



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04434

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

12/02/2015

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 24, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 3, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 12, 2015, and the hearing was convened as scheduled on July 15, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, and offered exhibits (AE) A through E, which were admitted without objection. The record was kept open and Applicant submitted AE F through M, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 23, 2015.

### **Findings of Fact**

Applicant admitted all the SOR allegations. Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 33-year-old employee of a defense contractor. She has worked for this employer as a systems administrator since 2013. She has a bachelor's degree. She has no military service. She is divorced and supports three children.<sup>1</sup>

The SOR alleges 11 delinquent debts totaling approximately \$11,845 and unfiled federal income tax returns and unpaid federal taxes for years 2008 and 2010. The debts were listed in credit reports from April 2013 and June 2014, her security clearance application, and her subject interview in May 2013.<sup>2</sup>

Applicant admitted during her hearing testimony that her delinquent debts were caused by her bad financial decisions and her divorce in 2006. She described her divorce as "bad," and stated she does not receive any child support from her ex-husband. She also was unemployed for about one year from 2009 to 2010 after she was fired from her position because of disruptive behavior. She received unemployment benefits during this time. She has not received any financial counseling for her debts.<sup>3</sup>

The status of the SOR debts is as follows:

#### **SOR ¶ 1.a (charged-off account for \$3,133):**

Applicant opened this credit card account in approximately 2002. She was making \$60 monthly payments up until about 2006 when her divorce occurred. Since then she has not resumed payments on the account. This debt is unresolved.<sup>4</sup>

#### **SOR ¶ 1.b (charged-off account for \$1,440):**

Applicant obtained this personal loan account in approximately 2005 to purchase furniture. She was making monthly payments up until about 2006 when her divorce

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<sup>1</sup> Tr. at 22-24, 26; GE 1.

<sup>2</sup> GE 1-4.

<sup>3</sup> Tr. at 24-25; GE 1, 4.

<sup>4</sup> Tr. at 33; GE 2-4; AE K.

occurred. Since then she has not resumed payments on the account. This debt is unresolved.<sup>5</sup>

**SOR ¶ 1.c (charged-off account for \$934):**

Applicant opened this credit card account in approximately 2001. She was making payments up until about 2006 when her divorce occurred. Since then she has not resumed payments on the account. This debt is unresolved.<sup>6</sup>

**SOR ¶¶ 1.d and 1.h (charged-off account for \$536 and judgment for \$633):**<sup>7</sup>

Applicant opened this personal loan account in approximately 2008. She made no efforts to repay this debt and the creditor received a judgment against her (SOR ¶ 1.h). In July 2015 she contacted the creditor to arrange a payment plan. No proof of payments under the plan was provided. This debt is unresolved.<sup>8</sup>

**SOR ¶ 1.e (collection account for \$373):**

Applicant opened this telecommunications account in 2012. She believed she paid this account, but did not any proof of payment. This debt is unresolved.<sup>9</sup>

**SOR ¶ 1.f (charged-off account for \$186):**

Applicant opened this credit card account in approximately 2002. She was making payments up until about 2009. Since then she has not resumed payments on the account. This debt is unresolved.<sup>10</sup>

**SOR ¶ 1.g (lien for \$2,612):**

Applicant paid this account in 2013 and provided supporting documentation. This debt is resolved.<sup>11</sup>

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<sup>5</sup> Tr. at 33; GE 2-4.

<sup>6</sup> Tr. at 34; GE 2-4.

<sup>7</sup> These two allegations will be treated as one debt. ¶ 1.h is found in favor of Applicant.

<sup>8</sup> Tr. at 35; GE 2-4; AE G.

<sup>9</sup> Tr. at 35; GE 3.

<sup>10</sup> Tr. at 35; GE 2-4.

<sup>11</sup> Tr. at 35; GE 2-4; Answer.

**SOR ¶ 1.i (collection account for \$811):**

Applicant paid this account in 2013 and provided supporting documentation. This debt is resolved.<sup>12</sup>

**SOR ¶ 1.j (collection account for \$951):**

Applicant paid this account in 2013 and provided supporting documentation. This debt is resolved.<sup>13</sup>

**SOR ¶ 1.k (collection account for \$236):**

Applicant paid this account in 2015 and provided supporting documentation. This debt is resolved.<sup>14</sup>

**SOR ¶ 1.l (unfiled returns and unpaid taxes for years 2008 and 2010):**

In Applicant's subject interview, she admitted to failing to file her 2008 federal income tax return because she was going through a divorce. She failed to file her 2010 federal tax return because she did not have the resources to pay the taxes. She filed her 2008 tax return in 2013 and her 2010 tax return in 2012. She entered into an installment agreement with the IRS in April 2015 for monthly payments of \$65. She failed to produce documentary evidence showing she has made any installment payments.<sup>15</sup>

Applicant stated that she has about \$200 to \$300 of discretionary income at the end of the month after paying all current expenses. Her checking account has a typical balance of about \$20 to \$50. She has no savings or retirement accounts. All of her tax filings are current.<sup>16</sup>

Applicant presented letters of recommendation from her supervisor and her security officer. Both have worked with her since 2013. Both expressed their belief that she is a hardworking, mission-focused, loyal employee. They support her effort to obtain a security clearance.<sup>17</sup>

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<sup>12</sup> Tr. at 35-36; GE 2-4; AE J.

<sup>13</sup> Tr. at 36; GE 2-4; AE E; Answer.

<sup>14</sup> Tr. at 37-38; GE 2-4; AE F; Answer.

<sup>15</sup> Tr. at 27, 39-40; GE 2; AE A-D, H.

<sup>16</sup> Tr. at 41-42, 44.

<sup>17</sup> AE M.

## 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 that 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 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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.

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

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has numerous delinquent debts that remain unpaid and she failed to timely file her 2008 and 2010 federal income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

Several 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 debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. She belatedly filed her tax returns for 2008 and 2010 and has paid four debts, but the rest remain unpaid. AG ¶ 20(a) is not applicable.

Applicant admitted that her debts were caused by her own financial mismanagement, her divorce, and a period of unemployment due to her firing from a job. Only her divorce is a condition beyond her control. She took responsible action to address four of her debts, but no action toward the remaining debts. She also failed to produce evidence that she was making payments under her tax repayment agreement. AG ¶ 20(b) is partially applicable. Applicant did not seek financial counseling. Given the unpaid status of the SOR debts, there are not clear indications that Applicant's financial problems are under control. Evidence of good-faith efforts to pay four debts exists, but evidence showing resolution of the remaining debts is lacking. AG ¶ 20(c) does not apply, but ¶ 20(d) partially 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 relevant 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.

I considered the circumstances by which Applicant became indebted. However, I also considered that she failed to significantly resolve her financial situation. She has not established a meaningful track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

## **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:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.f:	Against Applicant
Subparagraphs: 1.g – 1.k:	For Applicant
Subparagraph: 1.l:	Against Applicant

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge