



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



In the matter of: )  
)  
) ISCR Case No. 17-00893  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2019

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On May 16, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on June 13, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 29, 2018, scheduling the hearing for December 6, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted. Applicant testified on her own behalf. She submitted Applicant Exhibits (AE) A through E. The record was left open until December 20, 2018, and Applicant timely

submitted a packet of documents, which was marked as AE F, and was accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on December 14, 2018.

### **Findings of Fact**

Applicant, age 58, is married and has one adult child. She obtained her undergraduate degree in 2007. She also has a master's in theology and other certifications. Applicant completed her security clearance application (SCA) on September 29, 2015. She has held a security clearance since 2004. (GE 1) She worked for her current employer since 2015. She previously worked as a contractor since 1998. (Tr. 18)

The SOR alleges a Chapter 13 bankruptcy filing in 2005 that was dismissed in 2005 when Applicant failed to complete required filings; a 2016 state tax lien in the amount of \$7,308; a 2011 state tax lien in the amount of \$13,132.00; a 2012 Federal tax lien in the amount of \$41,313.00; a medical account in the amount of \$560; and a 2014 eviction law suit. Applicant admitted the allegations relating to the financial allegations. The SOR alleged under personal conduct concerns three instances of falsification on her 2015 security clearance application. Applicant denied the falsifications on the security clearance application and she provided explanations for her financial situation.

### **FINANCIAL**

Applicant acknowledged her financial hardship, but reported unemployment from December 2014 to February 2015 and from July 2015 to September 2015. Applicant was self-employed from May 2007 to May 2009 and from October 2009 to December 2010. (GE 2) Applicant also referred to bad advice from an accountant regarding the filing of her self-employment tax return. A final unemployment occurred when a contract ended in October 2017 until April 2018. (Tr. 47)

Applicant suffered a stroke in the workplace, but did not have health insurance as she was working as a 1099 employee and responsible for health insurance. She suffered some short term memory loss as a result, and noted this to the OPM investigator when she had neglected to provide certain dates. (GE 2)

As to SOR 1.a, Applicant admitted the bankruptcy filing (GE 9) and explained that her attorney advised her to file as there was a home contractor who was attempting to garnish her wages and extract \$68,000 from her for work that had not been done and for which she had no account. (Tr. 51) She was not aware of this until she was purchasing a home and it appeared on her credit report. Her attorney asked for proof from the company that Applicant owed \$68,000 and nothing was forthcoming. The bankruptcy was dismissed. It has not appeared on her credit bureau report for some time and she has discussed this issue in previous investigations. The action is 12 years old.

Applicant admitted that she was indebted for the state tax lien (SOR 1.b) in an original amount of \$7,308. However, Applicant stated that there is only one account or

lien for the state and the total is \$13,132, which is the other state tax lien alleged in SOR 1.c. She submitted a document from the state comptroller, dated March 2018 showing a balance of \$4,786.08 for tax year 2007 and a balance of \$9,072.72 for tax year 2009. (AE A) Applicant explained that the tax was due to the inaccurate tax filing by her accountant. Applicant was to file as an S corporation but the filing was for a C corporation. (Tr. 22) She explained that in 2011, she began paying \$400 a month, but it was not clear from the record that the payment was going to the IRS. At one point, she received the checks back. They had been torn in half. In 2018, Applicant contacted the state comptroller's office and explained her "situation." Applicant reached an agreement for a payment plan for a term of 60 months with a down payment of \$1,374 and monthly payments of \$235. She stated that the tax year 2008 had been paid in full. Applicant has not started making any payments and stated that her husband had a massive heart attack and she is the only one employed. (Tr. 25)

As to SOR 1.d, a 2012 Federal tax lien in the amount of \$41,313, Applicant made an offer in compromise for \$2,400, which was accepted. She made monthly payments of \$100. Applicant presented a Certificate of Release of Federal Tax Lien (AE B) and a letter from the IRS, dated 2013 that the final payment was made by credit card and that all payments had been made. (AE B)

As to SOR 1.e, a medical account in the amount of \$560, Applicant stated that she has been making payments to a creditor monthly in the amount of \$87. However, there is no record of any payments made to the account. As a post-hearing submission, Applicant provided a receipt for \$480, but it was not clear to whom it was paid. (AE F)

Applicant explained that the law suit situation which resulted in allegation SOR 1.f, is due to a flood that occurred above her apartment in May 2014, when her dining room filled with scalding water from the roof. She called maintenance and after about 20 minutes a technician. The technician was unsuccessful in stopping the water and he called the supervisor. It took another 20 minutes to turn the water off in the above apartment. This left her apartment uninhabitable and she checked into a hotel. (AE C) Management asked Applicant to move all her belongings out so that the apartment could be renovated. When Applicant asked to be reimbursed for her May rent and expenses paid for the hotel night, she was told no. Applicant moved things as fast as she could. Before she was finished a notice of eviction was placed on her door. She was charged for various repairs for which she paid.

Applicant volunteered that she filed for an extension for her 2017 Federal tax return. (Tr. 59) It has been filed and she owes about \$8,000. She stated that she believes she also owes states tax for 2017. (Tr. 60) She testified that this was due to the old accountant that she had a problem with concerning the S versus C corporation, i.e, filing the wrong tax returns during her self-employment in 2008. She has a new accountant.

## **PERSONAL CONDUCT**

When Applicant completed her 2015 SCA, she answered "No" to Section 26 concerning liens against your property or failure to pay taxes in the past seven years. She

also answered “No” to Section 26 concerning bills or debts turned over to collection accounts. Also, Applicant responded “No” to Section 28 regarding non-criminal court actions in the last ten years.

Applicant denied that she intentionally falsified her 2015 SCA. In her answer, she stated that she did not have a lien placed against her property for failure to pay taxes. She stated that she did not become a home owner until 2015 and the taxes owed were paid in 2013. She testified that she answered all questions to the best of her ability and as for being a party to a law suit regarding the apartment, the amount of money was paid and she did not regard this as being a party to a law suit. She realized at the hearing that she answered incorrectly. (Tr. 35) She was adamant that she did not believe the medical account was in collection because it was due and owing to a hospital. (Tr. 36) She testified at the hearing that she had liens (both state and federal) but they had been resolved in years prior. Applicant stated that she kept no information from the investigator during her interview. (Tr.45) She reiterated that she was completely open and honest with the Government when she answered the questions.

### **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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions, corroborated by her credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations") and AG ¶ 19(f) ("...failure to pay annual Federal, state or local income tax as required").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's bankruptcy occurred in 2005, and is an isolated event. She experienced unemployment on various occasions and suffered a stroke. Her husband suffered a heart attack. She also received some bad advice from an accountant. These events were beyond her control. She also had flooding in her apartment as a result of a flood from an apartment above. AG ¶ 20(a) is not established. Applicant has significant tax issues, an unpaid medical debt, and 2017 Federal tax due in the amount of about \$8,000.

AG ¶ 20(b) is not established. While Applicant's unemployment, stroke and other health issues were beyond her control, she has not acted responsibly to address the resulting debts. She has not produced sufficient information to show that she has been proactive in her actions.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that her financial situation is under control. She has settled a Federal tax lien but has not started payments on other liens. She did not submit proof or documentation about her medical account. Her current ability to pay her delinquent debts and taxes is in doubt. Her financial problems are not under control.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR ¶¶ 1.b, 1.c, and 1.e.

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

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of her SCA, the following disqualifying condition could apply:

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that she falsified her 2015 SCA, in her answer, and in her remarks at the hearing, she was adamant that she was not trying to defraud the Government. She paid a Federal tax lien and did not understand the question about a lien on property. She answered to the best of her ability. In fact, she had denied those allegations on the SOR. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>1</sup> An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on an SCA was deliberate.<sup>2</sup>

In this instance, it is clear from Applicant's comments that she was not aware of the intent of the questions. At the hearing, she agreed that she answered inaccurately when the questions were explained. She should have disclosed the delinquent debts she had knowledge of on her SCA. However, I find insubstantial evidence of an intent by Applicant to intentionally omit, conceal, or falsify facts from and on her SCA. Therefore, AG ¶ 16(a) is not established.

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<sup>1</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

<sup>2</sup> ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant made prompt or good-faith efforts to correct any misleading or false information when she spoke openly to the investigator during her interview. Applicant was credible and has shown that similar lapses in judgment are unlikely to recur. She provided sufficient information in this record to demonstrate that she has met her burden of proof for her personal conduct.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including her credibility and openness at the hearing, I conclude that Applicant did not deliberately falsify her SCA, but she has not mitigated the security concerns raised by her financial indebtedness. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant 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**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant



Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a-2c: For Applicant

**Conclusion**

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

Noreen A. Lynch  
Administrative Judge