



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



In the matter of:)
)
) ISCR Case No. 11-04707
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2013

Decision

MASON, Paul J., Administrative Judge:

Applicant's financial problems over the years were partially caused by unemployment, under employment, and her husband's 1989 car accident, rendering him permanently unable to work. In the late 1980s, she stopped paying federal taxes for several tax years. By December 2001, she had 16 delinquent commercial accounts and owed the Government approximately \$18,000 in delinquent federal taxes. When the SOR was published in June 2012, Applicant's back federal taxes increased to approximately \$30,000. Though she repeatedly claimed that she has been trying to reach a compromise on her federal debt, she has presented no evidence in support of her claim. Her husband's physical problems and her employment difficulties, together with her unexplained medical illness, have been thoroughly reviewed, but are deemed insufficient to fully establish her case in mitigation and extenuation. 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 December 14, 2010. She was interviewed by an investigator for the Office of Personnel Management (OPM) on January 19, 2011. She provided interrogatory responses to adjudicators from the Defense Office of Hearings and Appeals (DOHA) on February 25, 2012. (Item 7) Under question #3 of Item 7, Applicant answered "yes" that the investigator's summary of the interview (January 19, 2011) accurately reflected information she provided to him. In response to question #6 of Item 7, Applicant answered "yes" that the investigator's interview summary could be admitted into evidence at a hearing to determine Applicant's security clearance suitability.

On June 5, 2012, DOHA issued a Statement of Reasons (SOR) 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) implemented on September 1, 2006.

Applicant furnished her answer to the SOR on July 7, 2012. 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 July 22, 2012. 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 August 30, 2012. Her response was due by September 29, 2012. No response was received by DOHA. The case was assigned to me on November 29, 2012.

Findings of Fact

The SOR contains three allegations under the financial considerations guideline. SOR ¶ 1.a alleges that Applicant owes delinquent taxes amounting to about \$30,000 for failing to pay federal taxes required by law. SOR ¶ 1(b) alleges that Applicant owes a charged-off debt of \$475 to a creditor. SOR ¶ 1(c) alleges that Applicant is indebted to a second creditor for \$113 that was also charged off. Applicant admitted SOR ¶¶ 1.a. and 1.b. She was trying to negotiate a payment plan for the delinquent federal taxes. She stated her intention to contact the creditor in SOR ¶ 1.b to pay the debt. She denied SOR ¶ 1.c. She claimed that she returned the silver ring in 2011. She could not locate the paperwork covering the sale because she moved and lost several receipts.

Applicant is 65 years old and has been married for 26 years. She has no children. She took several college courses between August 1965 and January 1966, but did not receive a degree. Since August 2000, Applicant has been employed in some kind of administrative capacity for several employers. She has been unemployed on several occasions. Her most recent period of unemployment was from June 2008 to January 2010, when she resumed employment as an administrative assistant. After

eight months of employment, she was hired into the same position with another employer in September 2010. She has held a security clearance since January 1970.

Applicant's financial problems began in the 1980s when the Internal Revenue Service (IRS) informed her in October 1997 that a \$12,000 tax lien was executed against her property for not paying back taxes for tax periods 1987, 1990, 1991, and 1992. She claimed that in 1998 she negotiated a compromise with the IRS to make payments of \$50 a month until the lien was satisfied. There is no documentation verifying a compromise was established or that payments were made on the lien. In her December 2001 security clearance investigation, Applicant indicated she became unemployed in August 2000 and was unable to pay any bills after October 2000. As a result, she owed 16 delinquent accounts and accumulated \$18,000 in back taxes to the IRS. No additional information was provided about whether the delinquent debts or back taxes were paid. She stated in December 2010 (e-QIP), January 2011 (interview), February 2012 (answers to interrogatories), and in July 2012 (answer to the SOR), that she was trying to negotiate another offer of compromise with the IRS to repay \$30,000 in delinquent back taxes. She provided no documentation that shows any compromise repayment plan is currently in place.

Applicant repeatedly furnished the same reasons for her financial problems that began in the 1980s. She has been the sole support for her husband since 1989 when he suffered incapacitating injuries in a car accident and was unable to work. For unexplained reasons, he has not qualified for any public assistance. In approximately 2004 or 2005, Applicant began claiming eight dependents so she would have less earnings withheld from her pay check during the year. However, receiving higher earnings during the year resulted in higher taxes at year's end that she was unable to pay. She stated that she corrected the deductions she was taking and hoped that in 2012 she could start paying her back taxes.

Applicant indicated that unemployment, under employment, and frequent job changes were additional reasons for her ongoing financial problems. Between April 1994 and October 2001, Applicant was fired from three jobs. On a fourth occasion, she left a job following allegations of unsatisfactory performance. On the fifth occasion, she left another job for other reasons under unfavorable circumstances. This evidence provides five reasons why Applicant frequently changed jobs during the foregoing period. Recently, she included her own unexplained medical illness as a reason for her inability to pay back taxes.

Applicant indicated in February 2012 (answers to interrogatories) that she filed all her federal and state returns for the last seven years. In March 2012, Applicant indicated by letter to the DOHA adjudicators that she would supply copies of her federal and state tax returns for the years 2002 through 2010, as requested. No tax returns were submitted.

Character Evidence

Applicant believes she is a good employee who is conscientious. She has held high-level security clearances in the past and would never do anything to harm the national security.

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 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 pertinent 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 financial problems began in the 1980s when she was unable to pay her taxes. The IRS filed a \$12,000 tax lien against her property for not paying taxes for tax periods 1987, 1990, 1991, and 1992. In December 2001, she informed the Government that she had not paid any bills since October 2000. She indicated she had 16 delinquent accounts and owed the IRS \$18,000. In February 2012, she indicated to DOHA adjudicators that she owed the IRS \$30,000. She repeatedly indicated that she has tried to work out plans to repay the IRS, but has produced no documentation of ever negotiating a plan or making payments on the plan. She has advanced no documentation to support her claim of contacting and paying the creditor in SOR ¶ 1.b. or officially disputing the creditor in SOR 1.c. AG ¶¶ 19(a) and 19(c) apply. Although AG ¶ 19(g) is inapplicable because there is no allegation that Applicant did not file federal tax returns, she engaged in an approximate seven year practice of inflating her earnings by claiming eight dependents and then being unable to pay the taxes at the end of the year.

Five pertinent 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;

AG ¶ 20(d) a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute that 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.

The record shows that Applicant has a history of not paying her bills and not paying her taxes. When the SOR was published in June 2012, Applicant owed the IRS approximately \$30,000. Without an agreement to repay and a track record of documented payments of her back federal taxes, Applicant's growing delinquent tax problem continues to cast doubt on her reliability and judgment. AG ¶ 20(a) does not apply.

Applicant claims that the conditions that resulted in her financial problems were largely beyond her control. Her husband's serious car accident in 1989 rendered him unable to work. Applicant's periodic unemployment, under employment, and frequent job changes were unanticipated, but must be weighed against the fact she was terminated on five occasions under unfavorable circumstances. Her unexplained personal illness has had some negative impact on her ability to pay her debts. However, Applicant receives very little mitigation under AG ¶ 20(b) because she has not provided sufficient detail how the foregoing occurrences negatively impacted her finances.

Applicant also has not supplied any evidence that shows she "acted responsibly under the circumstances," the second prong of AG ¶ 20(b). While she repeatedly mentioned negotiating a payment plan with the IRS to repay the delinquent taxes, she provided no evidence to show a plan was executed. She provided no evidence demonstrating whether she contacted and paid the creditor in SOR 1.b. She provided no evidence supporting her claim of having returned the ring in 2011 or having officially disputed the account with the creditor in SOR 1.c. Applicant has furnished no information to convince me that she has ever had financial counseling. Her delinquent financial obligations are not being resolved or under control. Although AG ¶ 20(b) has limited application, AG ¶¶ 20(c) and 20(d) do not apply.

Applicant's denial of SOR 1.c triggers the potential application of AG ¶ 20(e). Her unsupported claim that she returned the ring to the creditor in 2011 does not satisfy the condition. To receive full credit under the condition, the individual is required to also furnish "documented proof to substantiate the basis of the dispute or provides evidence to resolve the issue." Applicant has presented nothing.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions 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 65 years old and has been married since 1986. She has held security clearances since 1970. She has had steady employment since January 2010. She is a conscientious worker who would not do anything to harm the national security.

Applicant's financial problems began in the late 1980s when she could not pay her federal taxes for several tax periods beginning in 1987. In 1997, the IRS imposed a \$12,000 tax lien against her. The amount of the delinquent taxes grew to \$18,000 by December 1991. Between 2004 or 2005 and 2012, Applicant intentionally claimed eight dependents on her withholding forms so that she received increased earnings for at least seven years. Currently, the amount of delinquent federal tax is \$30,000. Further, she has not resolved the debts identified in SOR 1.b and 1.c. Applicant's current financial problems are likely to continue. After weighing and balancing the disqualifying and mitigating conditions under the financial considerations guideline, and considering all the evidence in the context of the whole-person factors, I find that Applicant has not mitigated the security concerns associated with her financial problems. 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.c:	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.

Paul J. Mason
Administrative Judge