



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-02802 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

03/25/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On August 5, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 16, 2015. The hearing was originally scheduled for March 6, 2015, but was postponed due to inclement weather. The hearing was rescheduled for March 13, 2015 and held accordingly. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-C, which were admitted without objection. I kept the record open for an additional submission, and Applicant submitted another document, which was marked as AX D, and admitted into the record without objection. The transcript was received on March 20, 2015. Based on a review of the

pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

In her answer to the SOR, Applicant denied the SOR allegations under Guideline F, with the exception of ¶¶ 1.j, k, and l.

Applicant is 37 years old. She is single and has one daughter who is four years old. She works as a security assistant, and has been with her current employer since 2007. Applicant has had held a security clearance for seven years. (GX 1)

Applicant attended university and graduated with an undergraduate degree in 2003. She obtained six student loans for her education. She also attended graduate school for almost three semesters. (Tr. 16 ) her full-time work schedule prevented her from taking more graduate courses.

The SOR alleges delinquent debts, including six student loans that are past-due, six collection accounts, and a past-due mortgage loan in the amount of \$16,801. Applicant admits that she owes some collection accounts. Her student loans (SOR 1.b-1.g) have been consolidated and are current. Her payments resume in July 2015. (AX A). Recent credit reports confirm the forbearance. (GX 3) Applicant is also attempting to have payments lowered. She noted that when she bought a home, she was advised it would look better if she consolidated the student loans.

As to the SOR allegation in 1.a, Applicant recently contacted the collection company. She understands that the account has been sold. The original account was a credit card. The delinquent amount is \$511. (Tr. 27) She is waiting to hear from the company so that she may address the account. (Tr. 37) As a post-hearing submission, Applicant presented a settlement for the account with a proof of payment of \$256. (AX D)

Applicant called the telephone/cable company regarding a collection account (SOR 1.h) for \$220. She was told that she does not have a balance. At the present time, she has all three services that the company provides and is current. (Tr. 28)

In August 2010, Applicant purchased a home for \$200,000. The mortgage rate was a fixed one. She qualified for a program, which permitted her to put \$40 down as a down payment. Applicant had termite problems and some other structural issues. She had to pay for the repairs. She fell behind in her payments, but she obtained a loan modification in April 2014. (AX C) The arrearage was added into the approved modification. The interest rate was lowered, as well as her monthly mortgage payment by about \$150. She is current on her monthly mortgage payment of \$1,191. (Tr. 20) This addresses SOR 1.i.

Applicant paid \$750 and provided a receipt for the parking tickets alleged in SOR 1.j, k, and l. (AX B) She believes that she may have another ticket but it is not reflected on the SOR.

Applicant incurred financial difficulties when her daughter was born. She had just moved into her house and was not expecting additional expenses. The pregnancy was unexpected and with the birth of her daughter there were a number of new expenses. So that Applicant could maintain her work, she had to pay for day care. This was approximately \$703 a month. (Tr. 29) Although Applicant does not receive any court-ordered child support, she receives about \$200 cash a month from the child's father and her daughter has health insurance through her father's company. Applicant's daughter is in a non-public preschool and has tuition costs. However, next year Applicant's daughter will attend public school. As a result, her expenses for school tuition will be non-existent. Applicant has a roommate who shares the household expenses. (Tr. 34)

Applicant's current position is stable with good health benefits and opportunity for growth and promotion. Applicant's annual salary is \$64,000. She has earned promotions and her salary has grown from an initial \$36,000. Applicant is current with all her expenses. She believes she has about \$450 net monthly remainder. (Tr. 31) She uses a budget and had financial counseling when she bought her home. (Tr. 31)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

---

<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

Applicant admitted she owes the delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had a mortgage loan that was past-due and student loans that she consolidated. She also had parking tickets and a collection account. Her daughter's birth created havoc with her budget. She has modified her mortgage and is current with her expenses. She has steady employment. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. As noted above, Applicant's financial difficulties are a combination of several things. This does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps to modify her mortgage loan, consolidate her student loans, and provide for her daughter. She has addressed all the delinquent debts. She now has steady employment with a company that will provide her with benefits and opportunity for growth and promotion. FC MC 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) partially 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 the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 37 years old. She is single and has one daughter. Applicant has held a security clearance for seven years. She lives within her means. Her credit reports reflect that she pays most of her accounts "as agreed." She has acted responsibly. Applicant has shown financial reform.

Applicant has shown sound judgment and reliability throughout the years. She has persuaded me that she refuted and mitigated the Government's case concerning security concerns under the financial considerations guideline. She met her burden of proof.

### **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.l:     | 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 a security clearance. Clearance is granted.

---

NOREEN A. LYNCH.  
Administrative Judge