



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



In the matter of: )  
)  
) ISCR Case No. 12-09588  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

September 17, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 58-year-old employee of a defense contractor. She has a history of financial indebtedness demonstrated by her 2000 Chapter 7 bankruptcy. Despite having her delinquencies discharged through bankruptcy in the early 2000s, she incurred 15 additional delinquent accounts between 2009 and the present time. She is now current on her mortgage, but 14 other delinquent accounts remain unresolved. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 27, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on May 24, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 21, 2015, scheduling the hearing for August 18, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibits (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection. Applicant testified on her own behalf. The record was left open for receipt of additional documents. On August 28, 2015, Applicant presented AE B. Department Counsel had no objections to AE B and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on August 26, 2015.

### **Findings of Fact**

Applicant is a 58-year-old employee of a defense contractor. She has worked for her employer for the past eight years. She is married. (Tr. 19, 23-26.)

As listed in the SOR, Applicant was alleged to be delinquent on 15 debts in the total amount of \$32,763. Her debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6.)

Applicant attributed her financial delinquencies to a series of events. Applicant and her husband married in 2006. At that time, she owned a town house. Her husband wanted to move to a larger house. They found a larger home and made an offer on it. A week before their sale of the new home was final, her husband lost his job. They proceeded with the house purchase, despite the loss of his income. Her husband started a business. They rented her townhome to tenants. Her husband's business was not profitable and they became delinquent on their home mortgage. Their tenants moved out of the townhouse unexpectedly, and new tenants moved in. The new tenants failed to pay any rent after moving in, and Applicant had to spend time and money to evict them. They had \$3,000 in repairs to make to the townhouse after the tenants were evicted. Applicant and her husband moved back into the townhouse and they are current on its payments. (Tr. 19-23.)

Applicant was past due on a mortgage account in the approximate amount of \$5,553, as alleged in SOR ¶ 1.a. She has been current on this loan since November 2014. Her August 18, 2015 credit report reflects \$0 past due on this account. Applicant is resolving this debt. (GE 6; Tr. 30-33.)

Applicant is indebted on a collection account in the approximate amount of \$11,040, as alleged in SOR ¶ 1.b. Applicant testified that this debt was for her husband's truck that was repossessed. Her August 2015 credit report reflects this debt first became delinquent in July 2009. Applicant has not had recent contact with this creditor. This debt is unresolved. (GE 6; Tr. 33-34.)

Applicant is indebted on a collection account in the approximate amount of \$2,453, as alleged in SOR ¶ 1.c. This debt was for a credit card. Her August 2015 credit report reflects this debt has been delinquent since April 2010. Applicant has not had recent contact with this creditor. This debt is unresolved. (GE 6; Tr. 34-35.)

Applicant is indebted on a collection account in the approximate amount of \$2,265, as alleged in SOR ¶ 1.d. This debt was for a repossessed motorcycle. Her August 2015 credit report reflects this debt first became delinquent in May 2009. Applicant has not had recent contact with this creditor. This debt is unresolved. (GE 6; Tr. 35-36.)

Applicant is indebted on a charged-off account in the approximate amount of \$1,171, as alleged in SOR ¶ 1.e. This debt was a store credit card that Applicant used to purchase Christmas presents for her children. Her August 2015 credit report reflects this debt first became delinquent in September 2010. Applicant has not had recent contact with this creditor. This debt is unresolved. (Tr. 36-37.)

Applicant is indebted on a collection account in the approximate amount of \$1,236, as alleged in SOR ¶ 1.f. She admitted this allegation. Applicant failed to present any evidence that she is addressing this debt. It is unresolved. (Answer.)

Applicant is indebted on a collection account in the approximate amount of \$694, as alleged in SOR ¶ 1.g. She admitted this allegation. Applicant failed to present any evidence that she is addressing this debt. It is unresolved. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant is indebted on a collection account in the approximate amount of \$11,040, as alleged in SOR ¶ 1.h. She admitted this allegation. Applicant failed to present any evidence that she is addressing this debt. It is unresolved. (Answer; GE 6.)

Applicant is indebted on a charged-off account in the approximate amount of \$78, as alleged in SOR ¶ 1.i. She admitted this allegation. Applicant failed to present any evidence that she is addressing this debt. It is unresolved. (GE 6.)

Applicant is indebted on a collection account in the approximate amount of \$62, as alleged in SOR ¶ 1.j. Applicant denied this debt because it was repaid. Her August 2015 credit report reflects the account as a charged-off account. It is unresolved. (GE 6; Tr. 37-38.)

Applicant is indebted on a collection account in the approximate amount of \$68, as alleged in SOR ¶ 1.k. She admitted this allegation. Applicant failed to present any evidence that she is addressing this debt. Her August 2015 credit report reflects the account as a charged-off account in the amount of \$313. It is unresolved. (GE 6.)

Applicant is indebted on a collection account in the approximate amount of \$341, as alleged in SOR ¶ 1.l. Applicant does not recognize this debt. She did not dispute it, but it no longer is on her credit report. (Tr. 38-39.)

Applicant is indebted on a collection account in the approximate amount of \$508, as alleged in SOR ¶ 1.m. Applicant does not recognize this debt. However, she failed to present any documentation showing that she researched this debt or otherwise contested it. (Tr. 38-40.)

Applicant is indebted on a collection account in the approximate amount of \$2,325, as alleged in SOR ¶ 1.n. Applicant does not recognize this debt. (Tr. 39-40.)

Applicant is indebted on a collection account in the approximate amount of \$2,015, as alleged in SOR ¶ 1.o. She admitted this allegation. Applicant failed to present any evidence that she is addressing this debt. It is unresolved. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant filed for Chapter 7 bankruptcy in January 2000. It was the result of a short marriage to her ex-husband. She had placed all of the marital debts in her name due to his poor credit rating. When the marriage dissolved, she was left with delinquent accounts that she could not resolve on her single income. As a result, she filed for Chapter 7 bankruptcy. Her debts were discharged. (GE 2; Tr. 26-29.)

Applicant testified she recently purchased a \$43,000 sports car. (Tr. 44.) She indicated that she has “been working really hard the last couple of years to catch up on things that I could pay and get current with [her] mortgage, and [she] knows [she] made some foolish decisions regarding [her] finances.” (Tr. 50.)

Applicant has displayed excellent work performance and business ethics during the past eight years of employment with her company, as documented by her facility manager. She is thought to be a trustworthy, conscientious, dedicated person and employee by her friends and co-workers. Her performance evaluations reflect she exceeds expectations in most of her job duties. She has received a number of certificates from her employer in recognition of her good work. (AE B.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 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 AG ¶ 2 describing 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.

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 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.

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, as follows:

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.

Applicant has a history of financial indebtedness demonstrated by her 2000 Chapter 7 bankruptcy. Despite having her delinquencies discharged through that bankruptcy in the early 2000s, she incurred 15 delinquent accounts in the total amount of \$32,763. She has resolved her mortgage delinquency of \$5,553, but the other 14 debts remain unresolved. The evidence raises all of the above security concerns, 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 financial difficulties:

- (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.

Applicant's financial problems are ongoing. She has 14 unresolved delinquent accounts. Despite her delinquencies, she recently purchased a new sports car. She has not demonstrated that future financial problems are unlikely. AG ¶ 20(a) has not been established.

Applicant blamed her financial problems on a series of events beyond her control, including her husband's loss of employment and tenants she had to evict from her townhome. However, she also accepted responsibility for poor decisions she made

like choosing to buy a larger house after her husband lost his job. She acknowledged that her financial problems were not entirely beyond her control. Further, she failed to act responsibly to address the debts in a timely manner. She has only taken action to rehabilitate her townhome mortgage. The rest of her debts remain unaddressed. AG ¶ 20(b) has not been fully established.

Applicant failed to produce documentation to show she received counseling for her financial problems. There are no clear indications that her financial problems are being resolved or are under control. Applicant recently brought her mortgage current; however, 14 other debts remain unresolved. AG ¶¶ 20(b) and 20(c) have not been fully established.

Applicant testified that she denied some of her debts because she did not recognize those accounts. However, she failed to take any formal steps or otherwise document her dispute on those accounts. AG ¶ 20(e) has not been established.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is respected by her colleagues and performs well at work. However, she has done little to address her delinquencies. Her total debt owed is less than the amount of the loan for of the sports car she recently purchased. She has not demonstrated reasonable or responsible actions with respect to her debt. 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 failed to mitigate the Financial

Considerations security concerns. 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: | FOR APPLICANT     |
| Subparagraph 1.a:         | For Applicant     |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |
| Subparagraph 1.d:         | Against Applicant |
| Subparagraph 1.e:         | Against Applicant |
| Subparagraph 1.f:         | Against Applicant |
| Subparagraph 1.g:         | Against Applicant |
| Subparagraph 1.h:         | Against Applicant |
| Subparagraph 1.i:         | Against Applicant |
| Subparagraph 1.j:         | Against Applicant |
| Subparagraph 1.k:         | Against Applicant |
| Subparagraph 1.l:         | Against Applicant |
| Subparagraph 1.m:         | Against Applicant |
| Subparagraph 1.n:         | Against Applicant |
| Subparagraph 1.o:         | Against Applicant |
| Subparagraph 1.p:         | 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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Jennifer I. Goldstein  
Administrative Judge