



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



In the matter of: )  
)  
) ISCR Case No. 20-01866  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

03/11/2021

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. She filed for bankruptcy protection under Chapter 13 five times from 1989 to 2017. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 29, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on December 23, 2020. Applicant received the FORM on January 4, 2021. Applicant did not object to the Government's evidence, but she provided a response to

the FORM. The Government's evidence, included in the FORM, and identified as Items 1 through 13, is admitted without objection. The case was assigned to me on February 23, 2021. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

### **Findings of Fact**

In response to the SOR, Applicant admitted all allegations with explanations. (Item 2) She is 58 years-old and unmarried with no children. Applicant attended college, and she obtained her undergraduate degree in 1984. She received a graduate degree in March 2010. She has also attended college classes from 2010 to 2015. Applicant completed her most recent security clearance application on August 5, 2019. She retired from employment in 2010 after working 20 years and has worked for her current employer as a scheduler since July 2019. (Item 4) Applicant does not currently hold a security clearance. (Item 3)

### **Financial**

The SOR alleges that Applicant has filed for Chapter 13 bankruptcy protection on five occasions from 1989 to 2017, and has a delinquent credit card account placed in collection. Applicant admitted all SOR allegations. She stated in her Answer that unemployment was the reason for two bankruptcies in 2010 and 2011. However, she filed for bankruptcy protection twice while she was employed full time. Her November 2010, Chapter 13 bankruptcy claimed \$64,377 in unsecured non-priority debts, which consisted of primarily student loans and other unsecured loans. (1.c) SOR (1.b) was dismissed in 2011 due to unemployment and subsequent inability to make the payment plans. (Item 2, 10) She elaborated that her decision to seek bankruptcy protection was made at the advice of her attorney. She elaborated that in 2010 she had medical problems and was granted a medical release from her job of almost 20 years. Her income changed significantly and has never been the same. She acknowledged that she takes the responsibility for not downsizing and changing her living habits as she should.

As to SOR ¶ 1.a, an active Chapter 13 bankruptcy filed in June 2017, she claimed \$168,802 in student loans and \$9,927 in other non-priority debts. Her plan was confirmed in 2017, amended in February 2018, and modified twice in November 2018 based on the trustee's assertion that Applicant is party to a lawsuit or other course of action that might result in additional disposable income. In January 2020, the trustee moved to dismiss the bankruptcy following Applicant's failure to make plan payments; and an income withholding order was issued to withhold plan payments from Applicant's wages. Applicant submitted a copy of the Trustee's report of receipts and disbursement for this case. It does not appear that there is a delinquency of \$5,203.10. (Item 9) She has shown that payments were made until December 9, 2020. (Response to FORM) The motion to dismiss was withdrawn on May 4, 2020. (Item 9)

Applicant also noted that in reference to SOR 1.b and 1.c, as discussed above, she filed and refiled within one week in 2010, because she wanted to include a vehicle and to demonstrate that she was employed. (Item 11) The bankruptcy was dismissed in 2011. The 2011 Chapter 13 bankruptcy reported essentially the same debts associated with the 2010 filing. This was dismissed as discussed above for failure to make plan payments.

As to SOR 1.d, Applicant filed for Chapter 13 bankruptcy relief in September 2005, claiming \$20,928 in unsecured non-priority debts such as cash advances, credit card debt, consumer service accounts and unsecured loans. This bankruptcy was discharged in October 2008. (Item 12)

Applicant first filed for Chapter 13 bankruptcy, SOR 1.e, in 1989. It was converted to Chapter 7 and discharged in August 1995. (Item 13)

As to SOR 1.f, a collection account that was her mother's, Applicant has consistently made payments on the account and submitted documentation to support her \$50 monthly payments since 2015, with a current balance of \$2,363, reduced from the original balance of \$3,013. (Attachment to Answer)

In Applicant's subject interviews of 2019 and 2012, Applicant stated that she really did not understand the bankruptcy process when she first filed and dismissed the early ones. As to the last 2017 filing, she stated that she became unemployed in 2017 and decided to file for bankruptcy. She pays \$379 a month to the bankruptcy trustee. Applicant has student loans that are not included in the bankruptcy plans, but she has no documentation that she has paid them. She claims they are in deferment, but provided no information concerning the issue. The student loans occurred between 2008 and 2015. (Items 5, 8)

Applicant also blamed gambling habits and overextending on spending for her 2005 filing. She admits over extension in debt, spending above her means, and using too many credit cards. (Item 7) She admitted the debts were not tied to circumstances beyond her control. Also, she was 90 to 180 days delinquent on accounts before filing for bankruptcy. She has never sought financial counseling.

In 2012, Applicant reported that her gambling habits led to some of her financial difficulties and that she would gamble an average of twice every three months. She used gambling as a hobby and entertainment. (Item 7) She did not believe that it impacted many of her accounts. It is not clear from the record whether she still gambles.

Applicant is now gainfully employed. There is no information in the record concerning her salary, use of a financial counselor, (except the requisite counseling when filing a bankruptcy), or budget. There are no character references. When Applicant was gainfully employed before her retirement in 2010, she received two bankruptcy discharges: a Chapter 7 discharge (converted from Chapter 13) in August 1995, and a Chapter 13 discharge in 2008. (Items 3, 12, 13) Two months after retirement, she filed a third bankruptcy, which was dismissed for failure to make plan

payments. (Item 11) This bankruptcy included student loans that appear to be associated with her 2010 graduate degree. Additional student loans are also claimed in the active bankruptcy. (Item 9)

## **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 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(a), 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 Exec. Or. 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* Exec. Or. 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 bankruptcy schedules and her credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"); 19(c) ("a history of not meeting financial obligations"); and 19 (g) failure.

The security concerns raised in the SOR may be mitigated by 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 admitted, and her credit reports confirm, that she gambled and did not maintain her finances. Granted she had some unemployment, but she chose to gamble and file for bankruptcy instead of making payments on her accounts. She has not received financial counseling and there is a pattern of filing for bankruptcy over a period of many years. She is now in an active Chapter 13, 2017 filing. She has not provided evidence of payments on her student loans which are not included in her bankruptcy. AG ¶ 20(a) is not applicable because she does not have her finances under control.

Applicant provided no credible nexus as to the short periods of unemployment and her inability to pay her debts. AG ¶ 20(b) partially applies, but she did not act responsibly under the circumstances. In fact, she admitted none of the financial issues were beyond her control. She utilized the bankruptcy process, which is a legitimate way of resolving debt, but she has shown a pattern of misuse of this legal process over many years.

Applicant's inaction regarding the debts precludes a conclusion that her finances are mitigated. She did not receive credit counseling. AG ¶ 20 (c) does not apply. She made some payment plan for one collection account. AG ¶ 20(d) partially applies. Due to the pattern of bankruptcy filings there is no record of whether the underlying problem has been resolved. Based on the evidence produced by Applicant, it is impossible to conclude she made a sufficient good-faith effort to resolve her debts or that her financial situation is under control. The Government has cause to question whether Applicant will successfully complete the terms of her active Chapter 13 bankruptcy and repay her overdue creditors. Despite gainful employment, there is no evidence that Applicant has made any payments on her student loans from 2008 until 2015. She has shown a pattern of financial irresponsibility. Any doubts must be resolved in favor of the Government.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant obtained her undergraduate and graduate degrees. She worked for about 20 years for one institution. She has had various jobs. She has been employed with her current employer since July 2019. On balance, Applicant did not produce information sufficient to mitigate the security concerns about her finances. She has shown a pattern of misuse of the bankruptcy process for many years.

Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

### **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
Subparagraphs 1.a –1.e:	Against Applicant
Subparagraph 1.f:	For 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's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge