



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



In the matter of:

ISCR Case No. 15-02231

Applicant for Security Clearance

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: *Pro se*

04/19/2016

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On September 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). DOD CAF acted under Executive Order (EO) 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 on September 1, 2006.

Applicant answered the SOR on October 21, 2015, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's File of Relevant Material (FORM) on December 29, 2015. The FORM was mailed to Applicant, who received it on January 14, 2016. The evidence included in the FORM is identified as Items 4-7 (Items 1-3 include pleadings and transmittal information). Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She chose not to submit any additional evidence or object to the proffered Government evidence. Items 4-7 are admitted into evidence. The case was assigned to me on March 29, 2016.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.<sup>1</sup>

Applicant is 34 years old. She is single with no children. She has worked for her current employer, a defense contractor, since July 2014. No record of high school education is listed in the record, but it does contain information indicating she attended training to receive a commercial driver's license in 2010. She was steadily employed from 1998 to 2014 with either commercial employers or a state employer.<sup>2</sup>

The SOR lists four judgments in the amounts of \$8,011; \$4,192; \$15,734; \$924 (SOR ¶¶ 1.a-1.d); one government debt, subject to a garnishment order in the amount of \$9,042 (SOR ¶ 1.e); four charged-off or collection accounts for credit cards or consumer goods in the amounts of \$8,272; \$6,188; \$5,694; \$4,313 (SOR ¶¶ 1.f, 1.h-1.j); two telecommunication collection accounts in the amounts of \$1,406 and \$1,191 (SOR ¶¶ 1.y-1.z); and 22 delinquent medical debts totaling \$15,721 (SOR ¶¶ 1.g, 1.k-1.x, 1.aa-1.gg). These debts are supported by credit reports from August 2014 and February 2015, and Applicant's admissions.<sup>3</sup>

The personal conduct allegations include deliberately providing false information while completing her security clearance application (SCA) in July 2014 by failing to affirmatively respond to questions asking whether she had any financial account or credit card charged off or cancelled for failure to pay, and whether in the past seven years or currently she was over 120 days delinquent on any account (SOR ¶ 2.a).

In her answer to the SOR, Applicant admitted all the debts and the falsification. She explained the debt situation by stating she went through a difficult period when her mother passed away of cancer on Christmas Day (she does not give the year, but it was before 2014, based upon her SCA) and her father died in a house fire the following August. She had extensive absences from work because of these circumstances, which

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<sup>1</sup> Items 1, 3.

<sup>2</sup> Items 4-5.

<sup>3</sup> Items 1, 3, 6-7.

ultimately led to her dismissal because of absenteeism. She stated she struggled to pay her bills during this time. Many of the debts, including the filing of three judgments, occurred in 2010. There is no evidence that she took action to set up payment plans. All the debts remain outstanding. Applicant did not present any information about her current financial status. She also did not provide evidence of any financial counseling.<sup>4</sup>

On August 31, 2014, Applicant completed her security clearance questionnaire. She answered “no” to a question concerning whether she had any account or credit card suspended, charged-off, or cancelled for failing to pay as agreed. She also answered “no” to the questions concerning whether she had been over 120 days delinquent on any debt within the last seven years, and whether she was currently 120 days delinquent on any debt. The answer to all those questions should have been “yes.” Applicant claimed she omitted this information because she did not have her records when she completed the SCA. She knew there were many debts, but she could not recall the details. She became overwhelmed by the questions and the information sought and omitted the information out of frustration.<sup>5</sup>

## **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, which are 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 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, an “applicant is

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<sup>4</sup> Item 2.

<sup>5</sup> Items 2, 5.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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 that an 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 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debts which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts are recent and remain unresolved. She did not provide evidence to show that the debts are unlikely to recur. Her inaction toward these debts casts doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. Applicant provided evidence she experienced financial difficulties resulting from the death of her parents. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. She failed to present evidence that she made any attempts to resolve her debts. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling. There is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that she has made a good-faith effort to pay the debts. I find AG ¶¶ 20(c) and 20(d) do not apply. She does not dispute any of the debts. AG ¶ 20(e) does not apply.

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

AG ¶ 15 expresses the personal conduct security concern:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(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 failed to list delinquent debt information as she was required to do on her SCA. She acknowledged she was aware of the debts, but was overwhelmed by the questions and therefore gave negative responses. Because she was aware of the debts, and consciously decided to exclude them, I am persuaded that she deliberately failed to list her debt information on her SCA in 2014. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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.

I considered all of the facts and circumstances surrounding Applicant's falsifications. Falsifying information on a security clearance application is not a minor offense and doing so casts doubt on her trustworthiness, reliability, and good judgment. AG ¶ 17(c) does not apply.

### **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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve her debts. She also deliberately provided false information on her SCA. Therefore, she failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

### **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.gg:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	AGAINST APPLICANT Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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