



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 12-10798  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Harris Ammerman, Esq.

05/12/2016

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the accumulation of delinquent debt. Her financial situation was not a result of living beyond her means, but instead of reflection of the high cost associated with her own medical issues and providing for the care of close family members. Her finances were also negatively impacted by her husband becoming disabled several years ago, leaving her as the family’s sole wage earner. She took action to resolve her finances and provided documentation that she is repaying her debts through a confirmed Chapter 13 plan. Clearance is granted.

**History of the Case**

On June 19, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish her continued eligibility for access to classified information (Answer).

<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*

On December 23, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for February 18, 2016.<sup>2</sup> The hearing was convened as scheduled. Department Counsel offered Government exhibits (Gx.) 1 – 4. Applicant testified and offered Applicant exhibits (Ax.) 1 – 13. All evidentiary exhibits were admitted into the record without objection. Applicant, through her counsel, also submitted a brief, which was marked and appended to the record as Hearing exhibit (Hx.) I. Department Counsel's index of exhibits was marked Hx. II. The hearing transcript (Tr.) was received by DOHA on March 1, 2016.

### **Findings of Fact**

Applicant, who is in her early forties, is married with four children. She is a contract security officer and holds a supervisory position. She has been with her current employer, a defense contractor, for the past 14 years. She has earned awards and received letters of appreciation for her work performance. Applicant's coworkers submitted letters reflecting their favorable opinion regarding her work ethic and overall character. (Tr. at 12-15; Gx. 1; Ax. 10.)

Applicant has dealt with persistent medical issues since 2007. Her condition has resulted in two significant medical procedures, with the most recent procedure occurring in 2013. Applicant has had to take time off from work due to her medical issues and to care for, first, her ailing grandmother and, now, her mother who suffers from Alzheimer's and dementia. Her mother's condition deteriorated to the point that she now lives with Applicant and her husband. In 2008, Applicant's husband started suffering from an undisclosed condition that within a year left him disabled and unable to work. Since 2009, Applicant has been the family's sole wage earner. She earns approximately \$65,000 annually. (Tr. at 16-18, 34-36, 39-41, 44-45; Ax. 12-13.)

Applicant started falling behind on paying her bills, including numerous medical debts listed in the SOR, due to a combination of the above circumstances. She disclosed her adverse financial situation in response to relevant questions on her recent security clearance application (SCA), and discussed her finances during the course of the reinvestigation of her background. She initially attempted to resolve her debts through a debt consolidation program (DCP) offered by a private company, which she was referred to by an Office of Personnel Management (OPM) contract investigator who conducted her background interview. After a year of paying for the DCP service, Applicant discovered that the company was not providing the essential service it had promised, namely, to consolidate and redistribute a portion of her monthly DCP payments to pay her overdue creditors. (Tr. at 18-21, 37-38, 50-51; Gx. 1 - 2; Ax. 12.)

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*Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>2</sup> The case was originally assigned to a different administrative judge. On January 12, 2016, I was assigned the case. Prehearing correspondence and the notice of hearing are attached to the record as Hx. III.

Applicant sought the assistance of a bankruptcy attorney to resolve her financial situation. She was advised that she was eligible to file for Chapter 7 bankruptcy and, if she did so, she could potentially wipe out all her debt. Applicant, instead, elected to file for Chapter 13 bankruptcy and resolve her debts through a court-approved wage earners plan. She took the required financial counseling course, and then submitted her Chapter 13 bankruptcy petition. She provided the bankruptcy trustee copies of her federal and state income tax returns for 2011 through 2014. Applicant's proposed Chapter 13 plan was recently confirmed by the bankruptcy court, and she has consistently made the required monthly payments. Her payments will now be automatically deducted from her pay. The confirmed bankruptcy plan is for 48 months. In addition to the required monthly payments, Applicant voluntarily agreed to forfeit any tax refunds to the bankruptcy trustee to use as additional funds to repay her creditors. (Tr. at 21-24, 42, 49-50; Ax. 1 - 7; Ax. 10.)

Pursuant to the Chapter 13 plan, Applicant will be required on a yearly basis to file with the bankruptcy trustee an income and expenditure report. She will also have to provide on a yearly basis to the bankruptcy trustee her federal and state tax returns. Finally, she is required to take and complete a debt management course before her bankruptcy case is completed. (Tr. at 28; Ax. 6; Ax. 8.)

### **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 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.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). 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, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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.

## **Analysis**

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

The security concern under this guideline 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.

Applicant’s financial problems raise the financial considerations security concern. The record evidence establishes the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

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's financial problems stem from her own medical issues and those of her close family members. She has been the sole wage earner and main source of financial support for her family for the past seven years. She started falling behind on debts with a decrease in household income and an increase in expenses attributable to her own medical expenses and the high cost of care for close family members. She initially attempted to resolve her past-due debts through a DCP but the company did not follow through with its promise to help her consolidate her debts and pay them. She has now consolidated her debts and is paying them through a court-approved Chapter 13 bankruptcy plan. Of note, Applicant could have elected the easier route of resolving her debts through Chapter 7, but decided to repay her creditors through the longer and more arduous process of Chapter 13. This decision by Applicant raises a favorable inference regarding her reliability, the sense of responsibility she has for her legal obligations, and other essential character traits expected of those granted access to classified information.

Although it arguably took Applicant longer than some would expect from a cleared contractor to confront her financial situation and take positive action to resolve her past debts, she has now responsibly addressed her overall financial situation and is paying the debts she accumulated over the past few years. Moreover, over the next five years, not only will she be paying her debts through a court-administered repayment plan, but she will also have to provide proof to the bankruptcy trustee that she is financially solvent and meeting her other legal financial obligations.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.<sup>3</sup> Applicant met her burden by demonstrating that she has taken responsible action to address her longstanding financial problems and, though her finances may not be perfect, they no longer raise a concern about her eligibility for a security clearance. Specifically, I find that AG ¶¶ 20(a) through 20(d) either apply in full or in part, and when considered together with the whole-person matters noted herein, mitigate the financial considerations security concern.

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<sup>3</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

## **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 all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been upfront and candid about her troubled financial situation during her current and past security clearance background investigations. She has held a clearance for the past 14 years and for the majority of that time served as a supervisory contract security officer protecting sensitive U.S. Government property and personnel. Her financial situation was not the result of poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Rather, her financial situation was a result of medical issues and high cost of care for her close family members, including her mother who suffers from Alzheimer's and dementia. She formulated a plan with her bankruptcy attorney to resolve her financial situation and implemented it. In short, Applicant mitigated security concerns raised by the accumulation of past-due debts. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for access to classified information.

### **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 B (Foreign Influence)	FOR APPLICANT
Subparagraphs 1.a – 1.t:	For Applicant

### **Conclusion**

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

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Francisco Mendez  
Administrative Judge