



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



In the matter of: )  
)  
) ISCR Case No. 14-00526  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

August 1, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has 18 delinquent debts, totaling \$10,529. Applicant testified that she repaid one debt, but failed to produce adequate documentation to substantiate her claim. All of Applicant's other debts remain unaddressed. Additionally, security concerns were raised because Applicant intentionally failed to disclose her debts on her electronic Security Clearance Application (e-QIP). Applicant failed to mitigate the financial and personal conduct concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted her e-QIP on September 11, 2013. On April 22, 2014, the Department of Defense issued a Statement of Reasons to Applicant detailing security concerns under the guidelines for Financial Considerations and Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on May 12, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 23, 2014. A notice of hearing was issued to Applicant on June 30, 2014, scheduling her hearing for July 16, 2014. The hearing was convened in Woodland Hills, California, as scheduled. The Government appeared by video-conference from Arlington, Virginia. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on her own behalf, called one witness, and presented Applicant's Exhibit (AE) A. AE A was admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 23, 2014.

### **Findings of Fact**

Applicant is 36 years old. She has worked for her employer since 2008 and seeks a security clearance in connection with her employment. She is a high school graduate and has never been married. She is a single mother of two children, ages 14 and 11. (GE 1; Tr. 42, 69.)

The Government alleged that Applicant is ineligible for a clearance because she made decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified financial concerns including 18 delinquent debts totaling \$10,529. Applicant's debts appear in credit reports entered into evidence. Personal Conduct security concerns arose out of Applicant's failure to disclose her SOR-listed debts on her e-QIP. Applicant admitted to SOR allegations 1.a, and 1.f through 1.i. She denied allegations 1.b through 1.e, 1.m through 1.r, and 2.a. (Answer; GE 3; GE 4; GE 5; GE 6.)

Applicant testified that all of her debts are for medical bills she incurred while unemployed or under-employed from 2006 to 2008. She had no health insurance during that period. She testified that she was slowly addressing her debts. In approximately 2010 she set up a repayment plan with a creditor to repay \$50.56 per month until the debt was satisfied. She produced one bank statement dated June 23, 2014, showing a \$50.59 deduction was made from her account on May 15, 2014, which she claimed satisfied the debt in full. However, the name of the creditor on her bank statement did not match with any creditors identified on the SOR. Further, she failed to produce documentation of any other payments. She testified that she intended to repay all creditors, although she had not made contact with any of the other creditors. She failed to produce adequate documentation to show she was repaying any of her SOR-listed debt. (AE A; Tr. 24-26, 29-30, 41-55.)

Applicant's father testified that he helped her set up a financial tracking system and that Applicant currently pays her debts on time. Applicant has had no formal financial counseling. She has approximately \$300 to \$500 left over each month after she pays her monthly financial obligations. She indicated she has savings of \$600 to \$700. (Tr. 23-37, 58-59.)

Applicant completed and executed her e-QIP on September 11, 2013. In “**Section 26. Financial Record**,” she was asked whether she had any judgments entered against her, or bills and debts that were turned over to a collection agency. She answered, “No.” However, she admitted to knowledge of at least some of her medical debts since 2010. She testified that she did not understand the questions on the e-QIP, and did not intentionally falsify her answers. She did not have a credit report available at the time she completed her e-QIP in 2013 and did not know all of the required information. (GE 1; GE 3; Tr. 60-69.)

Applicant’s father, who is also in her chain-of-command at work, indicated that Applicant is a responsible employee and pays excellent attention to detail. He testified she is a valuable asset to her employer. (Tr. 33-34.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the 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, 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 AG ¶ 2 describing 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 the decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. The 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 as to 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**

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

The SOR alleges that Applicant incurred approximately 18 delinquent debts totaling \$10,529. She has not contested or otherwise addressed her delinquent accounts listed on her credit reports. She has \$300 to \$500 left after satisfying her monthly obligations, but has not addressed her delinquent debts in a meaningful manner. She has an overall “history of not meeting financial obligations.” AG ¶¶ 19(a) and 19(c) are disqualifying.

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

- (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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board has held, "A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."<sup>1</sup> Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>2</sup>

Applicant's ongoing decision not to address her debts in a meaningful manner reflects poorly on her current judgment, reliability, trustworthiness, and ability to protect classified information. She has not established that the problem is being resolved or is under control, or that she made a good-faith effort to repay her remaining delinquent accounts. While Applicant may have incurred the SOR-listed debt as a result of unexpected medical expenses during a time of unemployment and underemployment, she failed to provide evidence of responsible action to resolve the debts. None of the mitigating conditions were sufficiently established by the record evidence with respect to those debts and the financial history of which they are symptomatic.

### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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<sup>1</sup> ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

<sup>2</sup> AG ¶ 2(a)

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to identify her SOR-listed debts on her e-QIP. She clearly knew she had debts that had not been resolved. Yet, she willfully chose not to include them on the e-QIP. This behavior indicates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. She provided no information that indicates she was ill-advised in completing her SF 86. Falsifying material information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, she failed to take responsibility for her actions. She has not provided sufficient evidence to meet her burden of proof for her personal conduct.

## 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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to produce sufficient documentation that her delinquent debts have been addressed or are otherwise being resolved in a responsible manner. Her veracity and personal conduct are still in question. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations or Personal Conduct security concerns.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline F:      | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.r: | Against Applicant |
| Paragraph 2, Guideline E:      | AGAINST APPLICANT |
| Subparagraph 2.a:              | Against Applicant |

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge