



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



In the matter of:	)	
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	)	ISCR Case No. 12-06777
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

January 17, 2014

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on May 29, 2012. (Government Exhibit 1.) On June 5, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning Applicant. 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 July 23, 2013, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 26, 2013. This case was assigned to me on September 13, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2013. I convened the hearing as scheduled on October 16, 2013. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant submitted Applicant Exhibit A, which was admitted without

objection, called one witness (her daughter), and testified on her own behalf. Applicant asked that the record remain open for the receipt of additional documents. DOHA received the transcript of the hearing (Tr.) on October 24, 2013. Applicant timely submitted Applicant Exhibits B through M, which were all admitted without objection.<sup>1</sup> Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 64 and married. She is a prospective employee of a defense contractor, for whom she has worked in the past, and seeks to obtain a security clearance in connection with her potential future employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance.

The SOR lists 11 delinquent debts, totaling approximately \$49,087. The existence and amount of most of these debts is supported by credit reports dated June 5, 2012; June 4, 2013; August 26, 2013; and October 16, 2013. (Government Exhibits 3, 4, 5, and 6.) According to Applicant, her financial problems began when she was laid off by her defense industry employer in 2006. This lay off was the result of a decision against the Applicant in a prior DOHA case.<sup>2</sup> Applicant was off of work from February 2006 to June 2007, when she got a job outside of the defense industry. Her salary dropped from \$26 an hour to \$11 an hour. That second job ended in 2011 when the company went out of business. She was unemployed from that time until the date of the hearing. Applicant admits to struggling to pay her bills since her lay off in 2006. (Applicant Exhibit A; Tr. 35-45, 49.)

The current status of the debts is as follows:

1.a. Applicant admits that she is indebted to a creditor for a credit card debt in the amount of \$8,200. Applicant testified that she believed she last made a payment on this debt about a year before the hearing. (Tr. 45-47.) The June 5, 2012 credit report

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<sup>1</sup>Applicant Exhibits B through K consist of financial documents of the Applicant. Applicant has redacted the account numbers on most of the documents. The impact of those redactions on any particular allegation will be discussed, as appropriate, below.

<sup>2</sup>The issues in that case, ISCR 02-17574, are different than those presented in the current case. (Government Exhibit 2.)

(Government Exhibit 3) shows two entries for this debt, partial account number 0144. On page 7 it is referred to as "Collection, Purchased by another lender." Page 8 states, "Account transferred or sold, Paid charge off." Applicant did not submit any documentation about the current status of this debt. Based on all available information I find that this debt is not resolved.

1.b. Applicant admits that she was indebted to a creditor for a debt in the amount of \$763. Applicant testified that she had made arrangements to pay this debt at the amount of \$50 a month "when I can." (Tr. 47-48, 50-51.) The June 5, 2012 credit report (Government Exhibit 3) shows two entries for this debt, partial account number 9973. This debt is shown as 120 days past due. The later credit reports show the account to be closed, but do not show it as being past due. (Government Exhibit 4 at 2, Exhibit 5 at 1, Exhibit 6 at 3.) Applicant Exhibit D is a statement from the creditor, showing Applicant is current on the account. Based on all available information I find that this debt is being resolved.

1.c. Applicant admits that she is indebted to a creditor for a credit card debt in the amount of \$8,189. Applicant testified that she had no knowledge of this debt. (Tr. 51-53.) Three of the credit reports show this debt. (Government Exhibits 4, 5, and 6.) Applicant has not paid this debt, or indicated that she will pay this debt. Based on all available information I find that this debt is not resolved.

1.d. Applicant admits that she is indebted to a creditor for a credit card debt in the amount of \$20,588. Applicant testified that she has been making payments on this debt and has reduced it to approximately \$13,000. (Tr. 53-57.) This debt has partial account number 1808. The October 16, 2013 credit report (Government Exhibit 6) indicates that this debt has a current balance of \$20,338, with \$8,057 being past due. Applicant did not submit any documentation about the current status of this debt. Based on all available information I find that this debt is not resolved.

1.e. Applicant admits that she was indebted to a creditor for a credit card debt in the amount of \$2,212. Applicant testified that the bank has indicated to her that the account is closed. (Tr. 57-59.) This debt has partial account number 4004. Government Exhibit 6 and Applicant Exhibit C support Applicant's statement that this account is closed with no deficiency. I find that this debt is resolved.

1.f. Applicant admits that she is indebted to a creditor for a credit card debt in the amount of \$4,214. Applicant testified that she has been making payments on this debt and has reduced it to approximately \$1,300. (Tr. 59-60.) This debt has partial account number 75. The October 16, 2013 credit report (Government Exhibit 6) indicates that this debt has a current balance of \$4,064, with \$690 being past due. Applicant submitted a payment coupon from this bank, which stated that an unidentified account was past due with a balance of \$1,061.65. (Applicant Exhibit B.) She also submitted a letter from this bank, indicating that a \$90 payment was made to an account on August 5, 2013. (Applicant Exhibit H.) The account numbers have been blanked out on both of these documents. There are four allegations in the SOR concerning different

accounts with this bank (1.f, 1.g, 1.i, and 1.j).<sup>3</sup> There is no way to know how this payment was applied given the state of the record. Based on all available information I find that this debt is not resolved.

1.g. Applicant admits that she was indebted to a creditor for a credit card debt in the amount of \$1,339. Applicant testified that she has been making payments on this debt, including a \$100 payment the day before the hearing. (Tr. 60-61) This debt has partial account number 76. The October 16, 2013 credit report (Government Exhibit 6) indicates that this debt has a current balance of \$4,064, with no past-due balance. Based on all available information I find that this debt is being resolved.

1.h. Applicant admits that she is indebted to a creditor for a credit card debt in the amount of \$305. Applicant testified that she had no knowledge of this debt. (Tr. 61.) This debt has partial account number 3766. The October 16, 2013 credit report (Government Exhibit 6) indicates that this debt has a current balance of \$393, with \$228 being past-due. Applicant did not submit any documentation about the current status of this debt. Based on all available information I find that this debt is not resolved.

1.i. Applicant admits that she is indebted to a creditor for a credit card debt in the past-due amount of \$280. Applicant testified that she has paid this debt off. (Tr. 66-67.) This debt has partial account number 4388. The October 16, 2013 credit report (Government Exhibit 6) indicates that this debt has a current balance of \$3,555, with \$180 being past due. Applicant submitted a payment coupon from this bank, which stated that an unidentified account was past due with a balance of \$1,061.65. (Applicant Exhibit B.) She also submitted a letter from this bank, indicating that a \$90 payment was made to an account on August 5, 2013. (Applicant Exhibit H.) The account numbers have been blanked out. As stated earlier, there are four allegations in the SOR concerning different accounts with this bank (1.f, 1.g, 1.i, and 1.j). There is no way to know how this payment was applied given the state of the record. Based on all available information I find that this debt is not resolved.

1.j. Applicant admits that she is indebted to a creditor for a credit card debt in the amount of \$314. Applicant testified that she has paid this debt, but is currently disputing interest charges. (Tr. 67-68) None of the four credit reports in the record (Government Exhibits 3, 4, 5, and 6) support this statement. Applicant submitted a payment coupon from this bank, which stated that an unidentified account was past due with a balance of \$1,061.65. (Applicant Exhibit B.) She also submitted a letter from this bank, indicating that a \$90 payment was made to an account on August 5, 2013. (Applicant Exhibit H.) The account numbers have been blanked out. As stated above, there are four allegations in the SOR concerning different accounts with this bank (1.f, 1.g, 1.i, and 1.j). There is no way to know how this payment was applied given the state of the record. Based on all available information I find that this debt is not resolved.

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<sup>3</sup>Government Exhibit 3 indicates that at one time Applicant may have had as many as 19 different accounts involving this bank.

1.k. Applicant admits that she was indebted to a creditor for a credit card debt in the amount of \$2,683. Applicant testified that this is the same debt as that set forth in 1.e, above. (Tr. 68.) The account numbers match between the credit reports (Government Exhibits 3, 4, 5, and 6.) and Applicant Exhibit C. Based on all available information I find that this debt is resolved.

Applicant submitted evidence that she is current on her mortgage, and paying other debts, albeit late in several cases. (Applicant Exhibits E, G, I, J, and K.) Also submitted was evidence that she had successfully disputed a debt that was not alleged in the SOR. (Applicant Exhibit F.) Applicant submitted a monthly budget indicating a monthly income of at least \$2,566. Payments for monthly expenses, other than credit cards and food, totals approximately \$1,955. Accordingly, about \$600 a month is available for debt reduction and other costs of daily living. Finally, Applicant admitted that she had not received any budgeting classes or other financial counseling. (Applicant Exhibit L at 3; Tr. 69-88.)

### **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has made false statements to the Department of Defense during the clearance screening process. Applicant admitted that she had false answers on her questionnaire, but denied there was an intent to deceive the Government.

2.a. Applicant filled out a Government questionnaire in May 2012. (Government Exhibit 1.) Question 25 of that questionnaire asked if Applicant had “**EVER** had a security clearance eligibility/access authorization denied, suspended, or revoked?” (Emphasis in original.) Applicant responded, “Yes,” and provided the following explanation of the circumstances, “my clearance was taken until further investigation then later granted back to me but there was no job openings.” In fact, as stated earlier, Applicant had her clearance revoked due to a prior DOHA proceeding, resulting in an adverse administrative judge decision on January 18, 2006; and an adverse appeal board decision on July 24, 2006. (Government Exhibit 2.)

As a result of the original decision Applicant received a layoff notice from her employer on February 3, 2006. Part of that notice states, “You [Applicant] will be placed on recall to [her prior position].” (Applicant Exhibit A.)

Applicant states that she believed her clearance had been restored to her, based on receiving that notice. According to Applicant, this notice was similar to ones she had received in the past, during prior layoffs for non-security-clearance reasons. She adamantly stated that her employer did not make mistakes when it came to informing employees concerning their security clearance status. (Tr. 106-116.)

2.b. Regarding her finances, Applicant stated that within the seven years prior to filling out the questionnaire she had not had bills turned over to a collection agency; had not had any credit card suspended, charged off, or cancelled for failing to pay as agreed; and that she was not 120 days delinquent on any debt. (Government Exhibit 1

at question 26.) These answers were not true, as set forth in detail under Paragraph 1, above.

Applicant states that she did not intend to mislead the Government in regards to her answers on the questionnaire. Applicant and her daughter both testified that the daughter filled out this computerized form with input from Applicant. This was because Applicant had recently had two operations on her thumb and could not operate the computer. Applicant testified, "You know, she [her daughter] was asking me questions, and I was answering them and going fast. And it was a mistake because I would never say that because I know how the Government works. I been there 26 years, and I would never lie like that." (Tr. 96.)<sup>4</sup>

Applicant's daughter testified that in attempting to help her mother fill out the form, she made the assumption that her mother's credit situation was alright. The daughter took responsibility for not making sure her mother understood the financial questions. (Tr. 118-124.)

## **Mitigation**

Applicant submitted several letters of reference from friends, and a former co-worker. (Applicant Exhibit M.) The writers include the executive director of a community non-profit organization, as well as an administrator of a ministry from her church. Applicant is described as a woman of "integrity, leadership and enthusiasm," "impeccable character," and someone who is "diligent and highly committed to her work."

## **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on

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<sup>4</sup>See Tr. 95-106.

his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. 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, “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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. As stated above, allegations 1.b, 1.e, 1.g, and 1.k are found for Applicant. Nevertheless, Applicant continues to have over \$40,000 in past-due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties have been in existence since at least 2006. She has been able to resolve some of her debts, but does not have a reasonable plan to pay the rest. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant’s loss of employment in 2006 was due to an adverse decision in a prior DOHA case. That is not a situation beyond her control. However, I have taken into consideration the fact that Applicant, once she received another job, made considerably less money than she had before, and that she has currently been unemployed for about two years. Applicant does not have a solid grasp of her financial situation, and no real plans for resolving it. Accordingly, I cannot find that she has acted reasonably in attempting to resolve her financial situation. This mitigating condition does not have application in this case.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has submitted some evidence showing that she has made successful payment arrangements with a few of the creditors listed in the SOR. However, she did not present sufficient evidence that she has acceptable payment arrangements with the majority of her creditors.

Applicant testified that she is disputing a portion of the debt in allegation 1.j. AG ¶ 20(e) requires that “the individual [have] 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.” I have taken her dispute into consideration, but find there is sufficient evidence to support the existence of this debt.

In conclusion, as stated above, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being



resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The following mitigating condition under AG ¶ 17 may apply to the facts of this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

There is no question that Applicant’s answers to questions 25 and 26 on the e-QIP were wrong. However, they were not intentionally false. In each case Applicant put her trust in an entity, or person, who she could reasonably rely on to help her.

With regards to question 25, Applicant put the Government on notice that she had lost her clearance. She also had a letter from her employer, who she reasonably relied on to know the security rules, stating that she was subject to recall to her job.

Under the circumstances her statement, while wrong, does not rise to an intentional deception.

Applicant's daughter, who has a master's degree, was helping her mother fill out the security questionnaire. At that time Applicant was suffering from a physical ailment, which made it difficult to use the computer, and her daughter has much more education than Applicant. She reasonably relied on her daughter to make sure Applicant was asked the proper questions while filling out the form. Applicant's credible testimony showed that she was knowledgeable of her financial situation at that time, and would have answered the question properly if asked. Under the particular circumstances of this case, Applicant's actions were not unreasonable, nor do they show particularly poor judgment. Paragraph 2 is found for Applicant.

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. She has a long history of not paying her debts, and does not currently have a good grasp of her overall financial situation. Applicant's conduct with regards to her finances was not mitigated. Applicant did show that the omission of relevant and material information from her e-QIP was accidental and not intentional.

Under AG ¶ 2(a)(3), her conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports denying her request for a security clearance.

### **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.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For 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.

WILFORD H. ROSS  
Administrative Judge