



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 11-04155
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

06/27/2013

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On October 15, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken 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 DOD on September 1, 2006.

Applicant answered the SOR on December 10, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 23, 2013, that was amended on May 29, 2013, due to scheduling conflicts. The hearing was

timely convened on June 12, 2013. The Government offered Exhibits (GE) 1 through 8, and they were admitted into evidence without objection.

Department Counsel moved to amend SOR allegation 1.e to reflect the amount of \$1,623, not \$137. Noting no objection, the SOR was so amended to comport with the evidence. Applicant testified and was examined by both the Department Counsel and myself. The record was closed upon receipt of the hearing transcript (Tr.), which was received on June 20, 2013.

### **Findings of Fact**

Applicant admitted a majority of the 28 SOR allegations, and either denied or did not respond to the rest. In sum, Applicant admits to approximately \$8,000 of the \$23,000 in delinquent debt alleged. (Tr. 11) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. She is a custodial facilities helper who has worked at the same job for different contractors for the past 12 years. She currently earns almost \$35,000 a year. Applicant attended high school. She is divorced and has raised two adult children. Applicant received financial counseling, which she found beneficial. It helped her to learn how to prioritize and satisfy debts, and how to minimize spending to the essentials. Overall, it has helped her learn to live within her means. (Tr. 29).

In the mid-1990s, Applicant's marriage began to sour. While Applicant worked, her husband had significant problems with drugs, gambling, and over-spending. In turn, Applicant over-relied on credit, increasing their credit card debt. She divorced her husband in the late 1990s, but he continued to abuse her kindness and desire to help him. During this time, he overused her credit cards and stole money from her bank account. His adverse impact on Applicant's finances had already led to a 2002 Chapter 7 bankruptcy petition and discharge. She was able to prevent her automobile from being repossessed. She ultimately ceased contact with her ex-husband.

In mid-2007, Applicant realized the full extent her ex-husband had on her financial situation. She consulted an attorney to help her seek bankruptcy protection. A petition was prepared to cover what Applicant believed to be all of her debts. (Tr. 23) In September 2007, she filed that petition under Chapter 13 and made the necessary arrangements to have her monthly payments on the bankruptcy plan (\$134.75) automatically deducted from her paycheck. Most Chapter 13 plans are completed in three to five years depending on income and the structure of the plan.

After approximately four years of payments, Applicant had made significant progress under her Chapter 13 repayment plan. Then her company lost its contract with the government at some point in 2011. She was hired by the successor company to continue in her position after a brief period of unemployment, but the former and successor companies did not accurately transfer her payroll information. As a result, the new company never debited from her income the payments to be wired to the

bankruptcy court. This problem was not immediately apparent. Meanwhile, she worked hard to economize. At some point in 2012, Applicant realized the bankruptcy deductions were not being made. After much research, she discovered that the Chapter 13 petition had been dismissed in October 2011. She knew that substantial progress should have been made on the debt covered by the Chapter 13 filing over the four years her payments were timely made. (Tr. 23) By mid-2012, she initiated actions to try to have the bankruptcy case and repayment plan reopened, noting that the interruption in payments had been the result of a third-party administrative mishap, not her inability to make payments on the plan. Eventually, her requests were rebuffed.

At least \$5,182.50 was paid by Applicant on the bankruptcy plan. With no additional information or explanation from the Chapter 13 bankruptcy trustee, she has since been trying to decipher which debts were satisfied and what her present obligations are on any other accounts.

Since filing for bankruptcy in 2007, Applicant has acquired no new delinquent debts. She had adhered to what she learned in financial counseling. Her rent has been timely paid for at least the last seven years. She has always made at least the minimum monthly payments on her accounts. Within the past year, she was expecting a significant pay raise, but that raise was not executed due to the change in contractors. She has kept in control of the few minor balances acquired due to emergencies.

