



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



In the matter of:	)	
	)	
1	)	ISCR Case No. 20-00866
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

07/18/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On June 1 2020, 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 and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2022.

The hearing was convened as scheduled on June 14, 2022. Government Exhibits (GE) 1, 3, 4, and 6 were admitted in evidence without objection. GE 5 was admitted over Applicant’s objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant’s Exhibits (AE) A and B, which were admitted without objection.

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<sup>1</sup> Applicant has a new last name since she married in February 2022. I have not amended the SOR in order to maintain clarity among the documents.

## Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She worked for a company subcontracting for her current employer from 2014 until she was hired by her current employer in 2015. She seeks to retain a security clearance, which she has held since about 2015. She has a bachelor's degree that she earned in 2013. She married in September 2012, separated for a period in 2016, reconciled, separated permanently in 2020, and divorced in 2021. She remarried in February 2022. She has a five-year-old child from her first marriage. ((Tr.) at 24, 29-33, 43, 45; Applicant's response to SOR; GE 1, 2)

Applicant was in a car accident in about 2010 or 2011 in which her leased car was rear-ended and pushed into the car in front of hers. She sustained medical injuries. She had to hire a lawyer to assist in collecting her damages. The case was settled about three years later, but her finances suffered in the interim. (Tr. at 21-22; Applicant's response to SOR; GE 2)

Applicant was harassed by another employee in about 2011. She brought it to the attention of her employer who did nothing about it. She quit because she did not feel safe. She was denied unemployment compensation because she quit. She did not find suitable employment immediately, which led to more financial problems. (Tr. at 18-23 Applicant's response to SOR; GE 2)

Applicant filed a Chapter 7 bankruptcy case in June 2012. There were no secured claims or unsecured priority claims. There were \$22,431 in unsecured nonpriority claims. Her debts were discharged in October 2012, shortly after she married her first husband. She completed credit counseling and financial management courses as a requirement of her bankruptcy. (Tr. at 18, 22, 34; Applicant's response to SOR; GE 1, 2, 5)

Applicant and her first husband had marital difficulties in 2016. The family's finances contributed to the difficulties. Applicant is organized about her finances, and her ex-husband is not. He opened some accounts without her knowledge. They separated in 2016 when he essentially kicked her out of the house. (Tr. at 24-26, 35-36; Applicant's response to SOR; GE 1, 2)

Applicant's ex-husband could not pay the bills on his own while they were separated, and he decided to file a Chapter 7 bankruptcy case. Applicant did not want to file bankruptcy again, and she was likely precluded from filing because of her 2012 bankruptcy, but it was his choice to make. She has happy with her bankruptcy attorney in 2012, so she recommended him to her husband. (Tr. at 24-26, 36-40, 49; Applicant's response to SOR; GE 1, 2)

Applicant's ex-husband filed a Chapter 7 bankruptcy case in February 2016. He reported that he had two vehicles and two motorcycles. Under Schedule D: Creditors Who Have Claims Secured by Property, the petition listed a mortgage loan and loans for the two vehicles and two motorcycles. Under Schedule E/F, Creditors Who Have

Unsecured Claims, the petition listed five nonpriority claims totaling \$22,838. He decided to surrender the two vehicles and one of the motorcycles, and he reaffirmed the loan for the second motorcycle. His dischargeable debts were discharged in June 2016. (Tr. at 27-28; Applicant's response to SOR; GE 1, 2, 6)

The SOR alleges Applicant's 2012 bankruptcy and four charged-off debts totaling about \$42,900. The debts are all joint debts with Applicant's ex-husband. Three of the debts consist of the deficiency balances owed on the loans for the two vehicles and the motorcycle that her ex-husband returned as part of his bankruptcy. The fourth debt is a joint credit card debt. All of the debts were listed in her ex-husband's bankruptcy petition and discharged against him. (Tr. at 24-27; GE 6)

Applicant discovered during their separation that she was pregnant with her and her ex-husband's child. They reconciled after about four to five months and had a child together. They lived in a community property state. As such, in general, a bankruptcy filed by one spouse prevents the creditors from collecting against the other spouse, even if the other spouse was not a party to the bankruptcy. This was relayed to her by the bankruptcy attorney, who knew she had been through her own bankruptcy in 2012. (Tr. at 26-29, 39c, 54; Applicant's response to SOR; GE 2)

The discharge order signed by the bankruptcy court judge contains the following language:

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

The order also contained the following:

This information is only a general summary of the bankruptcy discharge: some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case. (GE 6)

In June 2020, Applicant's ex-husband's bankruptcy lawyer wrote a letter about the SOR debts:

Although [Applicant] was not included as a party on her husband's bankruptcy, she avails herself of the "community discharge." In community property states like [Applicant's state], after a married person files for bankruptcy, pre-petition creditors are enjoined from seeking recovery against the non-filing spouse, except for the spouse's separate property. As long as [ex-husband] and [Applicant] remain married to each other, [Applicant's] income and all community assets are not attachable by any pre-petition creditor discharged in [ex-husband's] bankruptcy. As a practical matter, because [Applicant] has no separate property and her income is a community asset, pre-petition creditors such as those listed

above are enjoined from levying or garnishing anything from [Applicant].  
(Applicant's response to SOR)

In layperson's terms, what this means is that in a community property state (such as Applicant's), the non-filing spouse's debts are not discharged in bankruptcy, but the non-filing spouse's community property is protected from creditors. That is a subtle difference that may be lost on most laypeople (and some non-bankruptcy attorneys). Language such as "community discharge" only serves to make it more confusing. To further complicate matters, there may be an exception if the non-filing spouse filed a bankruptcy within the previous six years.

Applicant relied on the statements by her ex-husband's bankruptcy attorney and believed the debts were discharged or the functional equivalent of a discharge, and she made no effort to pay them. The creditors likely also considered the debts discharged or at least uncollectable. She never heard from any of the creditors after the bankruptcy. None of the debts are reported to have been transferred to a collection company. (Tr. at 39-42; Applicant's response to SOR; GE 3, 4; AE A)

Applicant's finances are otherwise in good shape. As indicated above, she was the financially responsible one in her first marriage. She has accrued no new delinquent debts since her ex-husband's bankruptcy. She has a good and stable job. Her new husband owns an e-commerce business and has no debt except their mortgage. (Tr. at 30-31, 45-48; Applicant's response to SOR; GE 2-4; AE A)

Applicant submitted a letter from a work colleague and friend attesting to her impeccable moral character and positive job performance. She is praised for her work ethic, dedication, and trustworthiness. (AE B)

## **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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including a 2012 Chapter 7 bankruptcy discharge and delinquent debts that she held jointly with her ex-husband. The evidence is sufficient to raise the above disqualifying conditions.

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; and
- (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.

Applicant's 2012 bankruptcy on its own has little current security significance. It is mitigated. Regarding her more recent financial issues and the SOR debts, this is an unusual case. Applicant's ex-husband filed a Chapter 7 bankruptcy case while they were separated. She did not want to file bankruptcy again, and she was likely precluded from filing because of her 2012 bankruptcy, but it was his choice to make.

They lived in a community property state and his bankruptcy attorney, who was also her bankruptcy attorney on her 2012 case, told her that the "community discharge" protected her. She believed the debts were discharged or the functional equivalent of a discharge, and made no effort to pay them. The creditors likely also considered the debts discharged or at least uncollectable. She never heard from any of the creditors after the bankruptcy. Because of her previous bankruptcy, the creditors may have been able to pursue Applicant, but she did not know that, and it is likely the creditors did not know it either. I do not expect Applicant to understand the intricacies of bankruptcy law, particularly when she followed the advice of a bankruptcy attorney. With the exception of the SOR debts, her current finances are sound. She and her new husband are on a sound financial footing.

The SOR debts have not been paid. However, 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). I believe that Applicant's actions, under the limited circumstance of this case, were reasonable and responsible.

I find that Applicant's financial problems were largely beyond her control and she acted responsibly under the circumstances. They occurred under such unique circumstances that they are unlikely to recur. Her finances do not cast doubt on her current judgment, reliability, trustworthiness, and ability to protect classified information. The above mitigating conditions are applicable.

### **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 Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.e: For Applicant

## **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge