



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01620
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

November 19, 2014

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 35-year-old employee of a defense contractor. She has reestablished financial solvency and is repaying delinquent debts caused by her post-service unemployment and divorce. Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. Her request for a security clearance is granted.

**Statement of the Case**

On June 2, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 September 1, 2006.

Applicant answered the SOR on June 17, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 13, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 4, 2014, scheduling the hearing for October 15, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered Exhibits (AE) A through I, which were admitted without objection. Applicant testified. The record was left open for Applicant to submit additional exhibits. On November 4, 2014, Applicant presented three additional exhibits marked AE J through AE L. Department Counsel had no objections to AE J through AE L and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 24, 2014.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor. She has been employed in the same job as a Government contractor since December 2011, although her employer has changed during that time due to a change in contracts. She is also a current member of the Navy Reserve, holding the rank of E-6. From December 1998 to October 2002, Applicant was in the Army. She was on active duty in the Navy from October 2002 to November 2010. She successfully held a security clearance without any violations from approximately 1998 to present. She is married to her second husband, who is on active duty in the Navy. She has no children. (GE 1; GE 2; Tr. 24-35.)

Applicant was married to her ex-husband from 2003 to 2011. In 2009, she began experiencing marital problems. Her ex-husband requested that she leave the Navy and move to their hometown in another state, where he moved ahead of her in an initial separation. She received an honorable discharge in 2010 and moved to rejoin him, but they were unable to reconcile. She was left with all of the marital debt in their divorce, which was finalized in 2011. Although her ex-husband promised to help her pay their debts, he never followed through with his promise. (GE 1; GE 2; GE 3; Tr. 24-39.)

After Applicant left the Navy, she was unemployed from November 2010 to June 2011, while she looked for work. She then began working for a bank, but only made enough to provide for her basic needs. She did not have money to repay the marital debt. (GE 1; GE 3; Tr. 39.)

As alleged in the SOR, Applicant was in debt on 14 delinquent accounts in the approximate amount of \$120,174. Applicant admitted all of the debts listed in the SOR subparagraphs, with explanations. Her debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 4; GE 5; GE 6; GE 7.)

Applicant wanted to resolve her debt, so she sought counseling from her brother who is a financial counselor. He referred her to a debt consolidation company (DCC). She contracted with the DCC to help her repay her delinquent accounts in February 2012. She testified that she pays the DCC \$290 per month to help her settle her debts.

She has successfully made her monthly payments to the DCC for more than two years. She listed eight delinquent accounts with the DCC and, so far, four of those accounts have been fully resolved. However, only seven of her SOR-listed debts appear to be listed with the DCC, including: the \$4,856 debt listed in ¶ 1.a; the \$2,157 debt listed in ¶ 1.b; the \$445 debt listed in ¶ 1.d; the \$811 debt listed in ¶ 1.e; the \$984 debt listed in ¶ 1.f; the \$5,535 debt listed in ¶ 1.g; and the \$2,157 debt listed in ¶ 1.j. She is making monthly payments through the DCC to resolve the debt in ¶ 1.a. She has fully resolved the debts in ¶¶ 1.b, 1.d, and 1.j through payments. The DCC is working to negotiate payments with the creditors identified in ¶¶ 1.e, 1.f, and 1.g. Applicant intends to continue working with DCC until all of her delinquencies are resolved. (GE 3; AE A; AE B; AE C; AE D; AE E; AE J; Tr. 41-48, 52-54.)

Applicant is indebted on a delinquent second mortgage in the approximate amount of \$84,354, as alleged in SOR ¶ 1.c. Applicant purchased a home in October 2006 for \$327,000 with her ex-husband. The loan was a 30-year fixed-rate mortgage. Her monthly payments totaled \$2,900. Applicant was able to afford the payments on the home until early 2010, when she no longer could due to her pre-divorce separation. She consulted a realtor at that time and was advised to stop making payments on the mortgage to facilitate a short sale. The value of the home had declined and it could not be sold for the amount Applicant owed on the mortgage. She was told that there would be no remaining balance after the short sale, which was finalized in October 2010. She has attempted to contact the creditor to follow up on this debt, but they are no longer in business. Applicant's October 12, 2014 credit report reflects this "account paid/zero balance; Account paid for less than full balance." This debt is resolved. (GE 7; Tr. 61-65, 67-70.)

Applicant was indebted to a city government for an unresolved parking ticket in the amount of \$109, as alleged in SOR ¶ 1.h. She resolved this debt on June 13, 2014, as documented in a receipt from this creditor. (AE F; Tr. 49.)

Applicant testified that the delinquent debt identified in SOR ¶ 1.i, in the amount of \$269, was also enrolled with the DCC. However, it does not appear to be listed on Applicant's documentation from the DCC. This debt is still listed as a delinquency on Applicant's October 12, 2014 credit report. It is unresolved. (GE 7; Tr. 49-51.)

Applicant is indebted on four student loans, as alleged in SOR ¶¶ 1.k through 1.n, in the total amount of \$18,497. Applicant took student loans to complete her education. After graduation in 2008, she received a 12-month deferment. When the deferment ended, she paid on her loans for approximately six months. However, she stopped making payments because she could not afford it. As a result, her wages were garnished for \$239 per month. Applicant was recently able to place her student loans in a rehabilitation program. She has been current on her rehabilitation program payments of \$226 per month since she enrolled in the program in June 2014. After she makes nine months of payments, her loans will no longer be considered to be in default. (GE 7; AE G; Tr. 56-60.)

Applicant has incurred no new delinquent debt since beginning her current employment. She now earns enough to make ends meet and slowly repay her delinquencies. (Tr. 39-41, 65.)

Applicant's supervisor gave Applicant his "highest recommendation for a security clearance." He noted that she is honest, mature, and professional. She handles sensitive information professionally and appropriately. (AE H.) Applicant's reviews reflect she works "above standards" in all criteria. (AE I.) She has been awarded three Navy and Marine Corps Achievement Medals during her service. (AE K.) She also received a citation for outstanding performance from a rear admiral. (AE L.)

## **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 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 clearance 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 protect or

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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant’s delinquent debts began accumulating in 2010 when she was unable to satisfy her bills due to unemployment and her pending divorce. She has a history of debt that she was unable to resolve for a four-year period. The evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

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

Applicant's delinquencies resulted from a combination of unique circumstances that are unlikely to recur. Applicant left a highly successful period of service in the Navy, to move with her husband. She ended up divorced and unemployed. She was unexpectedly saddled with the marital debt. She now has a well-paying, full-time job. She has been responsibly addressing her debts, as funds would allow, since February 2012. Her delinquencies are being resolved in good faith. She is now remarried and her family has a double income. It is unlikely she will be in a similar situation in the future. Her current judgment and trustworthiness are not in question. AG ¶ 20(a), 20(c), and 20(d) apply.

AG ¶ 20(b) focuses on delinquencies that result from events that an applicant could not control. Here, several events affected Applicant's ability to maintain financial solvency, including her divorce and her unemployment, which made it difficult for Applicant to live within her means. Applicant acted responsibly under the circumstances. She began addressing her debts shortly after obtaining a better-paying job in 2012. While she has not addressed or resolved all of her delinquencies, she has been working toward that goal for several years and intends to fully resolve her debts as her funds allow. She has resolved five debts identified in SOR ¶¶ 1.b, 1.c, 1.d, 1.h, and 1.j. She is making payments on ¶¶ 1.a, 1.k, 1.l, 1.m, and 1.n. The DCC is negotiating on her behalf with the creditors involved in ¶¶ 1.e, 1.f, and 1.g, and she intends to resolve them through their services. Only one small debt, ¶ 1.i remains unaddressed at this time, and Applicant mistakenly thought that it was included in her DCC. Under the circumstances, Applicant acted responsibly. AG ¶ 20(b) 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 the applicant's conduct and all relevant 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant served honorably on active duty in the Army and Navy for 12 years. She is now serving in the Navy Reserve. She has received citations and recognition for her service. While she experienced financial problems after she left the Navy, brought on mostly by an unexpected divorce and unemployment, Applicant is working to resolve her delinquent debts. She lives within her means. No new debts have been incurred. She has sufficient income to insure that there is little likelihood of recurrence.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person analysis for Applicant.

### **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:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.n: 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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Jennifer I. Goldstein  
Administrative Judge