Despite her resolve to address the debts noted in her bankruptcy, Applicant has suffered recent setbacks. She has had difficulty adapting to expenses over which she has little or no control, such as the rising costs associated with her rent, health insurance, and car insurance. These increases coincided with a temporary layoff she experienced before a new company took over the contract covering her position and brought her back to work. (Tr. 31) While she was brought back to work, it was without her expected raise. Indeed, she was rehired at a lower wage than she was previously earning. (Tr. 32). She now takes home about \$125 less a month than she did previously. This sum represents a significant reduction for Applicant, who lives alone in a studio apartment and cautiously watches her expenditures. Her job and her recent employment change have also adversely impacted her health. Her custodial duties include heavy lifting, trash recycling, and other janitorial services demanding she maneuver up to 125 pounds at a time. Consequently, she has developed significant back issues. Her work with chemicals has impacted her sinuses and lungs. She has also had multiple unrelated surgeries in the past couple of years. She has never been eligible for workers compensation. She recently had an emergency procedure that kept her in hospital for a week and generated about \$1,000 in debt.

During the hearing, the Government and Applicant discussed the debts at issue, including those included in the Chapter 13 bankruptcy filing. The debts on which progress has been made are as follows:

1.b (\$631) – A duplicate of 1.l for a utility service. On motion by the Government, this allegation was struck from the SOR as duplicative and the SOR so amended.

1.f (\$463) – Applicant has been in continuing contact with this telecommunications carrier disputing the balance reflected. (Tr. 39).

1.g (\$7,722) – This debt, which is the largest and most significant debt at issue, was included in the Chapter 13 bankruptcy repayment plan and was shown to have been satisfied. (Tr. 26-27).

1.j (\$507) and 1.y (\$185) – Applicant has regularly paid on a debt repayment plan with her state regarding these balances. (Tr. 40-41, 44).

1.l (\$521) – This was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 38).

1.m (\$77) – This medical debt was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 42).

1.n (\$93) -- This debt was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 42).

1.p (\$4,635) – This debt, the second largest debt at issue, was included in the Chapter 13 bankruptcy repayment plan.

1.q (\$568) -- This debt was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 42).

1.r (239) -- This debt was included in Applicant’s bankruptcy. (Tr. 42-43). Applicant characterized the creditor as a “scam” and has disputed this debt.

1.t (\$45) – Although Applicant cannot identify this account, it was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 43)

1.x (\$101) – This was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 44).

1.y (\$185) -- This was included in Applicant’s Chapter 13 bankruptcy repayment plan. (Tr. 44).

Going forward, Applicant’s strategy for addressing her debts is to recognize and accept that she cannot pay all of them off at the same time. Therefore, she is approaching them by working on the smallest debts first, then working her way up to the larger ones when she is able. (Tr. 47) She is presently sorting out the balances owed on the debts included in the Chapter 13 repayment plan. The remaining 11 debts, which amount to about \$6,000, range in amount from under \$100 to \$1,290. She hopes to continue paying off her smaller debts until she can start a repayment plan to finish off the debts formerly included in the bankruptcy repayment plan. After financial

counseling, she spends cautiously and prioritizes expenses. She has taken steps to remove all impediments vexing her attempts at financial stability, such as her ex-husband. It is her intent to satisfy her debt as expeditiously as she can, although she recognizes that her recent 25% reduction in salary has adversely impacted her ability to make significant progress in the near future. (Tr. 50)

### **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. Likewise, I have not drawn 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, an "applicant is 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 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 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**

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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has numerous delinquent debts that she has been willing, but unable to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

AG ¶ 20(b) is established because Applicant's initial financial issues were related to abuses by her ex-husband who acquired debts in Applicant's name. Later, her bankruptcy plan was halted and dismissed due to an administrative error over which Applicant had no control. Moreover, Applicant has recently endured serious medical issues which necessitated surgery and time off from work, and imposed physical limitations on her ability to work. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. When she became overwhelmed with debt that was beyond the scope of her income due to her ex-husband's machinations, she sought bankruptcy protection. In doing so, she chose Chapter 13, rather than Chapter 7 bankruptcy, thus financially contributing toward the debts to be dismissed. When that bankruptcy was dismissed through no fault of her own, she actively sought to have the case reopened so she could have her payments resumed. Since that time, she has faced a drastic reduction in salary after a brief layoff. However, she has adapted to her new situation without acquiring an unwieldy amount of new debt. It appears that the sum remaining to be addressed can realistically be resolved in a slow, but measured way as her salary base returns to its previous level. I find AG ¶ 20(b) fully applies.

Applicant began addressing her debts long before the issuance of the SOR. She put most of her debts into her Chapter 13 bankruptcy filing. She made substantial progress in her payments on that plan until a third-party's administrative mistake led to the dismissal of her petition. Since that time, she received financial counseling. Applicant testified that she found such counseling genuinely helpful in prioritizing her needs and her bills. She demonstrated that she can apply this approach in adapting to her recent reduction in pay. Meanwhile, she is using prioritization of debts (from lowest to highest) as a model for approaching her remaining debt. I find that AG ¶ 20(c) and AG ¶ 20(d) 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 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 the 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.

Applicant is a 51-year-old custodial facilities helper currently earning approximately \$35,000 a year after a significant reduction in salary and a brief layoff between contracts. She attended high school and raised two children. Both during and after her marriage, her ex-husband abused Applicant's trust and finances. At age 45, she filed for Chapter 13 bankruptcy, with payments automatically drawn down through her employer's payroll. A change in contractors led to an inadvertent cessation of payments on the bankruptcy plan, and the plan was ultimately dismissed without her knowledge. When Applicant learned of the error, she tried to have the plan reinstated, knowing that after four years of timely payments that the plan should be nearing completion. Her request was denied. Since that time, she has been discerning which accounts were included in the bankruptcy petition and which still remain in need of direct action.

At issue in the SOR was approximately \$23,000 in delinquent debt. In her response to the SOR, Applicant admitted to approximately \$8,000 in delinquent debt. The Government and Applicant reviewed the debts at issue. Applicant has made significant and reasonable efforts given her circumstances to address the majority of her debt. But for a third-party error, Applicant's Chapter 13 bankruptcy repayment plan should have been completed by now. Regardless, she has actively monitored and managed her debts in good faith -- despite by a recent cut in salary and significant rise in rent and health insurance.

An applicant is not required to be debt-free, nor required to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given the circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions that evidence a serious intent to effectuate the plan. The fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern. See, e.g., ISCR



Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009); ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011). It is also significant that Applicant is no longer involved in activities or with individuals that foster the acquisition of delinquent debt. See, e.g., ISCR Case No. 10-04405 at 4 (Sep. 19, 2011). Indeed, despite a recent reduction in salary, Applicant, through financial counseling, has learned to take control of her life and her finances, prioritize her needs, and organize her bills. In terms of managing her finances, Applicant now exercises self-control, notable caution, and good judgment.

Here, Applicant demonstrated that she successfully filed a Chapter 13, as opposed to a Chapter 7, bankruptcy action. This required the development of a reasonable repayment plan, rather than an application to have all debts simply discharged with no effort by the Applicant under Chapter 7. Applicant regularly made payments on that plan through payroll deduction, establishing a track record of reliable payments, until a 2011 change in contractors led to the cessation of her automatic payments to the bankruptcy court. When Applicant discovered the problem in 2012, she earnestly sought to have the plan reinstated, noting that four years of regular payments represented payment of a majority of the payments due on the plan, and pointing out that the gaffe ceasing the payments was the result of clerical error, not from a failure on her part. Since then, she has applied what she learned through financial counseling to prioritize her debts, devised a strategy (paying off the lowest amounts first), and simplified her lifestyle. Just as she was recently poised to make some notable strides because of an anticipated raise, her employer changed, she was temporarily laid off, and then rehired at a significantly lower salary; meanwhile, her rent, health insurance, and auto insurance increased.

Despite multiple setbacks, Applicant has demonstrated a track record for addressing her debts as best she can, given her means and circumstances. She remains committed to honoring her debts and has been diligent in trying to make sure her efforts toward that end are executed. In light of her present situation, there is little more she can do but attempt slow and measured steps toward satisfying the smaller debts, while she works her way back up the salary ladder. In short, despite her modest income and protracted plan for satisfying her remaining debt, which is not an unwieldy sum, Applicant's continued diligence, demonstrated good faith, and reasonable plan for addressing her debts reflect her commitment to satisfying her remaining debt. Overall, despite Applicant's recent reduction in pay, I am impressed by her ability to adjust to that reduction with such equanimity and sustained resolve. Her commitment to addressing her debts as she is able is highly credible. Overall, the record evidence leaves me with no doubts about Applicant's eligibility and suitability for a security clearance given the unique facts presented in this case. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **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:

FOR APPLICANT

Subparagraphs 1.a-1.bb:

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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge