



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



In the matter of: )  
)  
) ISCR Case No. 11-09052  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

February 8, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accrued \$714,543 in delinquent Federal tax debt for tax years 2004 and 2005. She made little progress toward resolution of her tax debt, and offered no evidence of an effective plan to resolve it. Resulting security concerns were not mitigated. Based on a review of the testimony, pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on March 8, 2011. On September 4, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). 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 effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on October 3, 2012, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 26, 2012. DOHA issued a notice of hearing on January 2, 2013, scheduling the hearing for January 23, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered Exhibits (AE) A through D, which were admitted without objection. Applicant called one witness, and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on January 31, 2013.

### **Findings of Fact**

Applicant is 33 years old. She worked for a defense contractor when she was 17 years old as a summer intern. From 2004 to 2008, Applicant was a home maker. From 2008 to 2010, she worked as a contract office assistant. She was hired into a full-time position with a defense contractor in 2010. She is married, and has a ten-year-old son. (AE B; Tr. 29-30.)

In her response to the SOR, Applicant admitted the single factual allegation set forth in SOR, which stated, "You are indebted to the Department of Treasury (IRS) for a tax lien entered against you in about October 2010 in the approximate amount of \$714,543. As of the date of this Statement of Reasons, it remains unpaid." Applicant's admissions, including those made in response to DOHA interrogatories, are incorporated into the following findings of fact. (Answer; GE 3; GE 5; GE 6.)

Applicant's debt to the IRS arose from a recycling business operated by Applicant's husband and his brother (Applicant's brother-in-law.) Applicant's husband started a recycling business with his brother in 2000. The business license was placed in Applicant's husband's name because his brother was not a U.S. citizen and the license required a U.S. citizen to be named. However, Applicant's brother-in-law, a legal permanent resident, operated the business. Applicant's husband was employed at the recycling business until January 2005, when he decided to seek a professional certification in another line of work. At that same time in January 2005, they were notified that the land the business occupied would be taken through eminent domain by the state. The business closed in 2006. (GE 5; GE 6; AE A; Tr. 36-52.)

The Federal tax debt listed on the SOR is for unpaid income taxes for the 2004 and 2005 tax years. The IRS assessed that the recycling business made approximately \$1.5 million in 2004 and \$2.5 million in 2005, but that Applicant and her husband failed to include these profits in their joint income tax return filings for 2004 and 2005. In 2010, after challenging the IRS in court, Applicant and her husband were ordered to pay the Department of Treasury back taxes for 2004 and 2005. On October 12, 2010, a tax lien was filed by the IRS against Applicant and her husband for \$714,543. (AE D; GE 2; GE 3; GE 4; GE 5; GE 6; GE 8; GE 9; Tr. 37-41, 52-60.)

Applicant and her husband have tried to hire professionals to negotiate their tax debt with the IRS. Each time, they were told that they needed a large down-payment of between \$14,000 to \$18,000 to submit with an offer in compromise. There were also told that they should expect to make payments of approximately \$1,900 each month on this debt. Applicant and her husband do not have the funds available to make these payments. As a result of their inability to reach a payment agreement with the IRS, Applicant's husband's wages have been garnished. From July 2011 to July 2012, they paid \$11,412.92 on their delinquent tax debt through garnishment. During that same period, their debt increased to \$854,824.16, due to interest charges. (GE 5; GE 6; Tr. 52-57.)

Currently, the IRS garnishes approximately \$254 per month from Applicant's husband's pay. The amount the IRS garnishes has decreased since the July 2011 to July 2012 statement because Applicant's husband elected to switch to part-time work at the job where his pay was being garnished. He found a second, full-time position to supplement his income, but that pay is not currently garnished. (AE C; AE D; 37-47.)

Applicant submitted a personal financial statement reflecting a net monthly surplus of \$207.09. Applicant's husband's jobs both pay \$8.25 an hour. Applicant estimated that her husband's net income is \$29,000 annually. She estimated her net income is approximately \$34,000 per year. (AE C; Tr. 47, 57-60.)

Applicant presented two letters of support from managers at her company. Applicant is well respected and thought to be a "model employee." She has a reputation for being reliable and trustworthy. (AE A.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s became aware of her delinquent tax debt for 2004 and 2005 in 2006. In 2010, a lien was filed against Applicant and her husband for failure to satisfy their

Federal income tax obligations. This debt remains completely unresolved and has increased due to additional interest charges. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 current reliability, trustworthiness, or good judgment;
- (b) 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) 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.

Applicant's debt to the Government now totals more than \$854,824.16, and continues to increase to date. While the tax debt was a result of her husband's involvement in the recycling business, she showed little effort to avoid additional delinquent debt. The ongoing nature of this debt and the excessive amounts due suggest her financial difficulties are likely to recur. Applicant failed to voluntarily address her debt to the Government in a meaningful way. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). Her husband's decisions with respect to the recycling business were largely beyond her control and created their debt. However, her lack of any meaningful efforts toward resolution of their debt precludes a finding that she acted responsibly under the circumstances. Their debt is being repaid involuntarily, through garnishment.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. She provided no

evidence to establish any good-faith effort to repay her debt, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

Applicant admitted owing the SOR-listed delinquent debt. The record credit reports and lien recording corroborate this allegation. Accordingly, she failed to demonstrate mitigate under MC 20(e).

### **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 pertinent facts and circumstances surrounding this case. Applicant is well respected by those that know her. However, she owes an excessive amount of money to the Government and has failed to address her debt in a meaningful way. She has little funds with which to settle her debt and relies on garnishment of her husband's pay to satisfy their obligation. However, the minuscule amount garnished does not even satisfy the interest charges, let alone pay off any of the principal debt. She offered no evidence of financial counseling or rehabilitation. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.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.

JENNIFER I. GOLDSTEIN  
Administrative Judge