



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-01918

**Appearances**

For Government: Stephanie Hess, Esq., Department Counsel

For Applicant: *Pro se*

04/29/2015

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant did not mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On September 2, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on September 22, 2014, and requested a hearing. The case was assigned to me on February 5, 2015, and was scheduled for hearing on March 26, 2015. At the hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on one witness (herself) and seven exhibits. The transcript (Tr.) was received on April 8, 2015.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file her federal tax returns for tax years 2011 and 2012; (b) incurred an adverse judgment in January 2013 for \$4,615; and (c) accumulated 17 delinquent debts exceeding \$25,000.

In her response to the SOR, Applicant admitted each of the allegations, except for the allegations pertaining to subparagraph 1.a (paid). She claimed she is paying \$25 a month on each of her remaining debts, which she intends to include in her planned Chapter 7 bankruptcy petition. Applicant claimed her delinquent debts are attributable to her husband's stage four cancer, and her resulting loss of income.

### **Findings of Fact**

Applicant is a 56-year-old communications tech II dispatcher for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married her spouse in September 1994 and has one child from this marriage. (GE 1) She claimed no post-high school educational credits or military service, but she is currently enrolled in classes in a local community college. (GE 1; Tr. 38-39) Applicant has worked for her employer for the past two years without a security clearance. (GE 1; Tr. 33, 37)

### **Applicant's finances**

Applicant failed to file federal income tax returns for tax years 2011 and 2012. (GE 1) She attributed her filing failures to medical hardships associated with her husband, who was battling cancer. (AE B; Tr. 37-39, 50-51)

Between 2009 and 2013, Applicant was employed as a police dispatcher for two separate contractors. (GE 1) During this time, her husband was diagnosed with prostate cancer, which caused him to miss considerable days of work. (AE B; Tr. 37-39) As the sole bread winner of her family, her husband's inability to work placed added financial strains to her family budget. (AE B; Tr. 37-39, 50-51) Applicant has since filed her federal tax returns for 2011 and 2012 and has entered into an installment agreement with the IRS to pay off the reported balance of \$3,752 for both tax years. (AE D; Tr.41, 60) Under her

repayment plan, she is obligated to pay \$50 a month to the IRS. She is current with her federal tax return filings for 2013 and 2014. (AE F; Tr. 41)

During her husband's illness, Applicant accrued additional debts. One of the creditors obtained a default judgment against her in January 2013 for \$4,615 in back rent owed to her landlord. (GE 2; Tr. 44) Applicant disputes this debt but never challenged the back rent claims in court. (Tr. 43-44) Another listed delinquent debt arose from a vehicle repossession in 2012 and is listed in her credit report as a deficiency balance in the amount of \$16,280. (GE 2; Tr. 42)

Applicant herself is a diabetic who experiences migraine headaches. (Tr. 51) Before her husband became ill in 2012, she was able to pay her bills. (Tr. 51-52) In January 2012, she entered into a retainer agreement with a legal firm, but deferred any decision on petitioning for bankruptcy relief while she assessed her husband's health and prospects for recovery. (AE F; Tr. 40) Most likely, she will proceed to seek Chapter 7 bankruptcy relief, an option she believes will afford her the best chance to create "a fresh start." (Tr. 40) But before making this decision, she will make every effort to contact her creditors. (Tr. 39-40, 52-54) Only if she is unable to reach payment agreements with her creditors will she undertake to file for bankruptcy relief.

At this time, it is unclear what payment arrangements Applicant is prepared to make with her individual creditors. She has no documented creditor contacts or payment arrangements with her listed creditors, and it is uncertain whether she will be able to work out payment agreements with her creditors before seeking Chapter 7 bankruptcy relief. (Tr. 56-58) All of her listed creditors remain unpaid and unresolved. With her limited income and modest disability benefits of her husband (\$733 a month), no inferences can be drawn at this point as to how Applicant will choose to resolve her debts.

## **Endorsements**

Applicant's security manager values Applicant's integrity and trustworthiness. (AE C) He credited her with consistently displaying the utmost integrity in her duties while dealing with sensitive information and material. Based on his observations of her actions over the previous 27 months, he vouched for her integrity and trustworthiness. (AE C)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a

security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant's history of delinquent debts, attributable in part to her diminished earnings following her husband's cancer diagnosis in 2012 and ensuing loss of spousal income. Applicant has been the principal provider in her home since her husband became ill and has limited means to cover her household expenses and still address her debts. Applicant's actions warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c) "a history of not meeting financial obligations."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant's payment problems were mostly attributable to her husband's becoming ill and unable to contribute more than modest disability benefits to the family's finances. Since being diagnosed with cancer, Applicant's husband has been unable to

work and is limited to his disability benefits. Applicant's mounting financial burdens have continued to affect her ability to catch up with her old debts. Her past financial problems merit partial application of MC ¶ 20(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."

Because Applicant has not developed any meaningful payment plan or other means for resolving her remaining debts since her husband became ill, full application of MC ¶ 20(b) is not available to her. Absent any evidence of repayment initiatives or efforts to otherwise resolve her remaining debts by bankruptcy petition or other legal means, Applicant may not take advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

To date, Applicant has not followed up with contacts of her creditors and has resisted proceeding with her petitioning for Chapter 7 bankruptcy relief. Prospects for doing so in the foreseeable future, given her track record to date, are difficult to gauge. Currently, she lacks any established payment initiatives, counseling, or payment plans to assist her in addressing her debts.

Without more tangible resources and initiatives to work with, Applicant cannot demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's lack of any repayment actions to date with the resources available to her prevent her from meeting the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant failed to document any positive steps taken within the past three years to restore her finances to stable levels consistent with minimum requirements for holding a security clearance. While she is well regarded by her supervisor and has demonstrated reliability and trustworthiness in her work, she has failed to demonstrate progress in addressing her listed debts consistent with meeting overall requirements for holding a security clearance. Whole-person assessment, while helpful to Applicant, is not enough to overcome her lack of a payment track history over the past three years since her husband became ill.

Considering all of the circumstances surrounding Applicant's payment history and other features of her employment and personal profile, her actions to date in addressing her finances are insufficient to meet mitigation requirements imposed by the guideline governing her finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.c through 1.u of Guideline F. Favorable conclusions are warranted with respect to subparagraphs 1.a-1.b.

## Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

### GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.c-1.u:	Against Applicant
Subparas. 1.a-1.b:	For Applicant

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### Conclusions

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

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Roger C. Wesley  
Administrative Judge

