



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 09-07792  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

February 28, 2011

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

On October 16, 2010, the Defense Office of Hearings and Appeals (DOHA) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 3, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 17, 2010. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 6, 2011. She answered the

FORM in an undated response. She did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to the documents in Applicant's response, and they are admitted as Exhibits (AE) A through C. The case was assigned to me on February 24, 2011.

### **Findings of Fact**

Applicant is a 39-year-old employee of a defense contractor. She has worked for her current employer since June 2009. She is applying for a security clearance for the first time. She is a high school graduate. She was married from 1990 until her divorce in 1993. She has two children who live with their father. Applicant has custody of the children during their summer holidays.<sup>1</sup>

Applicant has experienced financial problems for a number of years. She filed Chapter 13 bankruptcy in 1998. She made all the required payments to the trustee, and her debts were discharged in 2003.<sup>2</sup>

Applicant and her ex-boyfriend were together for 13 years and lived on both their incomes. He managed the finances, but most of the accounts were in her name. In about September 2006, she discovered that he had not been paying their bills. He used the money to get his own residence and moved out. She was unable to pay their accumulated debt and maintain her bills on her salary alone. She filed Chapter 13 bankruptcy in November 2006. The bankruptcy was dismissed in July 2007.<sup>3</sup>

Applicant stated that her bankruptcy was dismissed because she was unable to maintain the payments after she was laid off from her job in February 2007. Her Questionnaire for National Security Positions (SF 86) indicates continuous employment with the same company from 2000 to March 2009, when she permanently lost her job after the company relocated to another state. The SF 86 shows that Applicant was unemployed until she was hired by her current employer in June 2009.<sup>4</sup>

The SOR alleges seven delinquent debts with balances totaling about \$25,000, past-due first and second mortgages, and Applicant's Chapter 13 bankruptcy that was filed in 2006 and dismissed in July 2007. Applicant admitted the bankruptcy allegation and that she owed the seven delinquent debts and the second mortgage. She denied owing the first mortgage. Applicant's house was lost to foreclosure, and the first mortgage was satisfied when the house was sold.<sup>5</sup>

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<sup>1</sup> Item 5; Applicant's response to FORM.

<sup>2</sup> Item 9.

<sup>3</sup> Item 4; Applicant's response to FORM.

<sup>4</sup> Items 4, 5.

<sup>5</sup> Items 4, 9; AE C.

Applicant saw a bankruptcy attorney in January 2010 to discuss filing Chapter 13 bankruptcy. When she responded to DOHA interrogatories in January 2010, she wrote that she was filing Chapter 13 bankruptcy and she should have her debts paid off in five years. In November 2010, Applicant retained the bankruptcy attorney that she saw in January 2010 to file a Chapter 13 bankruptcy on her behalf. She paid \$540, which included \$340 for expenses and filing fees and \$200 as a deposit toward the attorney's fees of \$3,200. Applicant stated that all the debts in the SOR, including the \$23,000 balance due on her second mortgage, will be included in the bankruptcy plan.<sup>6</sup>

It is unclear if the Chapter 13 bankruptcy petition has been filed. Applicant stated that after her ex-boyfriend left, she had to start over with nothing. She stated that she learned to live on her income alone. She stated that she has kept up with her bills for the last two-plus years and that she "work[s] very hard and [she has] learned that you live within your means."<sup>7</sup>

Applicant submitted several character letters from managers and supervisors who praised her job performance, work ethic, trustworthiness, honor, responsibility, honesty, loyalty, and integrity.<sup>8</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 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.

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<sup>6</sup> Item 6.

<sup>7</sup> Item 4; Applicant's response to FORM.

<sup>8</sup> AE A, B.

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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:

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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;

(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 debt 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 and her ex-boyfriend were together for 13 years. He handled the finances, but most of the accounts were in her name. He did not pay the bills before they separated. She was unable to pay their accumulated debts and her living expenses on her salary alone. She filed Chapter 13 bankruptcy in November 2006. The bankruptcy was dismissed in July 2007. She stated that she was laid off from her job and was unable to maintain the payments under her bankruptcy plan. Applicant's SF 86 indicates that Applicant was continuously employed with the same company from 2000 to March 2009, when she permanently lost her job after the company relocated to another state. It is possible that Applicant was laid off on a temporary basis in 2007, and she did not report the temporary lay off on the SF 86. Her ex-boyfriend's actions, their separation, and her unemployment qualify as conditions that were outside her control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant's first mortgage was satisfied when the house was sold after foreclosure. That debt has been resolved. There is no evidence of any payments on any of the other debts. Applicant consulted with a bankruptcy attorney in January 2010, but she did not retain and pay him \$540 until November 2010. The current status of the bankruptcy is unclear. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve her delinquent debts. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. AG ¶ 20(e) is applicable to the first mortgage

that was paid when the house sold after foreclosure. In sum, I find that financial concerns remain despite the presence of 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 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 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. I considered Applicant's favorable character evidence. However, the limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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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Edward W. Loughran  
Administrative Judge