



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



In the matter of:)	
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)	ISCR Case No. 11-14784
Applicant for Security Clearance)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On April 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). On August 6, 2013, an amended SOR was issued to Applicant.¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered both SORs and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2013. A notice of hearing was issued on August 27, 2013, scheduling the hearing for September 17, 2013. Government Exhibits (GX) 1-16 were admitted into evidence, without objection.

¹The amended SOR updated the amounts owed to the IRS and added a judgement for unpaid state taxes. (1.g-1.k). It also added allegations 1.l-1.q).

Applicant testified, presented the testimony of one witness, and submitted Applicant Exhibits (AX) A-E for the record. The transcript (Tr.) was received on September 24, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SORs, Applicant admitted the factual allegations 1.a-1.c, and 1.g through 1.q under Guideline F (Financial Considerations), with explanation. Applicant denied 1.d, 1.e and 1.f, which totaled \$125.

Applicant is a 43-year-old program manager employed by a defense contractor. She graduated from high school and attended college for a short while. She currently takes online college classes. She is married and has three children. Applicant has held a security clearance for almost 23 years. (Tr. 13) She has been with her current employer since October 2000. (GX 1) However, she has worked for the government since 1988.

The SOR alleges Applicant is indebted to the Internal Revenue Service (IRS) for taxes and penalties on her 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010 personal income tax returns; failure to timely file personal federal income tax returns and/or make timely payment of income tax owed from 2002 until 2011; eight tax liens for a total of approximately \$94,000; a 2013 state judgment in the amount of \$3,513 for unpaid taxes; several collection accounts totaling \$125; and a homeowner's association judgment for \$871. The alleged amount of delinquent indebtedness is approximately \$90,000.

Applicant admitted that she did not file her tax returns in a timely fashion. She was candid in that she had no excuse for not doing so. She acknowledged that she did not request an extension. She does not dispute that she owes the IRS taxes, but does dispute the amount that the IRS claims she owes for each year. Applicant has been disputing the amounts for many years. She claimed that when she inquired by phone about the exact amount she owed as recently as 2013, the IRS representative stated that she did not owe \$90,000. Applicant asserts, she owes about \$25,000 to the IRS.

Applicant states that when she did not file her tax returns, the IRS re-filed for her, but listed her as "single", for two of the nine years in question, rather than married filing jointly. Applicant has called the IRS on various occasions to get the correct status, but she has not been successful. The tax transcript provided shows that the IRS categorized Applicant as "single" in 2006 and 2007 only. (GX 9 and 10)

Applicant has now filed the tax returns for years 2002 through 2012.² In 2002, she entered into an installment agreement but there is no evidence of payments. This installment agreement ended in 2005. Her offers in compromise for tax years 2004,

²Applicant claims she did not make timely filings of her federal income tax. However, the tax returns she provided are all dated prior to the respective income tax due dates.

2005, and 2006 were denied by the IRS. Applicant did not submit any correspondence from the IRS noting the amount of payments made.

Although Applicant has not been able to pay all of her taxes each year, she claims she has made some payments. She noted that in 2011, the IRS garnished her pay for two months but stopped. (Tr. 75) She inquired why, but she received no answer. There is no documentation in the record concerning the garnishment. Applicant believes the amount garnished was about \$1,600.

Tax transcripts for years 2002 through 2011 reflect "credits to the account" but it is not clear why the credits were issued. The tax transcripts show credits of approximately \$15,000 from 2002 until 2005, but during the last seven years credits of \$3,553 appear on the tax transcripts. The tax transcripts also reflect that the IRS has repeatedly sent notice to Applicant reminding her that she had not timely filed her tax returns. The interest and penalties accrued each year are noted. The transcripts confirm that Applicant had an installment plan for one year in 2004 but stopped in 2005; an offer in compromise that was denied in 2006; and notices of intent to levy were sent.

On July 4, 2011, the IRS sent a notice to Applicant. The notice reflected that Applicant has paid approximately \$22,536 for tax year 2009. The form states that the tax owed is \$24,961. Applicant relied on this notice to show that she only owes \$3,961 in taxes to the IRS. However, the notice only related to 2009, and approximately \$3,000 is owed solely for that tax year.

Applicant's plan is to obtain a loan from her 401(k) to pay the delinquent taxes. However, she wants to know exactly what she owes to the IRS before she agrees to a plan. She submitted documentation that she has approximately \$100,000 in her retirement plan. (AX D)

In February 2013, Applicant talked with Premier Tax Service seeking their assistance to work with the IRS to contest the tax assessments and negotiate an installment agreement. She is required to pay them \$4,800. She has paid \$2,800. (Tr. 71) The service will not work on a client's behalf until 65% of the fee is paid. (Tr. 72)

She also acknowledged that her state of residence has a 2013 judgment against her for \$3,513 which is not paid. Applicant has a judgment from her homeowner's association in the amount of \$871 which is not paid. She recently contacted the state collection agency and will attempt to negotiate a payment plan.

Applicant's husband was unemployed from April 2010 until September 2012. His job loss impacted her ability to continue to pay her taxes. His income had been about \$85,000 a year.³ Applicant incurred other delinquent debts during that two-year period. She documented that she paid one non-SOR debt (GX 2)

³Applicant's tax returns list no unemployment compensation for tax years 2011 or 2012. The adjusted gross income during those two years appears to be approximately \$4,000 less than the prior years.

Applicant's net monthly income is approximately \$8,964. Her net monthly remainder is \$1,226. She is current on her monthly expenses. Applicant's income for the tax years in question was significant, ranging from adjusted gross income of \$118,000 to \$191,000.

Applicant was candid and forthright. She explained that she has a long job history with no negative incidents. Applicant fully disclosed the situation on her SF-86 and during her investigative interview. She visited the IRS office recently and before the hearing she sent all her paperwork to the IRS. This was not the first time that she sent the completed tax returns. (Tr. 26)

Applicant's supervisor described Applicant as a person of high professional and ethical standards. "Her dependability and dedication is a reflection of her successful tenure of more than 20 years with the agency." (AX B) Applicant's supervisor is aware of the particular security concern. Applicant has informed him of the steps that she has taken to rectify the situation. She has a record of stellar contributions. Applicant's supervisor is confident that she is forthcoming and truthful concerning her actions to remedy the tax issues.

Applicant received the President's Award 2010 for recognition in demonstrating leadership and demonstrating honesty, integrity, and selflessness in serving customers. (AX C) Applicant was Employee of the Year in 2011. (AX C) She commutes a great distance to work and her days are often 12 to 14 hours. She received many promotions and progressed through the ranks during her more than 20 years of employment.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁴ The burden of proof is something less than a preponderance of evidence.⁵ The ultimate burden of persuasion is on the applicant.⁶

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁷ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁹ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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

⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁹ *Id.*

protect classified information. An individual who is financially over-extended 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant did not timely file her federal income tax returns or pay income tax in the proper amount from 2002 until 2011. She acknowledges that she has a tax debt but disputes the amount of \$90,000. Eight federal tax liens have been filed against her. She admits the state judgment for unpaid taxes and a homeowner's association judgement

which has not been paid. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 19(a), 19(c), and 19(g).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(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; and

Applicant's delinquent tax debt has been ongoing since 2003. She did not file timely for tax years 2002 to 2010. She acknowledges that she did not ask for an extension and that she has no excuse for not filing timely. She disputes the amount of tax owed to the IRS and she has attempted to determine the actual amounts she owes. However, she has not paid consistently during these years. She has been on notice since 2005. She has earned a significant salary during those years, despite the years of unemployment for her husband. She did not seek the advice of a tax attorney to help determine what she owed the IRS. In February 2013, she obtained the services of a company to help negotiate with the IRS, but she has not paid the full fee to them. Therefore, they have not started to work with the IRS on her behalf.

Applicant did not produce documentation to show that she has actually paid any additional taxes to the IRS not automatically withheld from her salary. The tax transcripts are not sufficient in that they show "credits issued" but it is not clear from the transcript if that is an amount that Applicant paid or whether that could possibly be an offset due to a refund for certain tax years or a readjustment of the assessment. Applicant has a 2013 state judgment for unpaid taxes. She has smaller debts that she has not paid. She disputes the amount owed on these debts, but did not substantiate the basis of the dispute. Applicant plans to pay the tax debt from her thrift savings plan.

She has obtained the services of a company to help negotiate with the IRS, but has not paid enough of their fee so that they may begin to work on her behalf. Applicant has not met her burden in this case to mitigate the financial considerations security concern.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 43-year-old employee of defense contractor who has held a security clearance for almost 23 years. She has worked without incident for many years. She is described as a stellar employee. She has earned awards during her work with the government. She has been praised for her accomplishments at work. She is married and has three children. She is attending college classes to improve her skills.

Applicant was candid and forthright at the hearing. She does not believe that this should impact on her security clearance. She admitted that she has no excuse for not filing her taxes timely for a long period of time. She fully disclosed the situation on her SF-86 and during her investigative interview. Applicant believes that she made a mistake but is now trying to rectify the situation. She believes that she has acted in good faith. However, the tax debts and judgements remain unpaid.

Applicant acknowledges that she has a significant amount of tax owed to the IRS. She has a 2013 judgment for unpaid state taxes. She has been disputing the amounts owed but she has failed to document she has consistently made payments over the years despite good earnings. She recently obtained the services of a company to help negotiate with the IRS but they have yet to start negotiating on her behalf because their fee has not been sufficiently paid. Applicant has a plan to use her

\$100,000 retirement funds to pay the IRS. Applicant stated she would like to pay her delinquent obligations but has failed to demonstrate any payments on those obligations. It is not clear that she will resolve the issue in the near future. Any doubts that arise must be resolved in favor of the government. Applicant has not met her burden of proof in this case. Clearance is denied.

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
Subparagraphs 1.a-1q:	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 continue Applicant's security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge