



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-02058

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel

For Applicant: *Pro se*

08/19/2015

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding her finances. Eligibility for access to classified information is denied.

**History of the Case**

On August 22, 2014, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 6, 2014, and elected to have her case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on May 15, 2015, and did not respond to the FORM within the time permitted. The case was assigned to me on July 31, 2015.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accumulated past due federal taxes for tax years 2008 through 2012, (b) accumulated a medical debt of \$136 placed for collection, and (c) failed to file federal and state tax returns for tax years 2005 through the present.

In her response to the SOR, Applicant admitted all but one of the listed debts. She disputed the allegations contained in subparagraph 1.f and expressed her intent to request a copy of her credit report. She claimed she filed her federal tax returns for tax years 2005 through 2012, and timely filed her federal tax return for tax year 2013. She claimed she has an agreement with the IRS to pay her back taxes owed with monthly payments (amounts not stated).

### **Findings of Fact**

Applicant is a 64-year-old security support specialist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married her spouse in January 1979 and divorced him in November 1982. (Item 1) She has no children from this marriage. Applicant attended college classes between March 2005 and April 2007 and claimed no military service. (Items 1 and 3)

#### **Finances**

Between 2005 and 2012, Applicant did not file timely federal or state income tax returns. (Items 1-3) She offered no reasons for her filing failures. While taxes were deducted from her earnings for the covered years, she never knew whether the withheld taxes were enough to satisfy her federal and state tax obligations. (Item 3) In a November 2013 interview with an agent of the Office of Personnel Management (OPM), Applicant claimed she filed all federal returns for tax years 2005 through 2011 (Item 3) and estimated the total amount owing to be \$29,000. (Item 3) Applicant has since admitted to owing the IRS \$2,737.48 for tax year 2012, \$6,502.80 for tax year 2010, \$6,546.16 for tax year 2009, and \$6,549.96 for tax year 2008, for a total of \$22,336.46. Still undisclosed is the outstanding balance owed for tax year 2011. The amounts alleged to be owed the IRS in the SOR, and admitted by Applicant, are reconcilable with Applicant's earlier estimates, and are accepted.

Applicant admitted to a lack of judgment in failing to file federal and state taxes for tax years 2005 through 2012. (Item 1) In her November 2013 OPM interview, Applicant told the OPM investigator she had no valid reason or excuse for not filing her taxes for tax years 2005 through 2012. (Item 3) Both statements are reconcilable and are accepted.

Applicant completed an installment agreement with the IRS in 2012. (Item 3) According to Applicant, her agreement called for her to make monthly payments of \$400, beginning in 2012. Her monthly installment payments were to have been increased to \$415 a month in 2013, and the funds were to have been drawn from her personal checking account. The agreement's terms and whether the agreement is currently in force cannot be verified without documentation. To date, she has not contacted the State to ascertain the balance due for her back state taxes, and has not established a time estimate for doing so. (Item 3)

Since her 2013 OPM interview, Applicant has provided no documentation of her filing her federal and state tax returns or how much payment progress she has made on her delinquent taxes. She continues to dispute a \$136 medical debt covered by subparagraph 1.f. (Items 1-3)

### **Endorsements**

Applicant provided no character references or evidence of financial counseling. Nor did she provide any proof of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security

clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a fully employed security support specialist for a defense contractor who accumulated delinquent federal taxes between 2008 and 2012 that exceed \$22,336 and failed to file federal and state returns for tax years 2005 through 2012. These debts have not been satisfied, and Applicant has not documented the filing of her tax returns for the listed years. In addition to her tax debts, Applicant accumulated a delinquent medical debt, which she disputes.

Applicant’s accumulation of delinquent federal tax debts and her failure to address them and the filing of her federal and state tax returns warrants the application of three of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), “inability or unwillingness to satisfy debts;” DC ¶19(c), “a history of not meeting financial obligation,” apply to Applicant’s situation, and DC ¶19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” apply to the facts of Applicant’s case.

Applicant’s pleading admissions with respect to most of the debts and tax filing lapses covered in the SOR and her failure to document her claimed filing of her federal and state tax returns enable the Government to meet its initial burden of proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Applicant’s unexplained delinquencies and her failure to demonstrate she acted responsibly in addressing her tax debts and tax-filing obligations reflects poorly on her judgment and trust. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder’s duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

In Applicant’s case, none of her delinquent tax debts or filing lapses reflect conditions beyond her control. Based on the documented materials in the FORM, no

evidence is documented of any of Applicant's tax debts and filing lapses being the result of conditions beyond Applicant's control. Nor is there any documented evidence of Applicant's seeking financial counseling or making any effort to resolve her tax debts and file her back federal and state tax returns. For lack of any documented independent evidence of inaccuracy of the reported medical debt she disputes, Applicant may not be credited with successfully disputing the debt covered by subparagraph 1.f. of the SOR.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent taxes and failures to timely file her federal and state tax returns. Since they became delinquent, she has not shown any manifest effort in addressing any of her covered debts to mitigate her still delinquent accounts or pursuing financial counseling. Resolution of her delinquent federal taxes and small medical debt, and documenting the filing of her federal and state tax returns is a critical prerequisite to her regaining control of her finances.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrued delinquent debts and tax filing lapses and her lack of more specific explanations of her debt delinquencies and tax filing lapses, it is still soon to make safe predictive judgments about Applicant's ability to repay her debts, file her federal and state returns, and restore her finances to stable levels commensurate with the minimum requirements for holding a security clearance. More time is needed to facilitate's Applicant's making the necessary progress with her finances to facilitate conclusions that her finances are sufficiently stabilized to permit her access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.g.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparas. 1.a through 1.g:

Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



