



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



In the matter of: )  
 )  
----- ) ISCR Case No. 17-03548  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

03/15/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On December 22, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).<sup>1</sup> In a response notarized on January 22, 2018, Applicant admitted all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on July 20, 2018.

On September 5, 2018, a notice setting the hearing for October 2, 2018, was issued. The hearing was convened as scheduled. The Government offered three exhibits (Exs.), noted as Exs. 1-3, and Applicant presented 15 exhibits, marked as Exs. A-O. With no objections, all exhibits were accepted into the record. Applicant was granted through October 19, 2019, to submit any additional materials. On October 18, 2019, a final file was offered by Applicant and admitted without objection as Ex. P. The

<sup>1</sup> 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 (AG) effective within the DOD on or after June 8, 2017.

record was then closed. In the interim, the transcript (Tr.) was received on October 11, 2019. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate security concerns.

### **Findings of Fact**

Applicant is a 54-year-old configuration and data manager who has been in that particular position for two years, and with the same entity for 13 years. She receives positive appraisals annually and earns approximately \$135,000 a year. She has supported the military in some capacity since she was about 18 years old, and earned an income since she was 13 years old. She earned a high school diploma and attended some college. Her husband recently began a job as a bus driver after being let go from a transit agency, where he earned about \$55,000. He accepted that job, which pays \$40,000 a year, after being unemployed from May 2018 to August 2018. The couple has a teenage son. Applicant is highly community-minded and devoted to this country.

Applicant's financial problems began when her husband was subject to a corporate downsizing maneuver in October 2011, reducing their joint income by \$55,000. He remained unemployed until December 2012, leaving the entire burden of marital bills, child-rearing, and mortgage on Applicant alone. Since that time, Applicant has received no monetary assistance from her husband, although he currently pays for their child's private school tuition. Financially maintaining their family of three on her salary alone, currently amounting to about \$135,000, has been "very hard." (Tr. 25) She admits her financial situation is "a mess." (Tr. 45). She recently started a part-time job to supplement her income. (Tr. 46) Applicant has received financial counseling. She concedes she did not act as quickly on her debts as she should have. (Tr. 45-46)

At issue in the SOR are 15 delinquent debts (1.a-1.o). The debt at 1.a is a mortgage past due in the amount of approximately \$7,019. This situation has been rectified and the Applicant is now current on that account. (Ex. K; Tr. 26)

The debts noted in the SOR at 1.b-1o consist primarily of credit card balances, amounting to about \$81,000, plus the debts at 1.i (personal loan for \$7,178) and 1.o (time share-related judgment for \$995 on a share acquired in 2011). In the past, only a smattering of payments was ever applied to these debts. She acquired so much delinquent credit card debt because she expected her husband to contribute more to the family coffers, a dilemma dating back to 2008. (Tr. 27) At that point, she only had one credit card. Doing her best, working hard, and applying her bonuses, however, did not help. She relied increasingly on payday loans then credit cards. (Tr. 27, 35)

In September 2018, Applicant filed for Chapter 13 bankruptcy protection, a solution she had hoped to avoid. (Ex. N) She had previously filed for bankruptcy around 2004. (Tr. 32) Applicant recently submitted a proposed payment plan under which she would pay \$100 a month for two months, then pay \$500 per month for 58 months. At the time of the hearing, her proposal was pending approval. In the bankruptcy paperwork, at Schedule J, Applicant calculated her monthly net income. (Ex. N; Tr. 36-37) It resulted

in a negative net monthly remainder. She hopes to ameliorate this situation with a home-based part-time job and the completion of monthly payments on her car (\$435).

After the hearing, Applicant provided documentary evidence that two payments of \$100 were submitted to her bankruptcy trustee in October 2018, scheduled for deposit in October and November 2018, respectively. She provided a screen shot indicating the one check was posted in October 2018. It is unclear whether her proposed payment plan has been formally implemented by the bankruptcy court.

### **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. 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any 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.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant has numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit 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.

There are multiple delinquent debts at issue, some dating back a decade. The rest appear to have been acquired as Applicant's husband's lack of financial contributions continued despite his status as employed. To meet the challenges posed by insufficient income, she tried to manage the debts and took a part-time job, but was

unsuccessful. This is sufficient to raise AG ¶ 20(b) with regard to her acquisition of delinquent debt.

Applicant has received financial counseling, but the only tangible progress she has made is with regard to SOR allegation 1.a, the past-due sum on her mortgage (about \$7,000). Meanwhile, nearly \$90,000 in delinquent debt has been bundled into her Chapter 13 bankruptcy petition filed in September 2018, the month arrangements for this October 2018 hearing were being made. Applicant provided evidence that one check for \$100 has been presented to the bankruptcy trustee. Otherwise, there is no documentary evidence establishing a record of consistent and meaningful payments on this bankruptcy action or any of the debts incorporated therein. At best, catching up on her mortgage, receiving financial counseling, and taking the first steps to seek protection under Chapter 13 bankruptcy raise AG ¶ 20(c) to a limited extent.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 54-year-old configuration and data specialist who has devoted her adult life to the military and working as a defense contractor. She is a lauded employee. Applicant is a loyal American and active within her community. She and her husband are raising their teenage child. For reasons yet unclear, Applicant's husband ceased contributing to their family coffers a number of years ago, regardless of his employment status, except for providing for their child's tuition. This shifted the family's financial burden onto Applicant, not as a temporary situation, but as a permanent status. Applicant has tried hard to make ends on her notable salary through budgeting and part-time work, but the effort was futile and she relied increasingly on credit. She protracted filing for bankruptcy protection in hopes that an alternative could be found, but none appeared.

Today, Applicant is poised to regain her financial footing with her current Chapter 13 bankruptcy petition set to address the nearly \$90,000 of delinquent debt. Her filing, however, was ill-timed in light of her hearing date. This process does not require an applicant to satisfy all her delinquent debts. It does, however, demand that one show they have implemented an appropriate scheme for addressing that debt, and documentation reflecting a meaningful and significant track record of timely payment. Here, insufficient time had passed to provide such documentation. Consequently, financial considerations security concerns remain unmitigated.

## 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:	For Applicant
Subparagraphs 1.b-1.o:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge