



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-06303
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

09/24/2015

**Decision**

DAM, Shari, Administrative Judge:

Applicant accumulated delinquent debts as a consequence of caring for her elderly mother and her husband’s long periods of unemployment. She is resolving delinquent debts through a 2013 Chapter 13 bankruptcy plan. In addition, she has paid several debts and has worked with a financial counselor since 2007. Despite the large amount of accumulated debt, she has taken sufficient actions over the years to help address her debts. Financial security concerns are sufficiently mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 8, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On December 2, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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 for SORs issued after September 1, 2006.

On January 7, 2015, Applicant answered the SOR (Answer), and requested a hearing. On April 27, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 5, 2015, DOHA issued a hearing notice, setting the case for July 1, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 5 into evidence. All exhibits were admitted. Applicant testified and called five witnesses. The record remained open until July 21, 2015, to give Applicant time to submit additional information. I extended that deadline to July 28, 2015. (HE 1.) Applicant subsequently submitted AE 6, 7, 8, and 9 (which included 37 pages). All were admitted into the record without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on July 10, 2015.

### **Findings of Fact**

Applicant admitted the 22 allegations contained in Paragraph 1 of the SOR, and provided explanations. Her admissions are accepted as factual findings.

Applicant is a 39-year-old employee of a defense contractor. She has been married for 17 years. She and her husband have three children, ages 11, 14, and 17. She started her current position after earning a bachelor's degree in 1998. She has held a security clearance for 17 years. She is active in several community organizations. (Tr. 10, 20-25.)

Applicant has experienced financial problems since 2007, when her sick mother moved in with her and Applicant began caring for her. As a result, Applicant started incurring medical and living expenses for her mother's care. After her mother died in 2009, she continued paying some of those expenses. In addition, her husband was unemployed from about 2005 to 2008. He again has been unemployed since 2013. (Tr. 26-28.)

In November 2013 Applicant filed a Chapter 13 bankruptcy. The monthly payments are \$875. She is two months behind in those payments, but intends to resolve those this month because of the extra pay period in the month. (Tr. 30, 59; AE 9 at 34, 35.)

In addition to SOR ¶ 1.a, an allegation pertaining to the filing of bankruptcy in 2013, the SOR alleged 21 delinquent debts totaling \$220,959, which included a delinquent mortgage. The status of each debt is documented in AE 9 and is as follows.

Eight SOR-alleged debts are resolved: ¶ 1.c for \$1,359 (Tr. 32; AR at C; AE 9 at 11.); ¶ 1.d for \$1,533 (Tr. 32, 43; AR at D; AE 9 at 12.); ¶ 1.e for \$90 (Tr. 47; AE 9 at 9.);

¶ 1.f for \$30 (AE 9 at 14.); ¶ 1.g for \$55 (GE 3; AE 9 at 13.); ¶ 1.o for \$75 (AE 9 at 23.); ¶ 1.p for \$50 (AE 9 at 24.); and ¶ 1.r for \$1,425 (Answer at E; AE 9 at 26.).

Five SOR-alleged debts are included in the Chapter 13 bankruptcy payment plan: ¶ 1.b for \$22,164, delinquent homeowner's association fees, (Tr. 39; AE 9 at 9.); ¶ 1.i for \$11,341, an automobile loan (Tr. 40; AE 9 at 17.); ¶ 1.j for \$136,000, a delinquent mortgage (Tr. 40; AE 9 at 18.); and ¶ 1.m for \$100.<sup>1</sup> (Tr. 49; AE 9 at 21.) The debt alleged in ¶ 1.n for \$5,179 is listed in the bankruptcy documents, but indicated that the creditor did not file a claim. (Tr. 61; AE 9 at 22.) These debts total \$174,731 and represent the majority of the SOR-alleged debt.

Applicant's two student loans, SOR ¶¶ 1.k for \$21,074 and 1.l for \$18,994, totaling about \$40,000, are in an active bankruptcy auto-state status. Collection efforts have ceased until Applicant completes the Chapter 13 bankruptcy payments. (AE 6, AE 9 at 19, 20.)

Applicant said she is making payments on three SOR-alleged debts: ¶ 1.h for \$114 has a balance of \$95 (Tr. 47; AE 9 at 9.); and ¶ 1.s for \$69 (Tr. 49; AE 9 at 27.). In July 2015 she began payments on the debt listed in ¶ 1.v for \$250. (Tr. 51; AE 9 at 30.)

Applicant is waiting for information from credit bureaus in response to her inquiries regarding three SOR-alleged debts: ¶ 1.q for \$50 (AE 9 at 25.); ¶ 1.t for \$842 (Tr. 37-39; AE 9 at 28.); and ¶ 1.u for \$165.<sup>2</sup> (Tr. 50; AE 9 at 29.)

Applicant has a combined federal tax liability of \$4,173 for tax years 2007, 2012, and 2014, with the balance on her 2014 taxes being \$1,275. She is making monthly payments of \$100 to the Internal Revenue Service (IRS) on her liability, although it is not clear if that payment includes the 2014 taxes.<sup>3</sup> (Tr. 53; AE 6, 9 at 32.)

Applicant's annual salary is \$90,000. As of the end of June 2015, her net income was \$45,617. (AE 9 at 33.) She is looking for a part-time position to help pay expenses and debts. Her husband is also looking for work. She does not use credit cards. (Tr. 29, 59-62.) A financial counselor, who has worked with her through a credit union since 2007, stated that she has helped Applicant "navigate through her financial decisions." (AE 9 at 37.) She said that Applicant has "made sustainable improvements. Although it has been a long grueling process, with some setbacks, [Applicant] never gives up." (AE 9 at 37.) She said Applicant "is persistent and committed to overcoming her financial

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<sup>1</sup> The balance of this debt is \$3,223, as listed in the bankruptcy documents. (AE 9 at 21.)

<sup>2</sup> The current balance of this debt is \$1,700 and owed to a communications company.

<sup>3</sup> The SOR did not allege unpaid taxes. Any matters that were not alleged will not be considered in an analysis of disqualifying conditions. They may be considered in my analysis of mitigating conditions and the whole-person concept.

challenges.” (AE 9 at 9.) Applicant is currently trying to reduce monthly expenses. She recently enrolled in a financial consulting/education program, and completed a financial coaching session with a company recommended by her Employee Assistance Program (EAP). She will meet with a counselor from that program on a monthly basis. (Tr. 64-65; AE 7.)

Five witnesses testified for Applicant. A woman who met Applicant through a community program stated that Applicant is the “epitome of a community servant.” (Tr. 68.) The husband of said woman testified. He said that Applicant has a strong and genuine character. (Tr. 72.) A friend and co-worker testified. She said Applicant is a “woman of integrity. If she gives you her word on something, she will do it, she will follow through.” (Tr. 76.) She trusts Applicant to speak the truth. (Tr. 77.) Applicant’s manager testified. He relies on Applicant and assigns her difficult tasks. She is able to bring people together to accomplish tasks. He has no concerns about Applicant “having a security clearance.” Applicant told him about the financial security concerns immediately after she received the SOR. (Tr. 83-85.) Applicant’s husband testified. He said Applicant discusses finances and bills with the entire family, in order to teach their children financial responsibility. (Tr. 90-91.)

Applicant submitted an interim performance evaluation for the first six months of 2015. Her supervisor gave her an overall rating of “Exceeds Expectations.” (AE 3.) Her 2014 summary rating was “Meets Expectations.” (AE 3.) In her 2013 evaluation, her supervisor stated that Applicant’s “efforts were instrumental” in meeting the team’s goals. (AE 3.) Her 2012, 2011, and 2010 evaluations give her an overall rating of “Exceeds Expectations.” (AE 3.) She submitted numerous certificates documenting recognition for her contributions and work. (AE 4.)

### **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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Since 2007 Applicant has accumulated delinquent debts that she has been unable or unwilling to resolve. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Since some of Applicant's financial problems date back to 2007 and have been ongoing, AG ¶ 20(a) does not apply. Applicant testified that her husband's periods of unemployment and caring for her mother for two years contributed to the financial difficulties. Those are circumstances that were largely beyond her control. In order to fully apply AG ¶ 20(b), Applicant needs to demonstrate that she acted responsibly as the debts accumulated. There is evidence that in November 2013 Applicant began resolving her largest debts through a Chapter 13 bankruptcy payment plan. Although that bankruptcy was not filed as timely as generally contemplated under this mitigating condition, her actions are sufficient to support a limited application of AG ¶ 20(b).

Applicant testified that she has periodically participated in financial counseling. Her financial counselor verified that she began assisting Applicant in 2007 and that Applicant has made progress over the years. Applicant is committed to continuing that progress through another program recommended by her EAP. Based on those actions,

and a review of the status of her current obligations, there is evidence that her situation is coming under control, albeit slowly. AG ¶ 20(c) has some application. In addition to resolving five large debts through bankruptcy, she paid or resolved eight other debts. She is paying three debts and delinquent taxes. Her actions to resolve or pay debts, demonstrates a good-faith effort to resolve her financial obligations. AG ¶ 20(d) applies. Applicant has a reasonable basis to dispute three debts. Because there is no resolution of those, AG ¶ 20(e) has limited application.

### **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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 39-year-old employee of a defense contractor since 1998. Her supervisor strongly recommends reinstatement of her security clearance based on his observations of her character and strong performance record. Colleagues and friends attest to her honesty.

Applicant has been addressing her largest debts since November 2013 through a Chapter 13 bankruptcy payment plan. She has also resolved other smaller debts. I am confident she will keep her promise to continue resolving the SOR debts, her unpaid taxes, and avoid future delinquent debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts.' However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant

demonstrates that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant is an intelligent person, and she understands what she needs to do to establish and maintain her financial responsibility. In addition to the Chapter 13 bankruptcy plan, she has also worked with a financial consultant for many years. Recently, she began a new program through a company recommended by her EAP. There is no evidence in the record which would lead me not to trust her or to conclude that she will not continue to resolve her outstanding debts and achieve financial stability, especially if her husband obtains employment soon. Moreover, she has established a sufficiently “meaningful track record” of debt re-payment. She is an asset to her employer or she would not have retained employment during this process of deciding whether her security clearance should be re-instated. There is no evidence indicating that the outstanding debts create a potential for pressure, exploitation or duress, as her family, friends, and supervisor are aware of the security concerns.

Overall, the record evidence leaves me without doubt or concerns as to Applicant’s present eligibility and suitability for a security clearance. Given her awareness of the potential negative effect additional delinquent debts or failure to continue addressing her current debts could have on her employment, the likelihood that similar issues will occur is minimal. Applicant sufficiently met her burden to mitigate the security concerns arising from financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a to 1.v:	For Applicant



## **Conclusion**

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

SHARI DAM  
Administrative Judge