chapter 7 bankruptcy in March 2006. Bankruptcy is a legitimate and legal financial tool to use in dealing with financial difficulties. It is not *per se* a disqualifying condition under Guideline F. However, Applicant’s tax liens were of security concern. She admitted a federal tax lien of \$12,560 and a state tax lien of \$1,051. 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 be applicable include 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” (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. However, in response to DOHA interrogatories, she provided credible documentation showing she had made good-faith efforts to pay or otherwise resolve the two tax liens alleged on the SOR. Her documentation showed she negotiated payment plans with the IRS and the state taxing authority. Her documentation established that she had paid \$1,850 to the state taxing authority and was continuing to pay \$150 each month to resolve her state tax lien. Additionally, she provided documentation corroborating her claim that she was also paying the IRS \$240 each month to resolve her federal tax lien, which had been reduced from \$16,830 to \$12,560. A review of her personal financial statement reveals current stability and a monthly remainder of over \$1,000. I conclude that while AG ¶¶ 20(a) and 20(b) are not applicable, AG ¶¶ 20(c) and 20(d) do apply in mitigation under the facts of this case.<sup>4</sup>

### **Guideline E, Personal Conduct**

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

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.

When Applicant completed and certified her e-QIP in November 2010, she failed to provide truthful answers to queries about her 2006 discharge in Chapter 7 bankruptcy and her two tax liens, one of which was a delinquent federal debt. The SOR alleged that Applicant’s “No” responses to Sections 26(a), 26(d), and 26(p) were deliberate falsifications. Applicant admitted the falsifications but denied that they were willful and deliberate. She stated that personal stress over family difficulties caused her lack of honesty in answering Sections 26(a), 26(d), and 26(p).

DOHA’s Appeal Board has cogently explained the process for analyzing falsification cases:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial

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<sup>4</sup> AG ¶¶ 20(e) and 20(f) are not raised by the facts of this case.

evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant's false answers raise a security concern under AG ¶ 16(a), which reads: "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."

Applicant is educated and holds a bachelor's degree. She was entrusted with protected information in the past as a contractor. As a person previously entrusted with access to protected information, she had reason to know that she was required to answer all questions on the e-QIP truthfully. She knew that her financial problems were serious and long-standing. She also knew when she applied for a security clearance as a government contractor that her background would be investigated thoroughly.

Applicant wanted to receive a security clearance. She had good reason to know that her current financial delinquencies might prevent her from receiving a security clearance. Instead of revealing these matters on her e-QIP, Applicant chose to conceal these matters from the Government.

Several Guideline mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(a) if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." If "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security process" and "[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely," then AG ¶ 17(b) might apply. If "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," then AG ¶ 17(c) might apply.

AG ¶ 17(d) might apply if "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." AG ¶ 17(e) might apply if



“the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

In her answer to the SOR, Applicant argued that the stress she felt as a result of family problems and the illness of her sister impacted her ability to read the e-QIP questions thoroughly and to answer them truthfully. She denied intentionally falsifying her answers to the e-QIP questions. These assertions lack credibility when viewed against Applicant’s age, education, and work experience. She knew, or should have known, the importance of telling the truth to the Government. Moreover, Applicant’s statements that stress caused her to falsify her answers on her e-QIP raise concerns about her judgment, reliability, and trustworthiness. The interests of the Government in protecting classified information are not well-served when individuals entrusted with security clearances cannot be relied upon to be honest in times of stress.

Applicant falsified material facts on the e-QIP that she executed and certified as true in 2010. Nothing in the record suggests that she took prompt good faith action to correct the omissions, concealments, or falsifications before she was confronted with the facts. Nothing in the record suggests that her failure to report her several financial delinquencies was caused or significantly contributed to by improper or inadequate advice specifically about the security clearance process from authorized individuals or legal counsel. (AG ¶ 17(b).) When she executed her security clearance application, Applicant knew or should have known that she had a record of financial delinquency. As a mature adult, she knew that her financial problems were not minor, so remote in time, so infrequent, or had occurred under such unique circumstances that they would not seriously impact her eligibility for a security clearance. (AG ¶ 17(c).) Applicant failed to provide documentation that she obtained counseling or had taken other positive steps that might alleviate the circumstances that caused her unreliable conduct and, as a result, such behavior was unlikely to recur. (AG ¶ 17(d).) Nothing in the record suggests that Applicant took positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress that her behavior caused. (AG ¶ 17(e).) I conclude, therefore, that none of the applicable personal conduct mitigating conditions applies to the facts of Applicant’s case. I also conclude that Applicant’s falsifications on her 2010 e-QIP were deliberate.

### **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 deliberately falsified her answers on the e-QIP she completed and certified in 2010. She failed to reveal that her debts were discharged in Chapter 7 bankruptcy in 2006, that she had liens placed against her property for failing to pay taxes or other debts, and that she was delinquent on her federal tax debt. Applicant's lack of candor in reporting these matters on her 2010 e-QIP raises concerns about her judgment, trustworthiness, and reliability.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that while Applicant mitigated security concerns about her financial delinquency, she failed to mitigate the security concerns arising from her personal conduct.

### **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:	FOR APPLICANT
Subparagraphs 1.a. - 1.c.:	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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Joan Caton Anthony  
Administrative Judge