



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-00803  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

11/14/2014

**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 provided sufficient information to mitigate security concerns based on her finances and personal conduct.

**Statement of the Case**

On August 12, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. Applicant was interviewed about her finances and personal conduct by a security investigator from the Office of Personnel Management (OPM) on September 24, 2013. On January 13, 2014, Applicant responded to questions raised in financial interrogatories issued to her by the Department of Defense (DOD). DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated April 22, 2014, detailing security concerns for personal conduct under Guideline E and 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 DOD on September 1, 2006.

Applicant answered the SOR on May 22, 2014. She denied the six allegations under Guideline F, and allegation 2.a under Guideline E. She admitted allegation 2.b under Guideline E. Department Counsel was prepared to proceed on September 8, 2014, and the case was assigned to me on September 10, 2014. DOD issued a Notice of Hearing on September 19, 2014, scheduling a hearing for October 23, 2014. I convened the hearing as scheduled. The Government offered ten exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 10. Applicant testified, and offered one exhibit that I marked and admitted into the record as Applicant Exhibit (AX) A. I kept the record open for Applicant to submit additional documents. Applicant timely submitted five documents, and submitted one document untimely, that I marked and admitted into the record as Applicant Exhibits (AX) B through G. Department Counsel did not object to the admission of the additional documents. (GX 11) DOHA received the transcript of the hearing (Tr.) on November 3, 2014.

### **Findings of Fact**

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

Applicant is 55 years old, and has been employed with the defense contractor since 1999, and was recognized for her over 15 years of service as a facilities manager. She has been eligible for access to classified information since 1984. She is a high school graduate with some college courses. She is attending college now, and expects to receive an associate's degree in December 2014. She was married for the third time in 2009, separated in 2012, and divorced in September 2013. She has two adult children, ages 30 and 34. Her daughter and her three children, ages 5, 6, and 8, live with her. Her daughter does not receive child support but does pay her share of household expenses. Applicant's yearly salary is \$99,000. Her net monthly pay is \$4,000. She has \$3,700 in net monthly expenses, leaving \$300 monthly in discretionary funds. She has a monthly budget kept on an Excel spreadsheet. (Tr. 25-37; AX A, Certificate, dated July 2014)

Applicant has a history of financial problems, but she also has a history of resolving those financial problems. She filed for bankruptcy and her debts were discharged in 1998. (GX 4, Bankruptcy Documents, dated February 5, 1998) She purchased a house in 1999 that was foreclosed in 2002. (GX 8, Credit Report and Foreclosure Documents, dated February 12, 2002) She purchased another house in 2009 for \$124,000, and is current with her \$1,086 monthly mortgage payments. Applicant incurred a tax debt when she withdrew funds in 2002 from her 401K account to make house repairs. Applicant paid the tax lien. She pays \$179 monthly in interest on student loans of approximately \$50,000. The loans are in deferment until after Applicant

completes her schooling in December 2014. She does not know the amount of her student loans payments after the loans are no longer deferred. Applicant has \$60,000 in a one 401K from a previous employer, and \$40,000 in a 401K with her present employer. She is current with her taxes and other debts. She does not use credit cards. Her car payment is current.

She learned two valuable lessons; keep use of credit cards to a minimum, and do not co-sign any loan for her children. She recently purchased a car for her daughter. The car loan is in Applicant's name and not her daughter's name. Applicant's daughter pays the car loan and is current with the payments. Applicant realizes the car loan is her responsibility if her daughter does not make the payments. Her daughter is presently gainfully employed and making the payments. (Tr. 37-43, 63-79, 80-84)

The SOR lists, and a credit report confirms, six delinquent debts for Applicant: a \$7,579 apartment rental debt in collection (SOR 1.a); a television service debt in collection for \$755 (SOR 1.b); a telephone service debt in collection for \$593 (SOR 1.c); two traffic violations for \$300 (SOR 1.d) and \$200 (SOR 1.e) in collection; and a home gas service debt for \$131 (SOR 1.f). The approximate total of delinquent debt is \$10,000.

The apartment rent debt at SOR 1.a arose because Applicant co-signed with her daughter on an apartment lease. Shortly after leasing the apartment, Applicant's daughter realized she could not pay the approximately \$900 monthly rent payments and informed the landlord. After not paying rent for three months, she was evicted. Applicant asked her daughter about the debt when she learned of the delinquent debt for \$7,579 on her credit report from the security investigator. Her daughter told her the debt should only be for three months of rent, approximately \$3,000. Her daughter contacted the apartment rental agency. There was a new rental agency but they had no information to verify the debt. Applicant contacted the collection agency, and they could not verify the amount of the debt. After discussions, Applicant was unable to agree on the amount of the debt or a payment plan with either the rental or collection agencies. Applicant contacted the credit reporting agency to dispute the debt. After not receiving information from either the landlord or the collection agency, the credit reporting company removed the debt from Applicant's credit report. No payments have been made on the debt by either Applicant or her daughter. (Tr. 44-51, 67-68; Response to SOR, Transunion Letter, dated January 16, 2014)

Applicant disputes the \$755 DirectTV debt at SOR 1.b. The debt notice from DirectTV was addressed to her using her maiden name. She has not used her maiden name since she was 19 years old. She did not have DirectTV at the time. The social security number for the debt was not her social security number. She was told to contact the fraud department but the fraud department took no action. She disputed the debt with the credit reporting agency, and it has been removed from her credit report. (Tr. 51-52; Response to SOR, Transunion Letter, dated January 16, 2014)

Applicant disputed the telephone service debt of \$593 to Sprint in collection by Enhanced Recovery at SOR 1.c. The credit report lists the debt to Enhanced Recovery as open. The activity date is December 2007 and reported date of November 2012. The credit report also lists a debt to Sprint in collection by Receivable Performa that has no balance due and is closed. The reporting date is August 2008 but no activity date. The accounts have different account numbers. (GX 2, Credit Report, dated August 24, 2013, at 8 and 9) Applicant testified that she had an account with Sprint but received a phone from her employer under a different telephone carrier. She turned off her personal Sprint phone, paid her Sprint debt in 2007, and notified the collection agency. She could not remember the name of the collection agency, but believes the debt was removed from her credit report. The credit report information on the debt in collection by Receivable Performa is consistent with Applicant's testimony. Applicant does not have telephone service with Sprint. Her children may have had Sprint telephone service, but she did not co-sign for their accounts. Applicant asked Sprint about the credit report entry and they directed her to the collection agency. The collection agency could not verify the account. Applicant notified the credit reporting agency of her dispute of the account, and it was removed from her credit report. I find that Applicant resolved this account by paying the debt in 2007. The debt in collection by Enhanced Recovery resulted from the transfer of the debt from one collection agency to another collection agency. (Tr. 52-60, 79-80; Response to SOR, Transunion Letter, dated January 16, 2014)

Applicant admitted the two debts at SOR 1.d and 1.e. The debts were based on traffic camera tickets received from the local government. Applicant did not deny that the tickets were her responsibility. The tickets have been paid. (Tr. 60-61, 80-81; AX D, e-mail receipt, dated November 7, 2014)

The debt at SOR 1.f is for gas service to a former residence that is in in collection by Nationwide Credit. Applicant claims she paid the debt. Applicant provided documentation to verify payment of the debt on December 26, 2013. (Tr. 62-63, 80-81; AX G, Letter, dated November 10, 2014)

Applicant did not list any delinquent debts on her security clearance application. She denies deliberate falsification of her security clearance application. Applicant did not know at the time she completed the application that her credit report listed delinquent debts. She believed she paid or resolved all of her past debts and was current with her present bills. She learned of the debts in the SOR when advised of them by a security investigator. (Tr. 63-67)

Applicant admits she used her company credit card in 2010 to help pay her daughter's rent so she could stay in her apartment. The daughter eventually did not pay her rent and was evicted leading to the debt at SOR 1.a. She admits she knew the company rule against using company credit cards for personal purchases. She reported the improper use to her supervisor and was told to pay off the debt. She paid the credit card debt. She no longer has a company credit card since she does not need it for her work. (Tr. 68-74, 81-82)

Applicant's 2011, 2012, and 2013 performance appraisals rate her as providing foresight and leadership when performing her facility manager's functions. She is rated as an exceptional contributor to the company's mission. (AX C, Appraisal Reports)

A friend wrote that she has known and worked with Applicant on many projects for over ten years. Applicant is an invaluable member of any team. She strives to surpass any goals set and boost the morale of the other team members. She considers Applicant to be honest and trustworthy. Another friend, who has known Applicant for over ten years, wrote that Applicant has displayed a high degree of integrity, responsibility, and ambition. Her good judgment and mature outlook ensure that their church organization meets its goals. Another friend, who has known Applicant for over eight years, wrote that Applicant is intelligent, capable, and personable. She reacts sensibly to all situations. She handles issues with thoughtfulness and maturity. Applicant's coworker wrote that she has known and worked with Applicant for over 15 years. Applicant is honest and trustworthy and is a help to all at work and in her community. She knows the importance of proper handling of classified information. She has faith that Applicant will properly perform her duties and properly manage classified information. (AX B, Letters, dated October 24-30, 2014)

### **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, thereby raising 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in 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 in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant’s history of delinquent debts is documented in her credit reports and her SOR response. Applicant’s delinquent debts are a security concern. The evidence is sufficient to raise security concerns under 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 information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Conditions under 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;

(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;

(d) The individual has initiated a good-faith effort to repay the 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 mitigating conditions at AG ¶ 20(a), (b), and (e) apply. Applicant was advised of her delinquent debts by a security investigator. The debt at SOR 1.a was a result of Applicant's co-signing an apartment lease for her daughter. Her daughter defaulted on the lease and was evicted. She has not co-signed for a debt for her children in four years, and does not intend to co-sign another loan. This debt happened under unusual circumstances largely beyond her control because the debts were incurred by her daughter's failure to pay her rent. Applicant no longer co-signs for her children's debts so this type of debt is unlikely to recur. Applicant had a legitimate basis to dispute the debt at SOR 1.b because she never had television service from the creditor. She disputed the debt at SOR 1.c because she paid the debt. Applicant took action to resolve the debts by contacting the creditors or collection agencies. She did not receive what she regarded as credible information from the creditors or collection agencies so she disputed the debts with the credit reporting agency. The credit reporting agency deleted the debts from her credit report.

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. A systematic method of handling debts is needed. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. 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. Applicant presented sufficient information to establish that the debts at SOR 1.c, 1.d, 1.e, and 1.f have been paid.

Applicant established that her delinquent debts have been resolved. She disputed three debts and the debts were deleted from her credit report. She established that she paid one of the disputed debts and that is the reason it was removed from her credit report. She established that she paid the other three debts. Her actions on her debts show that she acted in good faith with adherence to her financial obligations. She established a “meaningful track record” of debt resolution, and that she acted responsibly and reasonably to resolve her financial issues. These actions are strong indications that she will act reasonably and responsibly to protect and safeguard classified information. Applicant presented sufficient information to mitigate security concerns for financial considerations.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 15) Personal conduct is always a security concern because it asks whether the person’s past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

Applicant did not list any delinquent debts on her security clearance application. Applicant used her company-furnished credit card for her personal use of paying her daughter’s apartment rent. These offenses go directly to questions concerning her reliability, trustworthiness, good judgment, and willingness to comply with rules and regulations. Her conduct raises the following Personal Conduct Disqualifying Conditions under AG ¶ 16:

(a) the 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 eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) (a pattern of dishonesty or rule violations.

Applicant denied intentional falsification for failing to note any delinquent debts on her security clearance application. Applicant answered “no” to the financial questions



on the application because at the time she completed the application she did not know of any delinquent debt. She learned of the delinquent debt from a security investigator during the security clearance process. She did not know of the apartment rent debt from her daughter, the DirectTV debt, or the traffic camera debts. She believed she had resolved her past delinquent debts, and she established she paid those past debts listed in the SOR. The debts she knew about had been resolved, and these debts were not later listed in the SOR. While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. I find that Applicants did not deliberately fail to provide correct and accurate financial information on the security clearance application. I find that her testimony that she did not know of any unresolved delinquent debts when completing the security clearance application is credible. SOR allegation 2.a is found for Applicant.

As to SOR allegation 2.b, I considered the Personal Conduct Mitigating Condition AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). This mitigating condition applies. Applicant used her company-issued credit card to pay her daughter's apartment rent in June 2010. Her company's policy is that the credit card would be used only for business-related expenses and not personal expenses. She told her supervisor of her improper use of the credit card, and was advised to pay the debt using a payment plan and not use the card again for personal use. Applicant paid the debt by the end of 2010. No further disciplinary action was taken against Applicant by the company. Applicant's job no longer required that she have a company-issued credit card, and her company credit card was turned in. Applicant improperly used the credit card only once four years ago. She complied with the redemption requirement of her supervisor, and no longer has a company credit card. Applicant resolved the issue with her employer. She only used the card improperly once four years ago so her offense was infrequent and occurred long ago. She no longer has a company credit card, so the offense is unlikely to recur. It does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. Applicant presented sufficient information to mitigate the security concerns based on her personal conduct.

### **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 is an excellent employee and has been eligible for access to classified information for over 30 years with no security issues. Applicant has a history of financial issues but she resolved the financial problems. Most of her delinquent debts were caused by her instincts to assist her children. She disputed debts and the debts were removed from her credit report. She paid her other debts. The six debts listed in the SOR have been resolved. Applicant presented sufficient information to establish that she acted reasonably and responsibly towards her finances. Her actions to resolve her financial problems indicate she will be concerned and act responsibly in regard to classified information, and will follow rules and regulations concerning the safeguarding of 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 and personal conduct guidelines. 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.f:  | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraphs 2.a – 2.b:  | 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