



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-01862
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2013

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**Decision**

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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 September 26, 2012, 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 (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) effective within the DoD on September 1, 2006.

Applicant answered the SOR on October 29, 2012, and requested a hearing before an administrative judge. The case was assigned to me on January 9, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 7, 2013, and the hearing was convened as scheduled on February 27, 2013.

The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted exhibit (AE) A, which was admitted into evidence without objection. The record was kept open to allow Applicant to submit additional evidence. She submitted AE B and C, which were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on March 7, 2013.

### **Procedural Issue**

Applicant affirmatively waived the 15-day notice requirement contemplated by the Directive, Additional Procedural Guidance, paragraph E.3.1.8. Additionally, Department counsel indicated she orally notified Applicant on February 6th about the hearing date and location, which is more than 15 days from the hearing date.<sup>1</sup>

### **Findings of Fact**

Applicant admitted all the debts listed in the SOR. The 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 52-year-old employee of a defense contractor. She has worked for her current employer since 2008 as an administrative specialist. She has a master's degree and believes she is currently underemployed because her current position only requires a high school diploma. She is married and has no children. Her husband has six children from previous relationships. She believes he is required to pay child support for two or three of the children. She has no military experience and has never held a security clearance in the past.<sup>2</sup>

The SOR alleged three delinquent debts totaling about \$41,183. The debts were listed on credit reports obtained in June 2012 and August 2010.<sup>3</sup>

Applicant received a master's degree in December 1986. She used student loans to finance her education. The original amount of the loans is not in the record, but when they went into collection status in December 2009 they amounted to about \$37,000. Currently, the balance is about \$43,000 on the student loan debt. Applicant testified that she was making regular monthly payments through the years on the debt in the amount of about \$300. When a major hurricane hit the area in 2005, she could not continue the payments. Her husband lost his carpentry job and she was temporarily displaced from her job. Her husband has never resumed full-time employment. He has only been able to work odd jobs here and there. Applicant worked two different jobs before she obtained her current job. She testified that she has not made a student loan payment since December 2005 or January 2006. She told a defense investigator during an

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<sup>1</sup> Tr. at 11-12.

<sup>2</sup> Tr. at 5, 6, 22; GE 1.

<sup>3</sup> GE 4-5.

interview for her security clearance in September 2010 that she was making biweekly payments on the student loans. This information to the investigator was not true. She also testified that she has not contacted the student loan creditor to set up a payment plan or discuss the possibility of obtaining a deferral of payments.<sup>4</sup>

The debt in SOR ¶ 1.a is the delinquent student loan debt in the amount of \$41,000. As stated above, there have been no payments since December 2005 or January 2006 and no contact with the creditor. This debt is unresolved.<sup>5</sup>

The debt in SOR ¶ 1.b is a collection account for a delinquent service provider debt in the amount of \$69. Applicant admitted this debt in her answer, she also admitted to having an account with this service provider. She cannot locate information about this account. Her contact with the creditor has not been fruitful in resolving this account. This debt is unresolved.<sup>6</sup>

The debt in SOR ¶ 1.c is a collection account for a medical debt in the amount of \$114. Applicant provided documentary evidence showing this debt was paid in January 2013. This debt is resolved.<sup>7</sup>

Applicant's budget shows that after expenses she has a monthly disposable income of about minus \$768. She also stated that she is behind about \$1,000 on her mortgage. She owes about \$800 on last year's federal tax return. She was paying \$100 towards satisfaction of her tax debt, but stopped about three months ago because she was low on funds. All of her other household bills are current. She presented character letters from friends, her church minister and an elder. All attest to her work ethic and dedication. All recommend her for a security clearance.<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 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

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<sup>4</sup> Tr. at 23-25, 27, 29, 38; GE 2.

<sup>5</sup> Tr. at 23, 27, 29; GE 2.

<sup>6</sup> Tr. at 26-27; GE 4.

<sup>7</sup> Tr. at 25; GE 4; AE A.

<sup>8</sup> Tr. at 33-35; GE 3; AE B.

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 that 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. Two are potentially applicable in this case:

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

Applicant has multiple debts that are delinquent. She was unable or unwilling to satisfy her obligations. 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 and multiple. She has paid one debt, but the others, particularly the large student loan debt, remain unpaid. Her poor financial record and her failure to establish a plan to pay the remaining debts casts doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was impacted by a hurricane, underemployment, and her husband's loss of job. These are conditions beyond her control; however, in order for this mitigating condition to fully apply, Applicant must also act responsibly. Applicant has not made contact with the student loan creditor to explore whatever options she may have. Her inaction toward this debt does not amount to responsible behavior in dealing with her debts. AG ¶ 20(b) partially applies.

Applicant did not receive financial counseling. The debt that was paid is resolved, however, the remaining debts are not resolved or under control. AG ¶¶ 20(c) and 20(d) apply to the paid debt, but do not apply to the remaining debts since no good-faith effort

was made toward paying those debts and her overall financial situation remains unresolved.

### **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 Applicant's difficulties caused by a hurricane and her character evidence. I must also consider that beyond resolving one debt, she has done very little to resolve the remaining debts. Additionally, she admitted owing on last year's federal income tax and being behind on her mortgage loan. Her past financial track record reflects a troublesome financial history that causes me to question her ability to resolve her debts.

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.b:	Against Applicant
Subparagraph 1.c:	For 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