



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



In the matter of: )  
)  
) ISCR Case No. 11-07014  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: Curran K. Porto, Esq.

12/20/2012

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

On July 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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 on September 1, 2006.

On July 27, 2012, Applicant answered the SOR and requested a hearing. The case was assigned to me on October 12, 2012. DOHA issued a notice of hearing on November 7, 2012, and the hearing was convened as scheduled on November 16, 2012. At the hearing, Department Counsel offered Government's Exhibits (GE) 1

through 5. Applicant testified and offered documents marked as Applicant's Exhibit (AE) A. The record was left open until November 30, 2012, for Applicant to submit additional matters. She timely submitted documents that have been marked as AE B through J. All exhibits were admitted into evidence without objection. Department Counsel's email forwarding Applicant's post-hearing submission was marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on November 29, 2012.

### **Procedural Matters**

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.<sup>1</sup>

### **Findings of Fact**

Applicant is a 53-year-old employee of a federal contractor. She has worked for her current employer since 1990. She graduated from high school in 1977. She married in 1978 and divorced in 2005. She has no children. For the past 22 years, she has held a security clearance without incident.<sup>2</sup>

The SOR alleged that Applicant had 12 delinquent debts totaling about \$51,263. Those debts were listed on credit reports obtained on August 4, 2010, and March 21, 2012. In her Answer, Applicant admitted five of the allegations (SOR ¶¶ 1.a, 1.b, 1.f, 1.g, and 1.h) and denied the other allegations. Her admissions are incorporated herein as findings of fact.<sup>3</sup>

For many years, Applicant worked two jobs. She attributed her financial problems to the loss of her part-time job. She had worked at that second job from December 1994 to December 2007. She lost that job after the company went through a downsizing following several mergers. She relied on the income from the second job to pay bills and other expenses. When she lost that job, she was not able to meet all of her financial obligations and a number of debts, including her mortgage, became delinquent.<sup>4</sup>

Prior to the hearing, Applicant paid the debts listed in SOR ¶¶ 1.c, 1.i, and 1.k. She also provided proof that, on March 18, 2012, she made a \$420 payment towards the debt in SOR ¶ 1.a and a \$30 payment towards the debt in SOR ¶ 1.g. She indicated that she paid the medical debt in SOR ¶ 1.e and provided a receipt showing a medical debt of \$230 was paid in July 2012. The debt in SOR ¶ 1.e is no longer listed on her most recent credit report, although it could not be confirmed that the receipt provided was for that debt.<sup>5</sup>

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<sup>1</sup> Tr. at 8-9.

<sup>2</sup> Tr. at 65-66; GE 1, 3.

<sup>3</sup> Applicant's Answer to the SOR; GE 4, 5.

<sup>4</sup> Tr. at 25-26, 50-51, 53-55; Applicant's Answer to the SOR; GE 1, 3.

<sup>5</sup> Tr. at 35-42, 46; Applicant's Answer to the SOR; GE 2; AE E, G-J.

After falling behind on her monthly mortgage payments of \$1,600 (SOR ¶ 1.f), Applicant attempted to arrange a mortgage loan modification. The mortgage holder initially refused to modify the loan and threatened to proceed with a foreclosure. In May 2012, she filed Chapter 13 bankruptcy. After that filing, the mortgage holder agreed to a loan modification. At the time of the hearing, Applicant was participating in a 90-day trial period for that modification. She testified that she had already made two monthly payments of \$1,149 under the modification. This modification also provides that the mortgage payments will be made directly to the mortgage holder and not as part of her monthly Chapter 13 payments.<sup>6</sup>

Applicant's Chapter 13 bankruptcy petition reflected that she had \$55,334 in total assets and \$125,899 in total liabilities, including her mortgage loan. Her unsecured debts totaled \$14,746. Her bankruptcy will last 60 months. She is required to pay the trustee \$992 for the first three months, \$100 for the next three months, and then \$309 for the remaining months. At the time the record in this proceeding closed, she made the three \$992 payments and two of the \$100 payments. She had not missed any Chapter 13 bankruptcy payments.<sup>7</sup>

Schedule F of Applicant's bankruptcy petition listed all of the delinquent accounts that were reflected on her most recent credit report. The bankruptcy petition included the debts in SOR ¶ 1.a, 1.g, and 1.h, which were her largest unsecured debts. She testified that those debts would be paid fully under the terms of the Chapter 13 bankruptcy plan.<sup>8</sup>

From a review of Applicant's credit reports and her bankruptcy documents, I find the debts in SOR ¶¶ 1.b and 1.d are duplicates of the debt in SOR ¶ 1.g, which is listed in the bankruptcy. Each of those debts is from the same original creditor. Her most recent credit report only listed the debt in SOR ¶ 1.g, which supports the determination the ¶¶ 1.b and 1.d were duplicates. Her most recent credit report also reflected that the debt in SOR ¶ 1.j had a zero balance and had been transferred to another creditor, but it did not re-appear on that credit report.<sup>9</sup>

Applicant disputes the debt in SOR ¶ 1.i. She indicated that she had no knowledge of this debt. She thought it may have been a debt arising from her prior marriage. As part of the bankruptcy, the creditor was given notice of its right to make a claim and failed to do so. This debt does not appear on her most credit report.<sup>10</sup>

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<sup>6</sup> Tr. at 25-26, 31, 39, 51-61; GE 3; AE A, C, D.

<sup>7</sup> Tr. at 22, 25-26, 55-61; Applicant's Answer to the SOR; GE 1, 2; AE A, C, D, F.

<sup>8</sup> Tr. at 22, 29; AE A, D.

<sup>9</sup> Tr. at 12-13, 28-31, 36-39, 41-42, 45-49; GE 2; AE A, D, E, I. The parties agreed that the debts in SOR 1.d and 1.g were duplicates. Undoubtedly, if the debts in SOR ¶¶ 1.b, 1.d, and 1.j were listed on her most recent credit report, those debts would have been listed in her bankruptcy petition.

<sup>10</sup> Tr. at 33, 43-46; AE E, J.

Applicant participated in credit counseling as a prerequisite to filing bankruptcy. She also received financial counseling from other sources and participated in a debt consolidation program for about six months. She earned \$44,499 in 2011. Her bankruptcy petition reflected that her average monthly income was \$2,767 and her average monthly expenses were \$2,639, which left her a monthly net remainder of \$127.<sup>11</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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>11</sup> Tr. at 61-62; GE 2, AE C, D.

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 accumulated delinquent debts that she was unable or unwilling to satisfy for an extended period. This 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;

(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.

In 2007, Applicant lost her second job and was unable to pay all of her debts. The loss of that job was a condition beyond her control. Before the hearing, she paid three of her delinquent debts. She also attempted to modify her mortgage loan, but the creditor initially refused such a modification and threatened foreclosure. After filing Chapter 13 bankruptcy, the creditor agreed to a mortgage loan modification. At the time of the hearing, she was participating in a trial period for that modification and making her modified mortgage payments. Her bankruptcy included her largest debts, and she was making her monthly bankruptcy payments. The debts in the bankruptcy will be paid in full. Some of her smaller debts were not included in the bankruptcy because they were no longer listed on her credit report or the creditors did not file bankruptcy claims. She received financial counseling and presented sufficient evidence to show that her financial problems are being resolved and are under control. While bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for their security significance.<sup>12</sup> After reviewing the reasons leading to the bankruptcy, I find her decision to file for bankruptcy protection was a reasonable and responsible action. AG ¶¶ 20(b) and 20(c) apply. AG ¶¶ 20(a) and 20(d) partially apply.

The debts in SOR ¶¶ 1.b and 1.d were duplicates of the one in SOR ¶ 1.g. Applicant disputes the debt in SOR ¶ 1.i and it no longer appears on her credit report. AG ¶ 20(e) applies to SOR ¶ 1.b, 1.d, and 1.i.

### **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

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<sup>12</sup> See *e.g.*, DISCR Case No. 87-1800 (February 14, 1989) at p.3 n. 2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the [administrative judge] must consider the possible security implications of the history of debts and problems that led to the bankruptcy").

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. Applicant is a hard-working individual. She worked two jobs for many years. She has held a security clearance for over 22 years without incident. She encountered financial problems when she lost her second job. Since then, she has taken responsible steps to address her financial difficulties. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F.

### **Formal Findings**

Formal findings 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.l:           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.

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James F. Duffy  
Administrative Judge