



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



In the matter of: )  
)  
) ISCR Case No. 18-02782  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2019

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 7, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 10, 2019, and requested a hearing before an administrative judge. The case was assigned to me on June 20, 2019.

The hearing was convened as scheduled on August 6, 2019. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that I have marked AE B through AA and admitted without objection.

## Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She has worked for her current employer, or its predecessor in interest, since March 2017. She served in the National Guard from 2001 to 2003. She is a few credits short of a bachelor's degree. She married in 2003, separated in 2016, and divorced in 2019. She has one child. (Transcript (Tr.) at 21, 28-32, 48-50; GE 1, 2)

Applicant's ex-husband used illegal drugs, could not hold a job, and was abusive. She attempted to make the marriage work, but his behavior worsened to the point that she had to leave and have a restraining order issued against him. He destroyed much of her property and left her with almost nothing from the marriage except debt and her child, for whom he does not pay child support. (Tr. at 17-27, 39, 65; Applicant's response to SOR; GE 2; AE A)

Applicant and her then husband filed a Chapter 13 bankruptcy case in May 2016. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$12,700 owed on an auto loan. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$5,500 owed to the IRS for 2012 income taxes; \$2,500 owed to their state for 2012 income taxes; and \$400 for 2013 state income taxes. The petition listed \$70,522 in student loans and \$21,731 in other debts under Schedule F, Creditors Holding Unsecured Nonpriority Claims. (Tr. at 21-23, 50; Applicant's response to SOR; GE 3)

The bankruptcy records indicate that the IRS asserted \$3,663 in claims for 2012, which included \$2,015 in taxes; \$364 in interest; and \$1,283 in penalties. The state asserted \$2,834 in claims, which included taxes, interest, and penalties for tax years 2012 and 2013. In June 2016, Applicant and her husband filed a motion to voluntarily dismiss the case. The case was dismissed in August 2016. Applicant stated that by that time, she knew that she was not going to remain in the marriage and bankruptcy was impractical. (Tr. at 23; Applicant's response to SOR; GE 3)

The SOR alleges the Chapter 13 bankruptcy; \$5,500 owed to the IRS for tax year 2012; \$2,500 owed to the state for tax year 2012; \$11,320 owed on a charged-off auto loan; an auto loan that was \$877 past due, with a \$12,426 balance; 5 miscellaneous delinquent debts totaling \$1,410, and 14 defaulted student loans totaling about \$78,600. Applicant admitted owing all the debts with the exception of the state and federal income taxes and the past-due auto loan.

Applicant established that she does not owe any federal income taxes. She documented that \$2,397 was withheld from her \$3,641 refund from 2017 to satisfy her 2012 taxes. She received the remaining refund of \$1,243, which indicates she did not owe any additional taxes. She provided a copy of her 2019 tax transcript that showed her \$4,832 refund was withheld and applied to a non-IRS debt. (Tr. at 32-34, 56-57; Applicant's response to SOR; GE 2; AE C, D, Z, AA)

Applicant owed \$1,306 in state income taxes for 2012 and \$369 for 2013, for a total of \$1,675. The state withheld her \$245 refund from 2017 and applied it to her 2012 taxes. Her 2018 tax return was filed, but not yet acted on by the state. She anticipates a refund of \$1,085 to be withheld for her back taxes, leaving a balance of \$345. She hopes her ex-husband will pay the balance as part of the divorce decree. She will pay it if he does not. (Tr. at 34; GE 2; AE C, P, Q)

Applicant rehabilitated her student loans. They were consolidated into one loan totaling \$83,472 in March 2019. She is current on her \$327 monthly payments. As of August 2019, the balance was \$80,005. (Tr. at 30-31, 75-77; Applicant's response to SOR; GE 2, 4-6; AE C, E, F)

Applicant entered into a payment agreement in August 2019 with the company collecting the \$403 debt alleged in SOR ¶ 1.l. She agreed to pay \$67 per month for six months. She made the first payment in September 2019. (Applicant's response to SOR; GE 4-6; AE C, G, H)

Applicant settled the \$232 debt alleged in SOR ¶ 1.m for \$130, payable in five monthly \$26 payments, commencing in October 2019. She paid the \$130 settlement amount in full in September 2019. (Applicant's response to SOR; GE 4-6; AE C, I)

SOR ¶ 1.l alleges an auto loan that was \$877 past due, with a \$12,426 balance. Applicant was rear-ended by another car in December 2016. Her car was a total loss. Her insurance company valued the car at \$11,125, but the loan payoff was \$11,729. The insurance company negotiated with the creditor to accept \$11,125 as a settlement of the loan. The creditor accepted the settlement and released the lien to the insurance company, thereby ending Applicant's liability for the loan. (Tr. at 25-26; GE 2, 4-6; AE C, J, K)

Applicant entered into a payment agreement with the company collecting the \$300 medical debt alleged in SOR ¶ 1.x. She agreed to pay \$50 per month for six months. She made the first payment in September 2019. (Applicant's response to SOR; GE 4-6; AE C, L)

Applicant has worked for her company since 2017, but she has only been earning a good salary and able to address her financial difficulties for about a year. Her current financial situation is much better. She paid or is paying debts that were not alleged in the SOR. There are three SOR debts she has not yet addressed, primarily the \$11,320 owed on a charged-off auto loan. She hopes her ex-husband will pay half of the debt. She stated that she will start paying it in 2020, with or without her ex-husband's help. She credibly stated that she is committed to maintaining her finances in order and paying her debts. (Tr. at 28, 38-48, 64-75; Applicant's response to SOR; GE 1, 2, 4-6; AE C)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2017. She reported her Chapter 13 bankruptcy case, two defaulted auto loans, and that she had sought financial counseling "to get [her] financials back on track." She did

not report owing any state or federal income taxes because she was not completely aware of the tax issues. She credibly stated that she did not intentionally provide false information about her finances on the SF 86. (Tr. at 32-33, 50-56; Applicant's response to SOR; GE 1, 2)

## **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including unpaid federal and state taxes, defaulted student loans, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Applicant and her then husband filed a Chapter 13 bankruptcy case in May 2016. The case was voluntarily dismissed in August 2016. The Chapter 13 bankruptcy case does not raise security concerns independent of the concerns raised by the unpaid taxes and delinquent debts in other allegations. SOR ¶ 1.a is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;

(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;

(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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's ex-husband used illegal drugs, could not hold a job, and was abusive. He destroyed much of her property and left her with almost nothing from the marriage except debt and her child, for whom he does not pay child support.

Applicant made the best of a bad situation. She separated, divorced, and obtained a restraining order against her ex-husband. She then set about putting her and her child's lives back together. She obtained a good job and started addressing her financial problems. Her federal taxes have been paid through withholding of refunds, and her state taxes have been partially paid. She rehabilitated her student loans through a consolidation loan, and she is current on her \$327 monthly payments. She established that one of the auto loans was paid by her insurance company. She paid debts that were not alleged in the SOR. She paid or is paying all but three of the remaining debts in the SOR. She credibly stated that she is committed to maintaining her finances in order and paying her debts.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in her intentions to pay her debts. There are clear indications that the problem is being resolved and is under control. I find that

she has a plan to resolve her financial problems, and she took significant action to implement that plan. Financial considerations security concerns are mitigated.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information about her taxes on her 2017 SF 86. AG ¶ 16(a) has not been established. SOR ¶ 2.a is concluded for Applicant.

### **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 relevant circumstances. The 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.

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. I have incorporated my comments under Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns.

### **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:	For Applicant
Subparagraphs 1.a-1.x:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

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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Edward W. Loughran  
Administrative Judge