



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 12-05693
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

06/10/2015

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by a history of failing to meet her financial obligations. She amassed a significant amount of delinquent debt, and resolved most of it through wage garnishment and a recent Chapter 7 bankruptcy. Notwithstanding the presence of some mitigation, an insufficient amount of time has passed to conclude that her finances are under control and financial problems will not recur. Clearance is denied.

**Procedural History**

On August 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant's conduct and circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> On October 6, 2014, Applicant answered the SOR and requested a hearing to establish her continued eligibility for access to classified information.

<sup>1</sup> This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

On November 20, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was originally scheduled in January 2015 and then in February 2015, but were canceled on both occasions due to inclement weather. By agreement of the parties, her hearing was held on March 17, 2015. Department Counsel offered Government exhibits (Gx.) 1 – 4. Applicant testified and offered Applicant's exhibits (Ax.) A – J. She requested additional time post hearing to submit documentary evidence. I granted her request, and she timely submitted Ax. K. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on March 25, 2015, and the record closed on April 3, 2015.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:<sup>2</sup>

Applicant, 41, was born overseas and became a U.S. citizen in around 1997. She has been married for about 14 years, and has three children. She earned her bachelor's degree in electrical engineering in 2000, and has been continuously employed as a federal contractor for the past 15 years. She has held a security clearance since about 2002, and has been with her current employer since 2011. (Tr. at 9, 22, 27, 41-42; Gx. 1) Her current supervisor writes that Applicant is reliable and completes her assigned work in a timely and professional manner. (Ax. G)

In January 2012, Applicant submitted a security clearance application (SCA or application) as part of the periodic reinvestigation of her background. She listed about eight delinquent debts totaling over \$145,000. (Gx. 1 at 39-51) She was subsequently interviewed by a background investigator, and discussed the eight delinquent debts listed on her application. She also discussed with the investigator over 20 debts listed on her credit report as either reduced to judgment, in collection status, or seriously past due. She explained that her financial problems stemmed from her husband's failed business. He operated the business from 2005 to 2009, and since then had been unemployed or underemployed. She also told the investigator that she was in "the process of setting up a payment plan with all creditors . . . and will satisfy the debts in the near future." (Gx. 2, *Personal Subject Interview*, March 21, 2012, at 3)

In January 2014, Applicant responded to a DOD CAF interrogatory that inquired, in part, as to what steps she had taken to resolve her delinquent debts. The interrogatory also requested that Applicant provide documentation to support any claim of debt resolution. (Gx. 2, *Instructions*, ¶¶ 1.a and 1.b) Applicant responded by noting that her husband was expecting to start a full-time job in April 2014, at a starting annual salary of \$80,000. She further noted that their goal was "to pay off all our debts and bring all past due accounts to current status." (Gx. 2, Response to ¶ 7).

---

<sup>2</sup> In reaching my findings of fact, I have made only those inferences reasonably supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

In response to the DOD CAF interrogatory, Applicant submitted a personal financial statement (PFS). The PFS reflects a monthly net remainder (disposal income remaining after paying expenses and debts) of over \$900 and about \$17,000 in assets. The PFS also reflects that Applicant's single largest monthly expense, following her mortgage, was \$920 for "credit cards and other debts." (Gx. 2)

Applicant also submitted documentation that her pay was garnished to satisfy some past-due debts. She submitted offers she received from overdue creditors to settle over \$180,000 in delinquent debt. At hearing, Applicant submitted documentation that she accepted one offer for \$4,000 to resolve a \$13,000 delinquent home equity line of credit (HELOC). (Tr. at 36-38, 42-43; Gx. 2, *Settlement Offers*; Ax. I)

In August 2014, the SOR, listing 16 delinquent debts totaling over \$150,000, was issued.<sup>3</sup> Applicant again explained that her financial problems stemmed from her husband's failed business. She amassed the delinquent debts from 2009 to 2014. Applicant's husband filed and had his debts discharged through Chapter 7 bankruptcy in around September 2014. Applicant subsequently filed her own petition for Chapter 7 bankruptcy, and her debts were discharged in January 2015. All the SOR debts, except for Applicant's student loan debt (1.n), were resolved either through involuntary wage garnishment or through the Chapter 7.<sup>4</sup> (Tr. at 23-26, 38-62; Gx. 3 – 4; Ax. A)

Applicant submitted documentation that she is now paying the homeowner's association (HOA) fees on two properties, her primary residence and a rental property. She previously failed to pay the HOA fees on both properties and the homeowner's association secured judgments against her in 2009, which went unresolved until recently. Applicant and her husband had two other properties that were disposed of through foreclosure or an agreed-upon short sale. (Tr. at 42-47, 60-62; Gx. 3 – 4; Ax. K)

Applicant's husband secured a job with the federal government in February 2015, at a starting annual salary of approximately \$64,000. The job is a two-year term appointment. (Ax. C) The record is silent as to what occurred with the prospective job he was expected to start in April 2014. Applicant recently received a raise, and her current annual salary is approximately \$97,000. (Ax. D) She testified about taking an online financial counseling course. She currently has three credit cards, including a \$7,000 line of credit that she opened after the bankruptcy. (Tr. at 29, 55-56) She submitted a written budget, which indicates that, after paying their monthly expenses and debts, her family has over \$7,000 in monthly discretionary income. (Ax. E) She testified, however, that after paying her monthly expenses and debts, her monthly "cash flow" is "about \$2,000." (Tr. at 28)

---

<sup>3</sup> The SOR alleges two separate debts at subparagraph 1.d. I amended the SOR to reflect that the 2009 judgment for \$1,232 is 1.d(1), and the \$8,565 charged off account is 1.d(2).

<sup>4</sup> Department Counsel stipulated that the SOR debts alleged in ¶¶ 1.i and 1.l are duplicates. Accordingly, SOR 1.i is decided in Applicant's favor.

Applicant submitted a portion of a bank statement to show that she is paying her student loans. (Ax. J) The bank statement reflects expenditures at one clothing store that exceeds the total monthly amount allotted for such expenditures, as reflected on the PFS and the written budget submitted at hearing. When questioned about this discrepancy, Applicant explained that the expenditure was due to a particular clothing store having a yearly sale that she generally takes advantage of. (Tr. at 62-63; *Contrast*, Ax. J, *with*, Gx. 2, *PFS*, and Ax. E) The bank statement, Ax. J, also reflects deposits of approximately \$16,200, and withdrawals or debits of over \$16,800.<sup>5</sup>

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information.

---

<sup>5</sup> Ax. J reflects deposits and withdrawals from January and February 2013, or about seven months before Applicant filed for Chapter 7 bankruptcy. Applicant did not submit other credible documentary evidence reflecting that her spending habits have changed and her testimony indicates it has remained the same.

Decisions include, by necessity, consideration of the possible risk an 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.<sup>6</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

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

The security concern regarding an individual who fails to pay their financial obligations and incurs delinquent debt is explained at 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 security “concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts.”<sup>7</sup> The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant has a history of failing to meet her financial obligations, as evidenced by several judgments, some dating back to 2009, and over \$100,000 in delinquent debt that was ultimately discharged through Chapter 7 bankruptcy. This record evidence raises the financial considerations security concern and establishes the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

---

<sup>6</sup> Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). See also ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014); ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013).

<sup>7</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant and her husband overextended themselves to invest in his business. This financial decision was not a matter beyond her control, but the business's failure and her husband's subsequent unemployment and underemployment was a matter largely beyond her control. However, Applicant failed to responsibly manage her finances under the circumstances. She has been aware of the Government's concerns regarding her delinquent debts for the past three years and has repeatedly promised to resolve her debts. Instead, she ignored the vast majority of her overdue creditors, even after some of them secured judgments against her, and spent her disposable income on consumer-related purchases. She resolved her longstanding past-due debts only after the SOR was issued. She then eliminated the great majority of her past-due debts through a Chapter 7 bankruptcy.<sup>8</sup> Although bankruptcy is a viable and legal avenue by which an individual can resolve their debts, Applicant failed to establish that her current financial situation is under control and she has changed the spending habits that contributed to her past financial problems.<sup>9</sup> In reaching this adverse conclusion, I considered Applicant's testimony and the un rebutted evidence regarding her spending habits that, notwithstanding the receipt of financial counseling, tends to indicate poor

---

<sup>8</sup> Applicant brought current her student loans and resolved other non-alleged delinquent debt outside of bankruptcy. SOR 1.n, alleging that one of her student loans is in collections, is resolved in her favor. This favorable record evidence does not outweigh the security concerns raised by Applicant's accumulation of a substantial amount of delinquent debt and disregarded for the majority of the debt until recently.

<sup>9</sup> ISCR Case No. 10-03578 at 3 (App. Bd. Oct. 4, 2012) ("the mere filing of a bankruptcy petition and the successful receipt of a discharge, *standing alone*, does not satisfy the good-faith requirement of AG ¶ 20(d)," nor necessarily mitigate security concerns raised by the accumulation of delinquent debt) (emphasis in original).

self-control and lack of financial reform.<sup>10</sup> Accordingly, I find that AG ¶ 20(b) partially applies, but none of the other mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>11</sup> I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's honesty during the security clearance process and that she has held a clearance for over 10 years without apparent issue. Additionally, I took into account that she has been her family's primary breadwinner for many years and the primary caretaker for the couple's three minor children. Furthermore, she brought her student loans current and resolved a few other debts not alleged in the SOR.

The favorable record evidence, however, does not outweigh the security concerns raised by Applicant's financial situation. Applicant accumulated a significant amount of delinquent debt and for years promised to resolve her debts. Despite having the apparent means to resolve her past-due debts, Applicant took little to no voluntary action to resolve her delinquencies. Instead of paying her overdue creditors, Applicant spent her disposable income on consumer-related purchases. After the SOR was issued, Applicant discharged over \$100,000 in delinquent debt through a Chapter 7 bankruptcy – debt she had amassed from 2009 to 2014. An insufficient amount of time has passed to mitigate the security concerns raised by her accumulation of such substantial debt, especially in light of the conflicting evidence adduced at hearing regarding her current finances. Overall, the record evidence leaves me with doubts and questions about Applicant's continued eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a - 1.h, 1.j – 1.m, 1.o:	Against Applicant
Subparagraphs 1.i and 1.n:	For Applicant

---

<sup>10</sup> ISCR Case No. 10-03578 at 3 (App. Bd. Oct. 4, 2012) (judge properly examined "circumstances underlying Applicant's debts, concluding that his financial management habits evidenced unreliability, untrustworthiness, and an unwillingness to follow rules and regulations").

<sup>11</sup> The non-exhaustive list of factors are: (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.

## **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

---

Francisco Mendez  
Administrative Judge