



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03549
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Lindsey Bierman, Esq.

10/29/2021

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant’s financial problems stem from a lengthy unemployment and a divorce. Since leaving her husband and gaining a new job, she has saved \$190,000. Currently, two of the three debts set forth in the Statement of Reasons (SOR) have been satisfied through the foreclosure process, and Applicant is negotiating a settlement on the third SOR debt. Upon considering the cause of the delinquencies, the steps that Applicant has taken to resolve them, and her current financial stability, I conclude that she has mitigated the security concern. Clearance is granted.

**History of the Case**

On January 30, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On February 25, 2020, Applicant answered the SOR, admitting all of the allegations and requesting a hearing; whereupon, the case was assigned to me on June 2, 2021. On August 5, 2021, the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the case for August 24, 2021.

The hearing was held as scheduled. I received six Government exhibits (GE 1 – GE 6) and seven exhibits from Applicant (AE A – AE I), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the conclusion of the record, I left the record open for Applicant to provide additional exhibits. Within the time allotted, she submitted one additional exhibit that I marked and incorporated into the record as AE J. The transcript (Tr.) was received on September 1, 2021.

### **Findings of Fact**

Applicant is a 48-year-old woman with three children, ages 13, 18, and 20. She was married previously from August 1998 to May 2019. It ended in divorce. (Answer at 2) Applicant graduated from college in 1996. Since 2018, she has been working for a defense contractor as an engineering consultant. (GE 1 at 12) Per her employer, she “provides sound support to her programs ensuring integrity of [the] products and compliance with [the] processes and procedures.” (AE D at 3) According to a supervisor, Applicant is dedicated to her tasks and has always met the needs of the program. (AE E at 1)

Although Applicant was the primary income earner, her husband was responsible for managing the finances and paying the bills. (Answer at 1) Applicant deposited her paychecks into a joint account, and received an allowance from her husband. She recognized that this was odd; however, she never questioned her husband because in the culture in which she was raised, “the man is the dominating head of household and any financial decisions are driven by him and not questioned without adverse reaction.” (Answer at 1)

For the majority of Applicant's marriage, she did not question her husband's financial management. (Tr. 15) Occasionally, credit cards would be declined, or her husband would tell her to wait a few days before paying a bill until another paycheck was received, but “the money would always eventually show up.” (Tr. 15)

When Applicant lost her job in 2015, she began to monitor the family finances more carefully, and realized that her husband had been grossly mishandling their money for years, using her income to support a lavish secret lifestyle, including an apartment where he entertained multiple mistresses. (Answer at 1) Most problematic, Applicant discovered that her husband, unbeknownst to her, had transferred her \$20,000 severance pay from their joint account to a secret bank account that she could not access. (Answer at 1; Tr. 24) For the next few years, Applicant struggled, often going hungry so that she “could buy enough groceries for the children without making it obvious to them what was really going on.” (Answer at 1) Appellant's husband's disrespect of her evolved into contempt, as he

would sometimes arbitrarily cut off her cell phone, and ultimately led to sporadic acts of violence, as he would sometimes respond to questions about the family finances by spitting on her or hitting her on the head. (Tr. 17)

In January 2018, Applicant obtained another job. (AE D at 1) Seven months later, in July 2018, Applicant and her husband initiated the divorce process. (Answer at 1) Their divorce was finalized in May 2019. (Tr. 29) Applicant moved in with her parents after the divorce, and her ex-husband remained in the home. (Tr. 29)

Subparagraphs 1.b and 1.c, totaling \$32,000, are mortgage delinquencies on a rental property that Applicant and her ex-husband owned. They have been delinquent since 2016. (GE 3 at 2) It was foreclosed on in May 2018. (Tr. 37) It resold for more than the balance that Applicant and her husband owed, and is no longer in delinquent status. (Tr. 28; AE B at 1)

Subparagraph 1.a is the delinquent mortgage account on the home where Applicant lived with her ex-husband. (Tr. 28) It has been delinquent since 2013. (GE 3 at 1) Although Applicant's attempts at negotiating a deed in lieu of foreclosure failed, she anticipates that upon foreclosure and resale, she will receive a surplus. Although her ex-husband still lives in the home, he has not been helping her resolve the mortgage. He has no incentive to help because he is legally joint owner of the home, as memorialized in the deed, but has no responsibility for the mortgage, which is solely in Applicant's name. (Answer at 2) Absent her ex-husband's cooperation, the negotiations are at an impasse.

Applicant's salary is \$135,000. (Tr. 30) Because her parents do not charge her for rent, and she lives an austere lifestyle, she has been able to save \$190,000. (Tr. 30; AE J) She intends to use these savings to facilitate the settlement of the delinquent mortgage in SOR subparagraph 1.a in the event there is a deficiency. (Tr. 33) Applicant has no other delinquent debts.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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 ¶ 1(d) requires that “[a]ny 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

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 . . . . An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s history of delinquent debt generates security concerns under AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial, consistent with the plan. Applicant’s financial problems stemmed from an abusive husband who

mismanaged their finances and misappropriated her pay without her knowledge to support a secret lifestyle. When she realized the extent of his deception shortly after her job layoff, she began questioning him more about his financial management, and he responded with threats, intimidation, and violence.

The mortgages set forth in SOR subparagraphs 1.b and 1.c were satisfied through the foreclosure process. Applicant obtained a new job in 2018 and moved in with her parents in May 2019 after the finalization of her divorce. Since then, she has saved approximately \$190,000, and is negotiating the resolution of the outstanding mortgage set forth in subparagraph 1.a. She has no other delinquent debts, and it is unlikely that her financial problems will recur because she is no longer married to her spendthrift husband.

Under these circumstances, the following mitigating conditions apply:

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; and

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

### **Whole-Person Concept**

Upon considering this case in the context of the whole-person concept, particularly with respect to the surrounding circumstances, the presence of rehabilitation, and the minimal likelihood of recurrence, I conclude that Applicant has mitigated the financial considerations security concern.

### **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.c:

For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge