



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 13-00932 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Julie R. Mendez, Department Counsel  
For Applicant: *Pro se*

03/05/2014

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on April 30, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 17, 2013, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on September 25, 2013. She submitted a notarized, written response to the SOR allegations dated October 6, 2013, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on November 21, 2013. Applicant received the FORM on December 3, 2013. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated January 10, 2014. Because Applicant initially received a copy of the earlier Adjudicative Guidelines, a copy of the most recent Adjudicative Guidelines was mailed to Applicant on January 15, 2014, which she received on January 24, 2014. She was given 30 days to review the Adjudicative Guidelines, and if she chose, to submit additional information. On February 21, 2014, Applicant submitted a second response to the SOR with additional information. Department Counsel did not object to this submission.

DOHA assigned this case to me on March 6, 2014. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's responses to the SOR has been marked and admitted as Items 3 and 4, and the SOR has been marked as Item 1. Her written responses to the FORM are admitted into the record as Applicant Exhibits (AE) A and B.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.g - 1.n, 1.p, and 1.s of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.a, 1.d, 1.e, 1.o, 1.q, and 1.r of the SOR.<sup>1</sup> Since she did not admit or deny allegation 1.f of the SOR, her answer is deemed a denial of the allegation. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 59 years old, works as a team leader and manager for a DOD contractor. She began working for her employer in 1981. Her recent performance evaluations reflect that she exceeds in her job performance. She is described as a people person and a diligent worker with an excellent work ethic and great integrity. She is respected by her co-workers. Her employer reprimanded her once for an issue

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

related to misuse of a company credit card by an employee. She reported the reprimand on her e-QIP.<sup>2</sup>

Applicant married in 1979 and divorced in 2000. She has two sons, ages 33 and 25. Her sons live independently. Applicant worked in her church for many years as a youth supervisor, Sunday school teacher, and superintendent of Sunday school.<sup>3</sup>

In 1999, Applicant filed a Chapter 13 bankruptcy petition which was converted to a Chapter 7. Her debts incurred during her marriage and shortly after the end of her marriage were discharged on October 29, 2002. Since this time, Applicant incurred additional unpaid debts. She attributes her delinquent debts to being a single parent supporting her sons through college and without child support. More recently, she provided financial support to her oldest sister, who worked as a babysitter, after she suffered three heart attacks and developed lung cancer. Applicant acknowledges that she provided money to her sister to the detriment of her bills. Because her sister had helped raised her, Applicant decided to provide financial help to her oldest sister during her illnesses. Her sister died in 2012.<sup>4</sup>

Applicant currently earns \$125,000 a year. Her gross monthly income is approximately \$10,400 and her net monthly income is \$4,809. She pays \$750 for rent, and approximately \$80 for utilities, \$30 for water, \$115 for cable, \$250 for food, \$200 for gas, \$500 for church tithes, and \$100 on incidentals for total monthly expenses of \$2,025, leaving \$2,784 to pay her debts.<sup>5</sup>

After reviewing the credit reports (CR) dated May 10, 2013, August 29, 2013, and the SOR, I have compiled a list of 19 debts allegedly owed, excluding any duplicate entries, and the current status of each. I find that Appellant's actual debts are as follows:<sup>6</sup>

| <b>SOR ¶</b> | <b>CREDITOR</b> | <b>AMOUNT</b> | <b>STATUS</b>         | <b>EVIDENCE</b>    |
|--------------|-----------------|---------------|-----------------------|--------------------|
| 1.a          | Medical bill    | \$ 576.00     | Unpaid, investigating | Item 3; AE A; AE B |
| 1.b          | Collection      | \$ 181.00     | Paid                  | Item 3; AE A; AE B |
| 1.c          | Collection      | \$ 457.00     | Paid                  | Item 3; AE A; AE B |
| 1.d          | Medical bill    | \$ 120.00     | Unpaid, investigating | Item 3; AE A; AE B |

<sup>2</sup>GE 1; AE A; AE B.

<sup>3</sup>GE 1; AE A; AE B.

<sup>4</sup>Item 3; AE A; AE B.

<sup>5</sup>AE B.

<sup>6</sup>Items 6 and 7.

|     |                    |             |                                   |                    |
|-----|--------------------|-------------|-----------------------------------|--------------------|
| 1.e | Medical bill       | \$ 155.00   | Unpaid, investigating             | Item 3; AE A; AE B |
| 1.f | Phone              | \$ 219.00   | Paid                              | Item 3; AE A; AE B |
| 1.g | Store account      | \$ 1,177.00 | Paid                              | Item 3; AE A; AE B |
| 1.h | Bank card          | \$ 529.00   | Paid                              | Item 3; AE A; AE B |
| 1.i | Store account      | \$ 480.00   | Paid                              | Item 3; AE A; AE B |
| 1.j | Collection account | \$ 2,115.00 | Paid                              | Item 3; AE A; AE B |
| 1.k | Collection account | \$ 1,819.00 | Paid                              | Item 3; AE A; AE B |
| 1.l | Collection account | \$ 9,784.00 | Attempting to set up payment plan | Item 3; AE A; AE B |
| 1.m | Mortgage debt      | \$22,460.00 | Attempting to set up payment plan | Item 3; AE A; AE B |
| 1.n | Car loan           | \$11,680.00 | Son paying; not verified          | Item 3; AE A; AE B |
| 1.o | Medical            | \$ 59.00    | Unpaid, investigating             | Item 3; AE A; AE B |
| 1.p | Collection         | \$ 244.00   | Paid                              | Item 3; AE A; AE B |
| 1.q | Medical bill       | \$ 125.00   | Unpaid, investigating             | Item 3; AE A; AE B |
| 1.r | Collection         | \$ 97.00    | Unpaid, investigating             | Item 3; AE A; AE B |
| 1.s | Phone              | \$ 121.00   | Paid                              | Item 3; AE A; AE B |

SOR allegations 1.a, 1.d, 1.e, 1.o, and 1.q are medical bills, which Applicant believes should have been paid by her insurance carrier. The credit reports identify these debts as medical bills with an account number. The name of the original creditor is unknown. Likewise, except for allegation 1.o, the contact information (address and phone number) for the original or current creditor is not listed on the credit reports. Applicant advises that she has been unable to locate the creditor, verify the bill, or find a place to pay these bills, despite her efforts. Given the debt payments she has made, her statement on her efforts to verify and resolve these debts is credible.<sup>7</sup>

The debt in SOR allegation 1.n is for the unpaid car loan she cosigned with her son. She made payments on the loan for several months when he was unemployed. When she could no longer continue with the payments, he voluntarily returned the car.

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<sup>7</sup>Items 3, 6, and 7; AE A; AE B.

She advised that he is now working and making payments on this debt. She has not provided documents showing that her son is paying on this debt.<sup>8</sup>

Applicant advised that she contacted the creditors in allegations 1.l and 1.m to develop a payment plan for her debt. She and the creditors have not yet reached an agreement. One of these debts concerns her second mortgage. The May 2013 credit report indicates that Applicant missed payments on her first mortgage. She later negotiated a modified or partial payment, which she was paying. The August 2013 credit report shows that she was not past-due in her first mortgage. Applicant moved to another residence and job location about 700 miles from where she had lived at the time she completed her e-QIP. She has not indicated whether her house has been sold or rented.<sup>9</sup>

The May and August 2013 credit reports reflect that Applicant paid four past-due debts, was paying on one debt, and negotiated a modified payment plan for her mortgage. These debts are not listed in the SOR. Applicant took a money management class presented at her church. She followed the guidance given in this program, which included contacting her creditors to resolve her debts.<sup>10</sup>

Applicant submitted three letters of recommendation. All indicate that she is trustworthy. She is involved in her community and displays the same work ethic in her community service as she has at work. None indicate a knowledge of her debt problems.<sup>11</sup>

## **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 list potentially disqualifying conditions and mitigating conditions, which are 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 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,

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<sup>8</sup>Item 3.

<sup>9</sup>Items 3, 6, and 7; AE A; AE B.

<sup>10</sup>Items 5, p. 33-34, 6 and 7.

<sup>11</sup>AE A; AE B.

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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security 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 an 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 Executive Order 10865 provides that 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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems over the last ten years. She was unable to pay her debts and many of the debts have been, or are, delinquent and are not resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

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

Applicant's financial problems began during her marriage and continued after her divorce even though she had eliminated her marriage debt through bankruptcy. Her former husband did not provide child support or financial assistance for the cost of her sons' education. The expense of college impacted her ability to pay her bills. When her oldest sister became seriously ill and could not work, Applicant paid her sister's expenses until her death. Applicant's sister's illness was a factor beyond her control, although paying her sister's bills was a factor within her control. Since her sister's death, Applicant has acted reasonably because she taken steps to resolve her debts. AG ¶ 20(b) is applicable.

Applicant attended a money management course at her church. She began contacting her creditors based on the guidance given at the program. She has a budget, and she has not incurred new debt. Her current finances are under control, and she is working to resolve her old debts. AG ¶ 20(c) applies.

Applicant contacted many of her creditors on her own initiative and made a good-faith<sup>12</sup> effort to resolve her debts. She has paid 10 of the 19 SOR debts, plus four non-SOR debts in the last few years. She has a payment plan in place for one other debt. She has made a good-faith effort to determine the legitimacy of the medical bills, but she has not succeeded in resolving these bills. She has not provided clear documentation showing her efforts to resolve her largest debts, but her statements that she is doing so is supported by the credit reports, which reflect that she negotiated a modification of her primary mortgage and a payment plan for one debt. Overall, the evidence supports a good-faith effort by Applicant to resolve her debts. AG ¶ 20(d) applies.

### **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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is

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<sup>12</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigation condition].

(Internal citation and footnote omitted) ISCR Case No.02-30304 at 3 (App. Bd. Apr.20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).



established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began in her marriage and continued after her divorce. (See AG ¶ 2(a)(4).) Although she eliminated earlier debt through bankruptcy, she continued to incur unpaid debts because her former husband did not pay child support or help pay for their sons' education. When her sister became seriously ill and could no longer work, Applicant helped pay her living expenses until her death. She believed that she owed an obligation to her sister to help and decided to do so to the detriment of her finances. Her sister died in 2012. Since then, Applicant has worked to resolve her past-due debts. Her current monthly bills are always paid, she reduced her living expenses, and she is not incurring new unpaid debts. She has taken affirmative action to pay or resolve many of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) She has not been

able to pay the medical bills because she cannot locate the creditor to verify the legitimacy of bills. She has sufficient income to easily pay the bills once she confirms the bills are hers and not covered by insurance. She is working to negotiate a payment plan for her two largest bills. She will be able to comply with the terms of any plans she developed. She has worked for her employer for 33 years and is well-respected by her co-workers. Her debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has a track record for resolving her old debts and can be relied upon to resolve her remaining debts. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) Applicant is a reliable and trustworthy person who would not provide classified information to others. If pressed to do so, she will make a decision in favor of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

### **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 |
| Subparagraphs 1.a- 1.t:   | 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.

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MARY E. HENRY  
Administrative Judge