



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



In the matter of: )  
)  
) ISCR Case No. 14-04170  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

01/19/2016

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on March 14, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on February 11, 2015, detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on March 2, 2015, and she answered it on May 27, 2015. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 10, 2015, and I received the case assignment on September 24, 2015. DOHA issued a Notice of Hearing on October 2, 2015, and I convened the hearing as scheduled on October 21, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 29, 2015. I held the record open until November 4, 2015, for Applicant to submit additional matters. Applicant timely submitted AE F, which was received and admitted without objection. The record closed on November 4, 2015.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.e, 2.a, and 2.b of the SOR. Her admissions are incorporated herein as findings of fact. She neither admitted nor denied the factual allegations in ¶¶ 1.f and 3.a of the SOR. Her answer is treated as a denial of these allegation.<sup>1</sup> She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 31 years old, works as an engineering technician for a DOD contractor. She began working for her employer in January 2013. Her position is not a full-time, permanent job. She works “on call”, usually for three months as a tester, then she will be unemployed from the position between three and nine months. She collects unemployment when she is not working. She started working part time (20 to 25 hours a week) for a fast food restaurant in July 2015. She took a leave of absence from this job in October as she began working full time (40 to 50 hours a week) in her contractor position. Her facility manager wrote a letter of recommendation praising her work skills and work ethic. The manager considers Applicant an asset to their work team. The manager does not indicate an awareness of the security issues in this case.<sup>2</sup>

Applicant graduated from high school in May 2002. She moved from State A to State B in June 2002, where she lived and worked until late 2012. Applicant worked in

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. “That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern.” See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>GE 1; Tr. 19-20, 40, 42-43.

the restaurant and fast food industry in State B until 2008, when she began working on her own. She bought and sold memorabilia on eBay. She moved back to State A in late 2012 to “straighten out her life” as she was not doing well in State B. In 2013 and early 2014, Applicant cared for a close family member, who was dying. During this time she did not work.<sup>3</sup>

Applicant earns \$14.98 an hour in her contractor position. When she works a full 40-hour week, she earns approximately \$600 in gross weekly income and \$2,400 in gross monthly income. Her manager advised that as of October 19, 2015, Applicant was working 45 hours a week, which increases her weekly income by \$75 and her monthly gross income by \$300. Since she had just begun her technician job, she did not have an earnings statement reflecting her pay for a full two weeks of work. She did provide an earnings statement which indicated that through October 9, 2015, she had worked a total of 20 hours in 2015, earning a total of \$300.<sup>4</sup>

Applicant received unemployment benefits of \$240 a week prior to July 16, 2015, when she started work at a fast food restaurant. She works between 20 and 26 hours a week, earning \$8.30 an hour for a gross income between \$166 and \$217 a week. She received her first paycheck on August 7, 2015 and her last paycheck on October 7, 2015. Her total gross income for this period of time was \$1,971 and her total net income was \$1,242. Applicant continued to receive \$40 a week in unemployment benefits while working at the fast food restaurant. Her net income for August and September 2015 was approximately \$780. Her fiancé’s monthly income was approximately \$720 a month.<sup>5</sup>

Applicant is single. She lives with her fiancé. He works for the same DOD contractor as an on call technician. He injured himself last year. For most of 2015, he received \$180 a week in workers compensation benefits or unemployment. Their monthly expenses include \$400 for rent, \$150 for utilities, and \$60 for cable. She estimated that she also spends \$300 on clothing, food and gasoline, \$90 on car insurance, and \$50 on cell phone. Her monthly expenses total \$1,050. Her fiancé’s other expenses are unknown. She does not have a car payment.<sup>6</sup>

Applicant filed a Chapter 7 petition for bankruptcy in 2007 because she had \$14,000 in credit card debt, while earning \$7 an hour. She acknowledged that she had little understanding about the use of credit cards and debt. She was unable to pay her credit card bills and her rent. Her debts were discharged in May 2007. Since then, Applicant’s income continued to be insufficient to meet her necessary monthly living expenses. She again used credit cards to pay bills and her moving expenses in 2012.

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<sup>3</sup>GE 1; Tr. 21.

<sup>4</sup>GE 1; AE C; AE D; Tr. 20, 40.

<sup>5</sup>AE B; AE E; Tr. 19-20, 42.

<sup>6</sup>Tr. 22-23, 41-44.

The debts identified in SOR allegations 1.b (\$3,169), 1.c (\$6,448) and 1.d (\$4,620) are these credit cards. The phone debt in 1.e (\$174) is for an early cancellation fee. She lacks any resources to pay these debts. She expressed an intent to use some of her earnings from her DOD job towards the resolution of these debts. The March 2013 credit report reflects that the three credit card debts became delinquent in the summer of 2009. The two October 2015 credit reports show that Applicant has three credit cards, which are current. She is making the required monthly payment.<sup>7</sup>

In September 2011, Applicant and her fiancé rented a room in a house with individuals they did not know well. The police came to the house and searched the bedroom of the homeowner. The police found marijuana in the homeowner's bedroom. The homeowner gave the police permission to search the rest of the house and found an empty drug pipe in Applicant's bedroom. All the house residents were arrested and charged with possession of methamphetamine and marijuana and possession of drug paraphernalia.<sup>8</sup> While in police custody, someone stole the belongings in Applicant's bedroom. Applicant filed a police report, but the items were not recovered. She pled guilty to possession of marijuana and drug equipment. The court fined her and placed her on one year of probation. She paid about \$2,000 in fines and completed her probation. She has not used illegal drugs since 2011, and she does not associate with people who do.<sup>9</sup>

