



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01029

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: Harris S. Ammerman, Esq.

10/28/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On April 30, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 July 1, 2015. A notice of hearing was issued on August 13, 2015, scheduling the hearing for October 8, 2015. Government Exhibits (GX) 1-7 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-R, which were admitted without objection. The transcript was received on October 16, 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 admitted the SOR allegations under Guideline F, with the exception of six debts. She provided explanations. Applicant denied the falsification allegation under Guideline E.

Applicant is 58 years old. She attended college for one year after her high school graduation in 1975. She has been divorced since 1988 and has a grown daughter. Applicant completed a security clearance application in 2011 and has been employed as a federal contractor 2003. (GX 1) However, she was employed as a federal employee for many years. (GX 1)

The SOR alleges 12 delinquent debts, including judgments, a home foreclosure, vehicle repossession, and collection accounts. These bills accumulated as she received no child support from her ex-husband, incurred medical bills, and experienced loss of income. Applicant used her savings and her retirement funds in an attempt to pay her bills. When Applicant exhausted more than \$31,000 from her retirement fund, that resulted in income tax problems. Applicant paid all bills that she was able to pay. Finally, she realized that she could not pay her delinquent debts, and she sought professional advice.

In 2000, Applicant suffered two strokes from an aneurysm in the heart. Her physician order her to stop work. She lost certain physical abilities and needed much rehabilitation. (Tr. 28) After two years or more in rehabilitation, she was asked to return to the government for a position as a contractor, she accepted. Applicant was adamant that she did not want to just sit and not do anything. She willed herself to walk, regain speech, and perform tasks. She accepted a position with much less responsibility to perform general office tasks. (Tr. 28)

Her current duties involve scheduling patients, making phone calls, and doing other rote procedures. (Tr. 30) Her work load is much less than her former positions. Much of the work is routine.

When Applicant contacted an attorney in 2012, she was advised to file a petition for Chapter 13 bankruptcy. She met the means test for Chapter 13 based on her income. She has a net monthly income of \$3,673. (AX N) She wants to pay as much as she can to her creditors. She filed the Chapter 13 bankruptcy petition in 2014. (AX G) She elected a five year plan, rather than a three year plan, so that she could pay all creditors. (AX I) She completed the required counseling course and a personal financial management course. (AX P) The plan provides that money is automatically deducted monthly from Applicant's pay check. (AX J) The plan provides a \$275 payment for 2 months; a \$325 payment for 42 months; and a \$735 payment for 16 months.

The delinquent debts alleged in the SOR are now included in Schedule F of the Applicant's bankruptcy petition. (Tr. 42) Applicant is current on her payments and provided documentation that supports her assertion. (AX D)

In July 2011, Applicant submitted a security clearance application. The SOR alleges that Applicant falsified that security clearance application because Applicant answered Section 26 - Financial Record - Delinquency Involving Enforcement (in the past seven (7) years) and Section 26 - Financial Record - Delinquency Routine Accounts with a "No." She answered no to all subsections regarding financial debts.

Applicant denied any falsification regarding her financial status on the 2011 security clearance application. She explained that she completed the application on line and that it took her a long time. She admits that she is much slower than she was before the strokes. (Tr. 46) After she completed the application in 2011, she was not approached by anyone to check it over. The first time that she realized that she had misinformation on the form was when she received notice about her security investigation.

When cross examined about the omission of any financial debts or difficulties, her responses were credible in that she did not intend to falsify any information. She answered to the best of her ability. She had never previously filled out such an application. She admits that she skimmed some questions.

Applicant submitted a letter of reference from a physician, a retired officer who served as Chief of Radiology at an Army medical center. Applicant worked for him for approximately 16 years. She began her employment in 1990 until 2011. She had a break in service from about 2000 until 2003 as a result of a medical illness and rehabilitation. When Applicant returned as a contract employee, she remained until the 2011 BRAC closure. As her supervisor, he knew her quite well. According to the retired Chief, she is a superb employee. She never failed to perform her duties in a conscientious and professional manner. Her demeanor and character were exemplary. She possessed superior interpersonal skills. (AX R)

Applicant is still under the care of her physician. She has appointments every three months. She has neurological damage and realizes that she is deficient in certain areas. She has undergone psychological evaluations. She refuses to admit defeat. She accepts her deficiencies and is moving forward. She continues to be self sufficient. (Tr. 52)

## **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.

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<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.*

## **Analysis**

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

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

(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.

In this case AG ¶ 16 (a) does not apply. Applicant answered her 2011 security clearance application to the best of her ability. She was confronted with a detailed application that she had never seen before. She checked all subsections to Section 26 - Financial Record with a "No" and she had delinquent accounts, which she has acknowledged. She probably did not digest all the questions. She just checked everything off and did it automatically. I do not find that she intentionally falsified her 2011 security clearance application.

### **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."

Applicant admitted that she was indebted and had delinquencies after she suffered two strokes and could not work. She filed a petition for Chapter 13 bankruptcy. 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's financial delinquencies arose after she suffered two strokes, was caring for her child without child support, and was unable to work for two years during her rehabilitation. She used her savings and retirement fund to pay her creditors. She has taken actions to resolve the debts by filing a Chapter 13 bankruptcy petition. This was an isolated incident in her life. 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) 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) applies. Applicant's divorce, medical condition, rehabilitation, loss of income and lack of child support were beyond her control. She worked hard after her rehabilitation and did everything to pay all her bills. She sought legal advice when she could no longer maintain debt payments. She has a five year Chapter 13 bankruptcy plan with which she is compliant. She acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant as noted above paid as much as she could to her creditors. She used her savings and retirement fund. Upon legal advice, she filed for bankruptcy. She is current with her payments. She took the required financial counseling course. 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) 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 58 years old. She has worked for the government and as a contractor for many years. She has good recommendations. She suffered two strokes and went through two years of rehabilitation. She refused to give up and accepted a position in a less stressful job. She did everything to pay her debts. She had no help from her ex-husband in supporting her daughter. She was responsible in addressing her debts by using savings and retirement. She obtained legal advice and filed for Chapter 13 bankruptcy. She is current on her payments in a five-year plan. I found her candid and sincere in her testimony. She has persuaded me that there are clear indications that her financial problems has been resolved. She has mitigated the personal conduct concern as well. Applicant omitted information about her finances in her responses to Section 26. She explained that she had never seen the form before. She answered the questions to the best of her ability. She admits that she made a mistake.

Applicant provided sufficient information to establish current judgment and reliability. She has mitigated the security concerns under the financial considerations and personal conduct guidelines.

### **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: Subparagraphs 1.a.-1.i:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT 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.

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NOREEN A. LYNCH.  
Administrative Judge

