



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



In the matter of:

ISCR Case No. 14-03122

Applicant for Security Clearance

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

11/15/2015

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns and the Government did not prove deliberate falsification by Applicant, therefore personal conduct disqualifying conditions were not established. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 8, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). DOD acted under Executive Order (EO) 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 30, 2014, and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 28, 2015 (the Government evidence is referred to in the FORM as "Evidence", but in this decision the evidence will be referred to as Items). The FORM was mailed to Applicant who received it on July 14, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response to the FORM on August 19, 2015, containing Applicant's exhibits (AE) A-F, which were admitted into evidence without objection. The case was assigned to me on September 21, 2015.

### **Findings of Fact**

In Applicant's answer to the SOR she essentially admits the allegations with explanations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 42 years old. She is single and has two children. She has worked for her current employer, a federal contractor, since June 2013. She has a master's degree. She did not serve in the military and has never held a security clearance.<sup>1</sup>

The SOR lists 13 delinquent debts in the total amount of \$94,098, of which \$85,000 is for student loan debt. The SOR also alleged that she falsified her security clearance application by failing to affirmatively disclose her debts turned over to collection agencies, charged-off accounts, and debts which have been or are currently 120 days delinquent. She did not list the debts in her application because at the time she completed it she was unaware of the debts and had not checked her credit report before completing the application.<sup>2</sup>

The status of Applicant's SOR debts is as follows:

#### **SOR ¶ 1.a:**

This is Applicant's mortgage debt. Her mortgage became delinquent when she experienced a period of unemployment before 2013. Since September 2014 she received a mortgage modification and has documented payments from September 2013 through the present. Her most recent credit report shows no past-due amount. This debt is being resolved.<sup>3</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Items 1-2.

<sup>3</sup> Items 2, 4; AE B.

**SOR ¶ 1.b:**

Applicant provided written documentation showing that she is making monthly payments of \$75 toward this debt. She has made these payments since April 2014. This debt is being resolved.<sup>4</sup>

**SOR ¶¶ 1.c, 1.e – 1.f:**

Applicant stated that she established payment plans to settle these debts, but she provided no supporting documentation. The accounts do not appear on her most recent credit report. These accounts are being resolved.<sup>5</sup>

**SOR ¶¶ 1.d, 1.g – 1.i:**

Applicant provided written documentation showing that she paid or settled these debts. They do not appear on her most recent credit report. These accounts are resolved.<sup>6</sup>

**SOR ¶ 1.m:**

Applicant stated that her student loans are currently in a deferred status and that she is not delinquent on them. Her most recent credit report supports her deferred-student loan status. These debts are being resolved.<sup>7</sup>

Applicant provided a character letter from a supervisor who supports her request for a security clearance. He described Applicant as dedicated, reliable, honest, and someone with great integrity.<sup>8</sup>

**Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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<sup>4</sup> Item 2; AE A, C.

<sup>5</sup> Items 2, 4.

<sup>6</sup> Items 2, 4; AE C-E.

<sup>7</sup> Items 2, 4.

<sup>8</sup> AE F.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters 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 that an 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.

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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 18 expresses the security concern for 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

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

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

Applicant has resolved eight of her debts and has made reasonable efforts to resolve the remaining debts. She has her mortgage back in good standing, set up payment plans for two other debts, and her student loans are in a deferred status. There is sufficient evidence to indicate that Applicant's debts are being resolved and that she has made good-faith efforts to resolve those that remain. I find AG ¶¶ 20(c) and 20(d) apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire. . . .

Applicant's statement during her personal subject interview and her SOR answer that she was unaware of the debts at the time she completed her security clearance application is sufficient to establish lack of intent to deceive when she incorrectly answered the financial-related questions. The Government failed to produce sufficient evidence of such intent. AG ¶ 16(a) does not apply.

### **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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has stabilized her finances and has shown significant progress towards getting her finances back on track.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, and that the Government failed to establish the concern under Guideline E.

### **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:  
Subparagraphs 1.a – 1.m:

FOR APPLICANT  
For Applicant

Paragraph 2, Guideline E:  
Subparagraph 2.a:

FOR APPLICANT  
FOR Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge