



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03004
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

11/20/2015

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant's financial problems were caused by events beyond her control and she acted responsibly to resolve them. Although she is not debt free, Applicant has mitigated the financial considerations concerns. Clearance is granted.

**Statement of the Case**

On September 23, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing, convened on June 5, 2015, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibit (AE) A, without objection. After the hearing, Applicant timely submitted AE B through D, which were also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on June 12, 2015.

### **Findings of Fact**

Applicant, 63, works as a security guard for a federal contractor. She was initially granted a security clearance in 2003 and held it until she retired from full-time employment in 2012. Applicant returned to the security guard position on a part-time basis in June 2013. On her security clearance application, dated January 2014, Applicant disclosed that she filed for Chapter 7 bankruptcy within the last seven years and a delinquent hospital bill (\$14,400). The investigation revealed that Applicant had also filed for bankruptcy 10 years previously, that she owed an outstanding state tax lien (\$1,600) and a delinquent cell phone bill (\$1,000). The two bankruptcies and three delinquent debts are alleged in the SOR. The state tax lien was paid and released in 2007. The phone bill was included in Applicant's Chapter 7 bankruptcy petition.<sup>4</sup>

Applicant's financial problems began in 2002, when she separated from her husband, leaving her in financial distress. Applicant tried to resolve the marital debts through a consumer credit counseling service, but she did not earn enough money to qualify for the program. She decided to file for Chapter 13 bankruptcy protection. She filed individually and included all the marital debt in her petition. Applicant filed her Chapter 13 bankruptcy petition in November 2002. In March 2006, having made all of the required monthly payments, her debts were discharged. Applicant's finances remained stable until 2012, when she developed a medical issue that required surgery. Applicant's insurance did not cover all of the costs related to the surgery or the complications she experienced afterward. Facing medical bills that she could not afford to pay, Applicant filed for Chapter 7 bankruptcy protection in December 2012. The debts were discharged in April 2013.<sup>5</sup>

Before Applicant's bankruptcy was discharged, she experienced another medical emergency. At the time, Applicant did not have medical insurance. She received a \$14,400 bill for the diagnosis of a common, yet temporary neurological condition that usually dissipates without medical intervention. The hospital bill represents almost half of Applicant's annual income. Applicant testified that she paid the hospital bill for three

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<sup>2</sup> The discovery letter is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> Correspondence related to Applicant's post-hearing submission is appended to the record as HE II.

<sup>4</sup> Tr. 21, 23-27; GE 1-5; AE B.

<sup>5</sup> Tr. 16-22, 35; AE D.

months when she stopped receiving invoices. When she contacted the hospital, Applicant testified that the hospital informed her debt was resolved. The account is not currently being reported on Applicant's most recent credit report, dated April 2015. After the hearing, Applicant contacted the hospital and was given a billing statement showing a \$14,400 balance. The billing statement also showed one \$50 payment. Otherwise, Applicant is able to live within her means and does not rely on consumer credit.

### **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 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 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 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 the 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.

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**

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”<sup>6</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant has financial problems as evidenced by two discharged bankruptcy petitions in 2006 and 2013, respectively, and three delinquent accounts totaling \$17,000. The debts are substantiated by the record, supporting findings that Applicant had an inability to pay her bills.<sup>7</sup> The record contains sufficient evidence to mitigate the financial considerations security concerns. Applicant’s financial problems were caused by events beyond her control, the dissolution of a marriage in 2002 and medical problems she experienced in 2012 and 2013. Applicant acted responsibly in her efforts to resolve her delinquent debts. She complied with the terms of her 2002 Chapter 13 bankruptcy payment plan for over 41 months between 2002 and 2006, when the debts were discharged. Her decision to file for Chapter 7 bankruptcy protection in 2012, after she retired from full-time employment, was also reasonable.<sup>8</sup>

Only the medical debt alleged in SOR ¶ 1.b remains unresolved. Applicant did not incur this debt to purchase luxury or non-essential items, but as the result of seeking emergency medical care. Ultimately, she had no control over the cost incurred by the hospital to arrive at a diagnosis. Based on Applicant’s past behavior, it is more than likely she will resolve this debt as she is able. Although the balance due is substantial, \$14,400, it is not dispositive on the issue of Applicant’s ongoing security worthiness.

The financial difficulties Applicant has experienced are not related to irresponsible or reckless behavior that raises concerns about her ability to properly handle and safeguard classified information. She held a security clearance between 2003 and 2012, without incident. I have no doubts about Applicant’s suitability for access to classified information. In reaching this conclusion, I have considered the whole-person factors at AG ¶ 2(a). The information in the record regarding the

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<sup>6</sup> AG ¶ 18.

<sup>7</sup> AG ¶¶ 19(a).

<sup>8</sup> AG ¶ 20(b).

circumstances of Applicant's debts, her otherwise favorable financial history, and her clearance history outweighs any risks raised by the derogatory financial events alleged in the SOR.

### **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.e: For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge