



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



In the matter of: )  
)  
) ISCR Case: 18-02240  
)  
Applicant for Security Clearance )

**Appearances**

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

February 13, 2020

**Decision**

ROSS, Wilford H., Administrative Judge:

**Statement of Case**

On March 2, 2016, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). (Item 5.) On January 9, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). (Item 1.) The action was taken 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 Department of Defense on June 8, 2017.

Applicant signed her Answer to the SOR (Answer) on March 20, 2019, and requested her case be decided on the written record in lieu of a hearing. (Item 4.) On April 12, 2019, Department Counsel submitted the Department’s written case. A complete copy

of the file of relevant material (FORM), consisting of Items 1 to 15, was provided to Applicant, who received the file on April 29, 2019.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted no additional information. The case was assigned to me on July 15, 2019. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 39 years old. She is single with one child. Applicant served on active duty with the United States Navy for 15 years, receiving an Honorable Discharge in August 2013. She was unemployed for about 18 months after she left the service. She has worked for several government contractors since February 2015. She wishes to obtain national security eligibility in connection with her employment in the defense industry. (Item 5 at Sections 13A, 15, and 17.)

Department Counsel submitted fifteen Items in support of the SOR allegations. Item 15 is inadmissible. It consists of summaries of unsworn interviews of Applicant conducted by various interviewers from the Office of Personnel Management on January 10, 2005; January 18, 2011; June 22, 2017; and February 23, 2018. Applicant did not adopt the summaries as her own statements, or otherwise certify them to be accurate. Under Directive ¶ E3.1.20, these Report of Investigation (ROI) summaries are inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 15 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM commentary, which described the potential admissibility of Item 15. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has failed to meet her financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the SOR allegations with the exception of subparagraph 1.e, which she denied. The total amount of money Applicant is alleged to owe in past-due debts is approximately \$22,300.

Applicant admitted SOR allegations 1.a and 1.b, which concern Applicant's 2014, 2015, 2016, and 2017 Federal and state income tax returns. Applicant admitted that she had not filed any of those tax returns in a timely fashion. In Section 26 of Item 5, which concerns Applicant's financial situation, she stated that her 2014 returns had not been

filed because, "I was unemployed at the time and I did not know I needed to do my taxes for 2014 until I filed for 2015." She further stated that, "I am in the process of gathering the information I need from my unemployment agency to take back to H&R Block to have them do my taxes for 2014." (Item 5.)

Applicant also responded to interrogatories propounded on her by DOHA. In her response, dated December 19, 2018, she again admitted not filing state or Federal tax returns for tax years, 2014 through 2017. For 2014 and 2015 she stated, "I was unemployed." For years 2016 and 2017 she stated, "I was unable to pay the price to get them done due to bills accumulating. I still am trying to catch up and make payments. My home foreclosed and I'm currently living in an apartment." She also submitted documentation from the Internal Revenue Service (IRS) confirming the fact that she had not filed her Federal returns. (Item 6 at 6, 38-43.)

Allegations 1.c through 1.i concern Applicant's past-due indebtedness. The current status of the debts is as follows:

1.c. Applicant admitted owing \$12,232 to a finance company for the balance due on an automobile that was repossessed. Applicant stated in her interrogatories that she was making payments on this debt. The most recent credit report in the record, dated April 10, 2019, showed the debt as, "Redeemed or reinstated repossession." In addition, the report stated Applicant, "Pays account as agreed." (Item 6 at 3, 8; Item 7 at 2.) This debt is being resolved through payments.

1.d. Applicant admitted owing \$2,228 to the Department of Veterans Affairs for a past-due debt. Applicant did not supply any information showing that she had paid, or had plans to pay, this debt. (Item 5 at Section 26; Item 6 at 3, 20, 21; Item 7 at 4.) This debt is not resolved.

1.e. Applicant denied owing \$365 for a past-due mobile phone bill stating, "It's paid off." The most recent credit report in the record states, "Account paid for less than full value. Paid collection." (Item 7 at 3.) This debt is resolved.

1.f. Applicant admitted owing \$2,310 to a condominium association for a judgment entered against her in 2015 for unpaid fees. Applicant no longer lives at the property, which was the subject of a foreclosure action. Applicant did not supply any information showing that she had paid, or plans to pay, this debt. (Item 5 at Section 26; Item 6 at 4; Item 9.) This debt is not resolved.

1.g. Applicant admitted owing \$2,470 to a condominium association for a second judgment entered against her in 2016 for unpaid fees. Applicant no longer lives at the property, which was the subject of a foreclosure action. Applicant did not supply any information showing that she had paid, or plans to pay, this debt. (Item 5 at Section 26; Item 6 at 4; Item 10.) This debt is not resolved.

1.h. Applicant admitted owing \$165.82 to a city treasurer's office for a judgment entered against her in 2016. Applicant submitted no information showing that she had paid, or plans to pay, this debt. (Item 5 at Section 26; Item 11.) This debt is not resolved.

1.i. Applicant admitted owing \$2,470 to a condominium association for a judgment entered against her in 2017 for unpaid fees. Applicant no longer lives at the property, which was the subject of a foreclosure action. Applicant did not supply any information showing that she had paid, or plans to pay, this debt. (Item 5 at Section 26; Item 6 at 4; Item 12.) This debt is not resolved.

Applicant submitted no documented financial information, such as a budget, from which to make a conclusion that she is now financially stable. Applicant did not submit any evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

### **Policies**

When evaluating an applicant's national security eligibility, 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 Executive Order 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes several conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) 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 Federal, state, or local income tax as required.

Applicant failed to file Federal or state income tax returns, as required, for tax years 2014, 2015, 2016, and 2017. In addition, she owes past-due consumer debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's substantial financial issues, including failure to timely file tax returns and unpaid bills:

(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, or 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 has not filed her state or Federal tax returns for tax years 2014, 2015, 2016, and 2017. She submitted no information concerning when she plans to file those returns. Mitigating condition 1(g) does not apply. Allegations 1.a and 1.b are found against Applicant.

Applicant submitted no evidence that the debts in allegations 1.d, 1.f, 1.g, and 1.i have been, or will be, resolved. Applicant did not supply any information to support a finding that her financial problems were beyond her control, or that she had acted responsibly under the circumstances. She admitted each debt. I have considered the fact

that Applicant was unemployed for several months after leaving the Navy. However, she continues to owe approximately \$9,700 in past-due debts that she has not paid, or made any plans to pay. AG ¶ 20(a), (b), (c), (d), and (e) do not apply to those debts. Allegations 1.d, 1.f, 1.g, 1.h, and 1.i, are found against Applicant.

Applicant submitted documentation to show that the debts in allegations 1.c and 1.e are either paid or being resolved. Those two allegations are found for Applicant. With those exceptions, Applicant did not mitigate her financial issues. Guideline F is found against 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant did not provide sufficient evidence to show that her debts were being resolved. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment and suitability for national security eligibility. She failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.i:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross  
Administrative Judge