



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-05374

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

01/25/2013

**Decision**

HOWE, Philip S., Administrative Judge:

On July 29, 2011, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 3, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. The action was taken under Executive Order 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 September 1, 2006.

Applicant answered the SOR in writing on September 24, 2012. Applicant stated she was making payments on some debts and not paying others. She also asserted the debts were at least seven years old. Applicant requested her case be decided on the written record in lieu of a hearing.

On November 1, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on November 1, 2012. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on November 9, 2012. Applicant did not file a Response to the FORM within the 30 day time allowed that expired on December 9, 2012. I received the case assignment on January 4, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant admitted the allegations in Subparagraphs 1.a to 1.f and denied all other allegations in Paragraph 1 pertaining to Financial Considerations. She denied the allegations in Paragraph 2 concerning Personal Conduct. (Items 2-6)

Applicant is 29 years old, unmarried, and a full-time student who does part-time security work for a defense contractor. (Item 4)

Applicant has 11 delinquent debts totaling \$15,727. These debts remain unresolved. They date from at least 2006 and continued to be incurred into 2011. The debts include four medical debts, a repossessed automobile, unpaid rent on an apartment (which the creditor reduced to a court judgment), a furniture purchase, a telephone bill, and three book or movie purchases. (Items 3, 5-8)

Applicant submitted responses to a DOHA interrogatory about her delinquent debts. She did not provide any responses to the questions about the debts in Subparagraphs 1.a, and 1.d to 1.k. Applicant attached several documents to her interrogatory pertaining to other debts she paid, but no documents relevant to the financial obligations alleged in the SOR. (Items 1, 5, 6 and 7)

Applicant's SF-86 contains negative replies to the questions pertaining to her financial history. Specifically, she denied having possessions repossessed (Question 26.b), having any judgments rendered against her (Question 26.e), having been over 180 days delinquent on any debt (Question 26.m), and having been more than 90 days delinquent on any debt at the time she completed that SF-86 (Question 26.n). Applicant claims she misread the questions, was going too fast to comprehend the information requested, denied knowing of the landlord's judgment against her, and was unaware of her current debts because she was told by someone sometime that debts older than seven years "go away," and her debts are "several years old." (Items 3-8)

Applicant submitted a personal financial statement with her July 2012 interrogatory. It shows a net monthly surplus of income over expenses of \$649. The statement shows she is paying two delinquent debts, including the two medical debts listed in Subparagraphs 1.b and 1.c of the SOR that are combined into one amount on her financial statement. She claims to be paying \$100 on the total debt of \$2,182. In her

September 2011 statement to the government investigator Applicant stated she intended to look into these accounts. She did not provide any proof of actual payments on these two medical debts. Her SOR Answer claims she pays each medical account \$100 monthly; however her financial statement does not support that contention. (Items 3, 5-8)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies 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 access to classified information will be resolved in favor of 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 access to classified information. 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 information. 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2006 to the present, Applicant accumulated 11 delinquent debts, totaling \$15,727, which are unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No mitigating condition applies.

Applicant did not present any evidence that she acted responsibly regarding these delinquent debts. Even her claim that she is paying two medical debts is unsubstantiated by any documentary evidence. She has no plan to repay these 11 debts and no basis to dispute them. She failed to meet her burden of proof on all issues.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(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 disclose her financial delinquencies as alleged in SOR Paragraph 1 on her SF-86. She spent the money to purchase furniture, purchase phone service, purchase an automobile, and buy books and entertainment material. She did not pay for those items. She also obtained medical services and did not pay for them. Applicant claims ignorance of the obligation to repay debts she incurred, but such a defense is not reasonable in any adult. Nor is the assertion that after seven years her debts would simply disappear. She knew she had delinquent debts and did not disclose them on her SF-86.

AG ¶ 17 lists seven mitigating conditions which might apply in any case. Two conditions might apply, while the remaining five conditions are not relevant. AG ¶ 17 (a) states it might be mitigating if Applicant promptly corrected her financial omissions before being questioned by the government investigator. She did not do so, so this mitigating condition does not apply. AG ¶ 17 (b) might apply if Applicant received improper or inadequate advice from an authorized person or her attorney. There is no evidence of such advice, so this mitigating condition does not apply.

### **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(a):

(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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day and is obviously voluntary. Applicant's inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on any of her delinquent debts during the past seven years.

I also considered the several falsifications exhibited by Applicant's answers to the various questions contained in Question 26 of the SF 86. She did not disclose any of her delinquent debts, though she had many. This pattern of falsification does not reflect favorably on Applicant's trustworthiness, good judgment, and reliability.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. She also did not mitigate the security concerns under the guideline for Personal Conduct. I conclude the "whole-person" concept against Applicant.

### **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
Subparagraph 1.a to 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a to 2.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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PHILIP S. HOWE  
Administrative Judge