



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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Applicant for Security Clearance )  
  
ISCR Case No. 14-00218

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Eugene Simpson, Personal Representative

05/30/2014

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate security concerns for financial considerations.

**Statement of the Case**

On January 12, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated March 12, 2014, detailing security concerns for financial considerations under Guideline F. 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on March 25, 2014, denying the three Guideline F allegations and stating that credit card accounts and a past-due mortgage were not her accounts. Department Counsel was prepared to proceed on April 23, 2014, and the case was assigned to me on April 24, 2014. DOD issued a Notice of Hearing on April 25, 2014, scheduling a hearing for May 13, 2014. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant and one witness testified. Applicant offered three exhibits that I marked and admitted into the record without objection as App. Ex. A through C. I kept the record open for Applicant to submit additional documents. Applicant timely submitted six additional documents. Department Counsel had no objection to consideration of the additional documents. (Gov. Ex. 5) I marked and admitted the additional documents into the record as Applicant Exhibits D through I. I received the transcript of the hearing (Tr.) on May 20, 2014.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 63 years old and has a master's degree awarded in 1994. She has been married for 26 years and has one adult son. She has worked for the same defense contractor as a senior communications supervisor for 26 years. She has had access to classified information since she was first employed by the defense contractor. Her present annual income is approximately \$91,000. (Tr. 17-2, 26-27)

Applicant listed two delinquent credit card accounts and a past-due mortgage as financial issues on her e-QIP. When she was completing her security clearance application, Applicant asked her husband what debts they had and what she should list on the e-QIP. He told her to list the two credit card debts and the mortgage for a house in Tennessee. She did not look at a credit report but relied completely on the information provided her by her husband. She also listed the same debts in response to questions on the interrogatories. She again received the information to answer the questions from her husband. She discussed the three debts with security investigators when questioned by them. The credit reports presented by the Government (Gov. Ex. 3, dated December 4, 2013, and Gov. Ex. 4, dated January 24, 2012), list only one delinquent credit card account (SOR 1.a). The other delinquent credit card account and the past-due mortgage are not listed. The only mortgage listed is for her present home, which was purchased in 2001. It has a mortgage with a different bank than the alleged past-due mortgage holder and is listed as paid as agreed. Applicant's latest credit report does not show any delinquent accounts. (Tr. 19-22, 45-52, 56-58; App. Ex. A, Credit Report, dated March 17, 2014.)

Applicant's husband is a retired Marine. When he was on active duty, he was stationed in Tennessee in 1985 and he purchased a townhouse. He married Applicant in 1987 and they lived in the townhouse until he was transferred in 1989. He was unable to sell the house so he rented it through an agent for a few years. His tenants so severely damaged the house that it is now unlivable. The house has lost value in the real estate market and Applicant's husband does not have the funds to make the

required major repairs. It is abandoned property. However, he has continued to pay the mortgage and taxes, so he is current with both accounts. Department Counsel agreed that the mortgage (SOR 1.c) is now current. (Tr. 24-25, 43-45, 52-54, 60-63, 94; App. Ex. B, Mortgage Statement, dated May 1, 2014)

Applicant denies any responsibility for the two credit card debts. Her husband has always managed the family finances. They use her work income and his retired pay in a joint account to pay their debts. She does not remember if she ever signed an application for or used either of the two credit cards listed in the SOR. At one time, she and her husband had another version of one of the credit cards, but they have not used that other credit card in some years. It was replaced with a newer credit card by the same credit grantor and is the credit card listed in the SOR. She does not have a credit card only in her name. She and her husband have one credit card they use jointly. The Government-furnished credit report and the credit report provided by Applicant list the payments on that credit card as current and paid as agreed. (Tr. 50-57; Gov. Ex. 3 and 4; App. Ex. A)

Applicant's husband's retired occupation is as a stock "swing" or day trader. When stocks are traded by Applicant's husband as a day trader, he must close his accounts and pay any debts that day. As a "swing" trader, the profits and debts are determined and accounts closed on a week-to-ten-day basis. (Tr. 68-69)

Applicant knew that her husband's income was less starting in 2008, but she did not know why the two credit cards became delinquent at that time. She knew that their bills were being paid, but that some were not being paid on time. She was aware that there were some financial issues, but she went to work and left it up to her husband to determine how to timely pay bills. She did not discuss the debts with her husband. She was not aware of any delinquent debts until 2012 when she received the SOR. She believes she and her husband are not responsible for the debt. She does not believe she owes any debt to the two companies because they are not on her credit report. (Tr. 27-40)

Applicant's husband testified that the two credit cards listed in the SOR were used only by him. Applicant was listed on the credit cards as only an authorized user. His credit reporting agency informed him that the credit-granting companies inform them of account holders (joint or individual), authorized users, or co-signers to list on credit reports. Account holders and co-signers are responsible for making timely payments. Authorized users are not responsible for payments. However, the account history may appear on an authorized user's personal credit report. (Tr. 84-87; App. Ex. E, Letter from Experian, dated May 13, 2014)

Applicant's husband stated that he told her to list the debts on her security clearance application, not knowing that in their state she is not liable for the debts that he alone incurred. He put his wife on the credit cards as an authorized user so she could use the credit cards if anything happened to him. But she did not use the credit cards. He did not give her the credit cards but kept them in a lock box in their house. They were strictly used by him in his stock day trader business and not used for household expenses. When he initially received the credit cards, he did not intend to

use them. He wanted to have them if he needed cash suddenly or to meet a margin call on his stocks. The only reason they were used was to cover his short falls in day trading when the stock market started to collapse in 2008.

He knows one credit card has been charged off. He opened that credit card in 1994 but used it initially only for personal expenses and paid it off monthly. In 2007 when the stock market started to collapse, he had a different credit card issued by the same credit card company that he started using to cover stock purchases but he could not pay it off monthly. He opened the other credit card in June 2004 but never used it until 2007/2008. It is listed as a \$52,000 delinquent debt by the collection agency, but the initial debt was \$20,000 before the collection agency added interest and penalties. He received a settlement offer from the collection agency but he did not have the funds to accept the settlement offer. He is negotiating with the collection agency to see if he can reach an agreed settlement. He has not used either credit card since 2008. (Tr. 63-65, 68-84, 88-90; App. Ex. C, Settlement Offer, dated April 10, 2014)

Applicant's husband testified that any profit from his stock trading was placed back into his account to use for other stock purchases. Any stocks purchased were held only in his name. He and his wife were able to meet their expenses using her salary and his retired pay. He has not taken any action to address the delinquent credit cards. He has made some money as a stock trader but is unsure of the amount. Applicant's and her husband's joint income tax returns for tax year 2010 to 2013 show that business income and capital gains were losses and not profit or income. (Tr. 68-70, 90-92; App. Ex. F through I, Tax Transcripts, Various dates)

### **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 must be considered 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, 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

## **Analysis**

### **Financial Considerations**

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant listed two delinquent credit card debts on her security clearance application and discussed them with a security investigator and in response to questions on an interrogatory. Only one of the credit cards is listed on a credit report. These delinquent debts established by Applicant’s statements raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates a history of both an inability and unwillingness to satisfy debt.

I considered the Mitigating Conditions 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); and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply.

Applicant's husband and not Applicant is responsible for the two credit card debts. He applied for and is the sole user of the credit cards. He uses them to cover his purchases of and short falls from stock day trading. The credit cards became delinquent when he had losses from his stock trading in 2007 and 2008. Applicant's husband listed her as an authorized user so she could have access to the credit cards in an emergency or if something happened to him. Applicant does not use the credit cards or have them in her possession. Department Counsel contended that Applicant is responsible for the credit card debts because she shared in the profits from the stock trading. However, the testimony of Applicant's husband showed that any stock trading profit was put back into his stock trading business and not used to pay personal or household expenses. Tax returns do not show any profit from the stock trading. Also, as only an authorized user on the credit cards, she is not responsible for payment of the debts according to the credit reporting agency. Accordingly, as to Applicant, the debts were incurred under circumstances beyond her control and are not likely to recur. She acted reasonably and responsibly towards her finances since the one credit card she uses is paid as agreed.

I considered mitigating condition AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) as to the past-due mortgage. For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. This mitigating condition applies to the past-due mortgage.

The mortgage that is listed as past-due was incurred when Applicant and her husband could not sell a house when they were transferred. They rented the house through an agent but it was damaged beyond repair by a tenant. It could no longer be rented and they did not have the funds to make repairs. Instead of abandoning the property, they continued to pay the mortgage and taxes. The mortgage is now current and not past-due. Applicant's and her husband's actions to continue to pay the mortgage establishes a "meaningful track record" of debt payment and shows a reasonable, prudent, and honest adherence to financial duty and obligation.

Applicant has shown that she manages her personal financial obligations reasonably and responsibly, and her responsible financial conduct is likely to continue. The credit card she uses is current and she does not have responsibility for the credit card debts incurred by her husband in his business. The mortgage on a rental property is current. Her credit report shows all debts are paid as agreed. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. Applicant presented sufficient information to establish that she is acting reasonably and responsibly towards her finances. Her financial track record establishes confidence in the responsible management of her financial obligations. This indicates she will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

### **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.c:                      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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THOMAS M. CREAN  
Administrative Judge