In December 2012, the police arrested Applicant and charged her with misuse of a credit card and fraudulent use of a credit card. At the time, Applicant worked as a cashier at a retail store. A customer left a credit card at her checkout station. Without the customer's authorization, Applicant used the card to purchase \$30 worth of necessary personal items (toilet paper, etc.) because she did not have any money to buy the needed items. The court offered her the opportunity to participate in an adult diversion program, which she accepted. She completed the program in September 2013, and she paid her fines. The court dismissed her case with prejudice on September 24, 2013. The program advised her that if she was ever asked if she had a conviction in this case, she could say "no", but if she is asked if she had ever been arrested, the answer would be "yes". Applicant has no other criminal matter. She acknowledged that she made a bad decision when she used the credit card. At the conclusion of her shift, her employer fired her for this conduct. She report her firing and her arrests on her e-QIP, and she discussed both with the OPM investigator.<sup>10</sup>

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<sup>7</sup>GE 3; GE 5; AE A; Tr. 24-25, 44.

<sup>8</sup>At the hearing, Applicant denied that the pipe was hers and opined that she may have been set up. She acknowledged that she and her fiancé used and purchased drugs, usually marijuana, occasionally. They have not used any drugs since 2011. GE 2; Tr. 26-29.

<sup>9</sup>GE 1; GE 2; Tr. 26-29, 34.

<sup>10</sup>GE 1; GE 2; AE F; Tr. 31-33, 35-37.

## **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.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

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**

The security concern relating to the guideline for financial considerations 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems because she lacked sufficient income each month to pay for the necessary items and expenses of basic living. She has not resolved the debts listed in the SOR. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following is potentially applicable:

- (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;

Applicant's inability to find full-time, steady employment at a living wage is a factor beyond her control because such work is not readily available where she lives. Her decision to file for Chapter 7 bankruptcy and have her existing credit card debt discharged was reasonable and responsible at the time because she had an opportunity to start anew. Her financial and work situation did not improve, creating more financial stress. The decision to use credit cards to pay bills a second time may have been reasonable had she paid as required monthly. She again stopped her payments, making her decision about the credit cards ultimately not responsible. Applicant currently lacks the resources to pay her past-due credit card debt. She did pay her fines. AG ¶ 20(b) is partially applicable.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

The police arrested Applicant twice, once for drug possession and once for misuse of a credit card. Applicant pled guilty to the possession of marijuana and drug equipment. A security concern has been established under AG ¶¶ 31(a) and 31(c).

AG ¶ 32 provides conditions that could mitigate security concerns. I have considered all the mitigating conditions, and especially the following:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant last used marijuana or any other illegal drug in the summer of 2011, more than four years ago. She avoids illegal drugs and the people who use them. She has no intent to use illegal drugs in the future. She acknowledged that she made a bad decision to use a customer's credit card without permission. She successfully participated in an adult diversion program, and the court dismissed her case without a conviction. This incident was the only one of this type of conduct. She is remorseful for her conduct. It is not likely to reoccur in the future. She is successfully rehabilitated and has mitigated the security concerns about her past criminal conduct under AG ¶¶ 32(a) and 32(d).

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to 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 classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct . . . may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's decision to use a customer's credit card to purchase needed personal items showed a serious lapse of good judgment. Her continued use of credit cards to pay for living expenses after she had previously had unpaid credit card debt discharged in a Chapter 7 bankruptcy also raises questions about her judgment and could make her vulnerable to exploitation or pressure by a foreign security or intelligence service. A security concern has been raised under AG ¶¶ 16(c) and 16(e).

AG ¶ 17 provides conditions that could mitigate security concerns:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant understands that she made a serious error in judgment when she used the credit card. She has shown remorse for her conduct. She also knows that her financial resources are limited. She has limited her expenses as best she can. Despite these steps, her finances and her judgment remain a security concern. She has shown some mitigation of Guideline 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.<sup>11</sup>

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<sup>11</sup>In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has been unemployed and underemployed for many years, making it difficult for her to pay her basic living expenses. She has resorted to using credit cards, then not paying even the minimum amount due each month. Her bankruptcy in 2007 allowed her to start over financially. She, however, again used credit cards and now has significant unpaid debt which she can not resolve with her current income. She has no defined plan to pay these debts nor does she have a track record for debt resolution.

Applicant's decision to use a customer's credit card for her personal purchases showed poor judgment and raises serious questions about her ability to hold a security clearance. The Government expects a high degree of honesty and integrity from anyone holding a security clearance. Applicant's decision to use a customer's credit card to purchase personal items for herself, however, much needed, continues to be a concern about her integrity. Because of this conduct, she has not demonstrated the high level of honesty and integrity needed to hold a security clearance.

Overall, the record evidence leaves me with 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 from her criminal conduct under Guideline J, but she has not mitigated the security concerns raised by her finances and personal conduct under Guidelines F and 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.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 a security clearance is denied.

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MARY E. HENRY  
Administrative Judge