



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 12-01266  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

01/23/2014

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on November 16, 2011. On August 20, 2013, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. DOD acted 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 by DOD on September 1, 2006.

Applicant received the SOR on August 28, 2013; answered it on September 20, 2013; denied all the allegations in the SOR; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 4, 2013, and the case was assigned to me on November 12, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2013,

scheduling the hearing for December 12, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection. I kept the record open until January 10, 2014, to enable her to submit additional documentary evidence. She timely submitted AX P through S, which were admitted without objection. DOHA received the transcript (Tr.) on December 17, 2013.

### **Findings of Fact**

Applicant is a 56-year-old systems analyst employed by a U.S. university since November 2000. She works on defense contracts in an applied research laboratory. She has held a security clearance since November 2000. (GX 1 at 10-11, 26-27; GX 2 at 13; Tr. 34.)

Applicant married in November 1984. She and her husband have three children, ages 29, 25, and 21. Applicant attended college at night for eight years while raising her children, and she received a bachelor's degree in December 1999. (GX 1 at 9; AX P.)

When Applicant submitted her application to continue her security clearance, she disclosed that a federal tax lien had been filed against her for failing to file tax returns for 2005 through 2007. (GX 1 at 30-31.) Her credit bureau reports (CBR) reflected a federal tax lien for \$31,542 filed in January 2011 and a \$15,236 judgment for unpaid state taxes entered in May 2012. (GX 3 at 1; GX 4 at 1; GX 5 at 5.) In December 2011, she was questioned by a security investigator about the federal tax lien, and she admitted it. (GX 2 at 14-15.)

Account transcripts from the Internal Revenue Service (IRS) reflect that Applicant and her husband received an extension of time until August 15, 2005, to file their federal return for tax year 2004, but they did not file it until April 24, 2006. They received a refund of \$668. (AX F.) They did not timely file their returns for 2005, 2006, and 2007 nor did they request extensions of time to file. Between May 2007 and December 2012, Applicant and her husband received six inquiries about their failure to file their returns. They filed their federal and state tax returns for 2005, 2006, and 2007 on March 4, 2013. (AX G, H, I, M, N, and O; Tr. 46.)

Applicant and her husband timely filed their federal and state returns for 2008 and every year thereafter. Their refunds for 2008, 2009, 2011, and 2012 have been credited against the tax due. (AX G at 2; Tr. 40.) The federal tax lien was withdrawn on September 18, 2013. (AX D.) The judgment for delinquent state taxes was vacated on October 28, 2013. (AX E.)

Applicant and her husband used an accountant to prepare their tax returns through tax year 2004. When their accountant died, Applicant "totally procrastinated" in finding a new accountant. (Tr. 50.) She testified that she did not believe that failing to file timely returns would be a "big deal," because she always received a refund. (Tr. 30.)

In 2009, Applicant decided to prepare her own returns, using tax-preparation software. She stated that protecting her security clearance was not the motivation for addressing her delinquent tax returns, but that her motivation was her awareness that “the IRS will not be ignored.” (AX P; Tr. 45.) She discovered that federal tax advocates were available, and she used a tax advocate to help her prepare her overdue returns. The tax advocate is also assisting Applicant in determining the amount of taxes due and arranging for payment. (Tr. 43.) The IRS account transcripts reflect a balance due of \$12,564 for tax year 2005, a zero balance for 2006, and a credit of \$1,415 for 2007. (AX G, H, and I.) The account transcript for 2005 reflects that the balance due of \$12,564 was computed after applying tax refunds for 2008, 2009, 2011, and 2012. (AX G at 2.)

Applicant estimates that she owes about \$3,000 in state taxes, but the amount of federal taxes due has not yet been determined. (Tr. 47.) She has not made any payments for federal and state taxes for 2005-2007, except for the involuntary seizures of her tax refunds, and she does not yet have a structured payment plan for any delinquent taxes due. She testified that she will pay whatever she owes as soon as the amounts are determined. (Tr. 51-52.)

The account transcript for tax year 2005 reflects that Applicant erroneously filed a separate return instead of filing jointly as she had done in every other year. (Tr. 53.) After the hearing, she filed an amended return for 2005, and she is awaiting a recomputation of her federal taxes for that year. On December 18, 2013, Applicant and her husband were notified that their claim for an \$826 refund, based on the original erroneous return for tax year 2005, was disallowed because they had not filed their 2005 return within three years of the due date. (AX Q.)

Applicant’s husband is self-employed, but he has encountered a business downturn for the last few years. Consequently, Applicant is the primary bread-winner in the family. Her husband depends on her to pay the household bills, manage the checkbook, help him run his business, and file the tax returns. (Tr. 56, 62.)

In response to DOHA interrogatories, Applicant submitted a personal financial statement (PFS) dated May 13, 2013. Her PFS reflected net monthly family income of \$8,827, expenses of \$3,595, debt payments of \$4,160, and a net remainder of \$4,667. She listed two homes, a trailer home worth \$45,000 with no mortgage, and her primary residence, worth \$650,000 with a balance of \$55,000 on the mortgage loan. She also listed stocks and bonds worth \$75,000. (GX 2 at 37.) The net monthly remainder listed on her PFS is mathematically incorrect; it should be \$1,072.

Applicant’s performance appraisals provide for an overall rating ranging from the top category of “significantly exceeds expectations,” followed by four categories in descending order: “exceeds expectations,” “meets expectations,” “partially meets expectations,” and “does not meet expectations.” For the period ending in February 2010, Applicant’s rating reflected that her performance “meets expectations.” (AX L.) For the periods ending in February 2011 and February 2012, her ratings reflect that her performance “exceeds expectations.” (AX J; AX K.)

Four coworkers submitted statements uniformly describing Applicant as dependable, responsible, dedicated, honest, and thorough. She is highly respected, caring, and well liked. (AX A; AX B; AX R; AX S.) A Navy officer from the project management office lauds her integrity, responsibility, dedication, and sound judgment. (AX C.)

### **Policies**

“[N]o 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.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline F, Financial Considerations

The SOR alleges an unsatisfied judgment for \$15,236 in unpaid state taxes (SOR ¶ 1.a) and a federal tax lien for \$31,542 in unpaid federal income taxes (SOR ¶ 1.b). It also alleges that Applicant failed to file her state and federal income tax returns for tax years 2004, 2005, 2006, and 2007 until "at least March 2013" (SOR ¶ 1.c). The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The evidence set out above establishes three disqualifying conditions under this guideline: 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 returns as required or the fraudulent filing of the same"). Even though Applicant filed her 2004 federal return, she was late, filing it April 2006, well past the extension to August 2005 that she received. She did not request extensions of time to file the 2005, 2006, and 2007 returns, and she did not file them until March 2013.

The following 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 current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

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): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's tax debts and failures to file returns are numerous, not yet resolved, and did not arise under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. The death of Applicant's accountant was a circumstance beyond her control, but she produced no evidence of circumstances preventing her from hiring another accountant or filing her tax returns herself, as she eventually did. Her failure to timely file her tax returns was due to procrastination, not a circumstance beyond her control.

AG ¶ 20(c) is established. Applicant is receiving counseling from a federal tax advocate. She has filed all the past-due returns and is in the process of determining the amounts of taxes due.

AG ¶ 20(d) is not established. "Good faith" within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant did not file her returns for 2005 through 2007 until March 2013, after she disclosed the federal tax lien on her security clearance application and was questioned about it by a security investigator.

Applicant has started the process of resolving her debts by filing all the past-due returns. As a result of her belated filing of her returns, the state judgment has been vacated and the federal tax lien withdrawn. She is certain that she will owe state taxes, and the IRS account transcripts indicate that she will owe federal taxes, but the amount has not yet been determined because of the recomputation of the erroneous return for 2005.

Some of Applicant's tax debt has been paid through involuntary seizures of her tax refunds. However, payment by involuntary seizure does not constitute a good-faith effort. See ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009) Applicant's PFS reflects that she has the ability to pay her delinquent taxes and she has promised to pay her tax debts in full as soon as the amounts due are determined.

However, a security clearance adjudication is not a debt-collection procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. Thus, payment of a debt, release of a lien, or vacation of a judgment does not end the inquiry. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Applicant has a long track record of procrastination. For years, she ignored reminders from the IRS that her tax returns were overdue. In light of her long record of procrastination, I am not convinced that she will not resume her procrastination if the pressure of protecting her security clearance is removed.

AG ¶ 20(e) is partially established. Applicant has disputed the amounts due and documented the basis for disputing her federal tax debt.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature, well-educated adult. She has a solid performance record at the applied science laboratory, and she has a reputation for honesty, integrity, dedication, and dependability. She has held a security clearance for more than 13 years, apparently without incident. She voluntarily disclosed the federal tax lien on her security clearance application. The judgment for unpaid state taxes has been vacated and the federal tax lien withdrawn. However, the underlying debts are not resolved. Furthermore, Applicant's long record of failing to file timely tax returns raises questions about her reliability and good judgment. She denies that she filed her returns to protect her clearance and her job. However, the evidence shows that the trigger for ending her years of procrastination was the submission of an application to continue her clearance.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

|                   |                   |
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| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge