



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



In the matter of:

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) ISCR Case No. 15-01908  
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Applicant for Security Clearance

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

04/29/2016

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**Decision**

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DAM, Shari, Administrative Judge:

Subsequent to having discharged debts through a Chapter 7 bankruptcy in 2008, Applicant accumulated additional delinquent debts. She resolved half of the alleged debts and is resolving the other half through a payment plan. She failed to disclose a Chapter 7 bankruptcy or any delinquent debts in her security clearance application. She mitigated the financial and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 3, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 24, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

On October 7, 2015, Applicant answered the SOR (Answer), and requested a hearing. On February 12, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me and issued a hearing notice, setting the case for February 29, 2015. At the hearing Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through F into evidence. All exhibits were admitted without objections. The record remained open until March 21, 2016, to give Applicant time to submit additional exhibits. She timely submitted exhibits, which I marked as AE G through P and admitted without objection. DOHA received the hearing transcript (Tr.) on March 10, 2016.

### **Findings of Fact**

Applicant admitted the allegations contained in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.l, 1.m, and 1.p. She denied the remaining allegations and asserted they were paid. She denied the allegation contained in SOR ¶ 2.a. Her admissions are accepted as factual findings.

Applicant is 58 years old and married to her second husband for five years. She has four adult sons from a previous marriage. She is a high school graduate and has earned certificates of achievement in areas of study from a technical college. In July 2014 she began an administrative assistant position with a defense contractor. (Tr. 15; GE 1.) Prior to this position she worked in the health care field for over 30 years. She was unemployed from July 2012 until April 2013. (Tr. 17, 23; GE 1.)

Applicant submitted a complimentary letter from a customer for whom she provided services. The customer appreciated her diligence and attention to detail. (AE D.)

### **Financial Considerations**

Applicant attributed her financial problems to several factors: a 2006 divorce from her first husband; a subsequent period of underemployment; and incurring medical bills related to a serious illness for which she did not have medical insurance. She explained that after her divorce she was earning \$7 per hour and was unable to afford health insurance or pay the numerous medical bills that accumulated after a serious illness. (Tr. 24-25.) In September 2007 she filed Chapter 7 bankruptcy and later discharged many of her delinquent debts, including some medical debts, in January 2008. Subsequently, she incurred additional medical bills for which she did not have medical insurance. (Tr. 27.)

Based on credit bureau reports (CBR) from July 2014, August 2015, and January 2016, the SOR alleged a 2007 Chapter 7 bankruptcy and 15 delinquent debts totaling \$21,906 that accumulated between 2009 and 2014. Of those 15 debts, 13 are medical debts and 2 are credit card debts. (GE 2, GE 3, GE 4.) To date, Applicant has paid eight SOR-listed debts totaling \$5,317: ¶ 1.b (\$229); ¶ 1.c (\$249); ¶ 1.d (\$559); ¶ 1.e (\$487); ¶ 1.f (\$3,539); ¶ 1.g (\$159); ¶ 1.l (\$75); and ¶ 1.p (\$50). The remaining seven medical debts are owed to a hospital and are being paid through a payment plan. They total \$16,559: ¶ 1.h (\$8,282); ¶ 1.i (\$2,329); ¶ 1.j (\$811); ¶ 1.k (\$990); ¶ 1.m (\$3,408); ¶ 1.n (\$573); and ¶ 1.o (\$166).<sup>1</sup> (Tr. 31-32; 51; AE E, AE G through AE P.)

Prior to being laid off in September 2015 pending this investigation, Applicant was earning \$20 per hour. She said that after obtaining the administrative position in 2014, she started paying some old medical bills, in addition to maintaining a car loan, and making payments on two student loans. (Tr. 27.) She submitted a copy of her monthly budget while she was working. Her net family monthly income was \$3,000 and expenses, including payments to her student loans, were \$2,600, leaving almost \$400 remaining. (AE A.) Prior to filing bankruptcy in September 2007, she completed a credit counseling course online. (AE C.)

### Personal Conduct

The SOR alleged that Applicant failed to disclose in Section 26 of her July 2014 e-QIP the 2007 bankruptcy or any of the 15 debts alleged in the SOR. That section requested information pertinent to any bankruptcy or delinquent accounts, which occurred within the past seven years.

In explaining the omissions, Applicant said she was working full-time and was rushing to complete the e-QIP in the evenings, in order to return it to her employer who was eager to submit it. It was the first time she submitted an e-QIP. She stated that when she completed the questions relating to her financial record, she knew that she had delinquent debts, but she did not have enough time to gather the pertinent information regarding them. She did not disclose her 2007 bankruptcy either. She said she did not appreciate the importance of disclosing the information and did not intentionally attempt to mislead the Government. She expressed remorse over her mistake. (Tr. 61-64.)

### **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 (AG) list

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<sup>1</sup> According to the collection agency for the hospital, the payment plan balance is \$14,132 as of February 26, 2016, and not \$16,559. (AE F.)

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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>2</sup>

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 has a history of not meeting financial obligations that began before September 2007 when she filed Chapter 7 bankruptcy. Between 2009 and 2014, Applicant accumulated an additional 15 delinquent debts that she had been unable to begin resolving until 2014, when she obtained fulltime employment. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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.

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant offered evidence that the financial problems resulting in a 2007 Chapter 7 bankruptcy arose as a consequence of her 2006 divorce. In 2009 she began accumulating additional delinquent debts, in particular medical debts, because she did not have medical insurance during a serious illness and had insufficient income to pay those bills. These were circumstances beyond her control. However, she did not provide documentation that she attempted to address the debts while they were accumulating, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant documented participation in a credit counseling course required for filing bankruptcy. She provided information that the unpaid alleged debts are slowly being resolved, and there is evidence to conclude that those debts are coming under control. Thus, the evidence establishes some mitigation under AG ¶ 20(c). She also provided evidence that she made a good-faith effort to pay and resolve 8 of the 15 SOR alleged debts. AG ¶ 20(d) applies.

### **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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleged in ¶ 2.a that Applicant falsified her July 2014 e-QIP because she failed to disclose a 2007 bankruptcy or any delinquent accounts in response to questions listed in Section 26. The Government contended that her omissions may raise a security concern and be disqualifying under AG ¶ 16:

- (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.

Applicant denied that she intentionally concealed requested information. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant asserted that she did not disclose information about her delinquent debts or a previous bankruptcy because she rushed to complete the e-QIP in the evenings after working all day, and did not have information about the financial matters available. She knew she had delinquent accounts, but did not appreciate the significance of giving accurate answers in the e-QIP. While her explanation of feeling hurried to finish and submit the e-QIP may be understandable, her explanation for failing to list any delinquent debt or the 2007 bankruptcy is not sufficiently credible. The series of questions relating to one's past financial record are extensive and clear. In fact the first question under the financial record section asks whether one has filed a petition under the bankruptcy code in the last seven years. The evidence establishes an intentional omission, raises the above disqualifying condition, and shifts the burden to Applicant to rebut or mitigate the security concern.

AG ¶ 17 includes two conditions that could mitigate security concerns arising under this guideline:

(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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant emphasized that at the time she submitted an e-QIP, and she did not have pertinent the financial information available to her as she rushed to complete it in the evenings after work because her supervisor was pressuring her to submit it. She explained that she did not appreciate the importance of being accurate in her answers, as this was her first security clearance application. She told the investigator essentially the same thing in response to his questions about the reasons she failed to disclose requested financial information. While testifying, she credibly and remorsefully acknowledged that she made a serious mistake and that she should have gathered her financial information before completing the application in order to accurately disclose the requested information. Given the circumstances surrounding the completion of her first application, her sense of feeling stressed to quickly submit it, and her current awareness of the importance of full disclosure to the Government, the likelihood that Applicant would fail to disclose requested information in a future e-QIP is unlikely. Her conduct no longer casts doubt on her trustworthiness, reliability, and good judgment. The evidence establishes mitigation under AG ¶ 17(c). Applicant's husband is aware of the security concern, reducing her vulnerability to exploitation or duress, should that information become known to the public. AG ¶ 17(e) provides some mitigation.

## **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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is an intelligent, 58-year-old employee of a defense contractor since 2014. She is effective in her position. She has a history of financial difficulties dating back to before 2007, many of which occurred after a divorce and encountering medical problems for which she did not have insurance. After obtaining an administrative position, she began to slowly establish a track record of resolving old debts. She fully mitigated the security concerns raised by past financial problems. Based on the circumstances surrounding the completion of her first e-QIP, her credible testimony regarding her state of mind at the time she submitted the e-QIP and demeanor, she also mitigated the security concerns raised by her personal conduct. Overall, the record evidence leaves me without doubts as to Applicant's present eligibility and suitability for a security clearance. Applicant met her burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

## **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 to 1.p:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT



Subparagraph 2.a:

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.

SHARI DAM  
Administrative Judge