



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-07352
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kathryn D. MacKinnon, Esq., Department Counsel  
For Applicant: *Pro se*

03/15/2013

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has a tax lien, a charged-off account and 17 collection accounts, totaling approximately \$13,000, which are unresolved. She provided false information on her Electronic Questionnaires for Investigations Processing (e-QIP) signed in September 2010 concerning her illegal drug usage and her employment history. Applicant failed to rebut or mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the DoD issued a Statement of Reasons (SOR) on August 31, 2012, detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct.

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel*

On October 10, 2012, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated November 15, 2012. The FORM contained seven attachments (Items 1 – 7). On November 30, 2012, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due on December 30, 2012. No response to the FORM was received. On February 25, 2013, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, she denies the debt listed in SOR 1.r (\$680), asserted she paid two debts (SOR 1.p, \$915 and SOR 1.n, \$2,671); and asserts the debts listed in SOR 1.k (\$201) and SOR 1.j (\$201) are the same debt. She admitted the remaining 15 unresolved debts. She admitted, with explanation, that she had provided false information on her e-QIP related to her employment record (SOR 2.a) and financial record (SOR 2.c). She admitted falsifying the e-QIP, but asserted she had forgotten about illegal drug related counseling (SOR 2.b). Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 32-year-old employee who works for a defense contractor. She served in the U.S. Army from March 2001 through February 2005 separating with a General discharge under honorable conditions. She receives a monthly disability check from the Department of Veterans Affairs (VA) for a 60% disability, which is \$1,009 monthly. (Item 5, SOR Answer). In May 2009, her eight-year marriage ended in divorce. (Item 6) Applicant had been seeking a divorce since 2003. She and her husband had only lived together for one month during their marriage. (Item 5)

Applicant admits the majority of her unresolved debts. She provided no documentation supporting her claim to have paid the debts listed in SOR 1.p and 1.n, nor did she provided any documentation that the debts listed in SOR 1.j and 1.k are the same obligation. In her October 2012 SOR response, she asserts she will use her income tax refund to address some of her outstanding debts. She asserted, but failed to document, that she has made arrangements with some of her creditors to settle and pay her unresolved debt as she claimed.

In 2004, while in the U.S. Army, Applicant tested positive for cocaine. She denies ever using cocaine, but admits testing positive for it. (SOR Answer) She asserted her military unit had problems with the urinalysis when an E-7 was caught with urine samples at his home. (SOR Answer) She stated, if "you research the urinalysis that was done in 2004 for you will see that I should have been cleared of that test." (SOR

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*Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Answer) She provided no documents supporting this assertion. She stated she “did not purposely mention [her] urinalysis and [ADAPT<sup>2</sup>] testing on purpose.” (Item 2)

On Applicant’s 2010 e-QIP, in response to questions posed in Section 26, Financial Record, she indicated she did not know the requested information and a “credit report would have to be pulled” to determine the information. (Item 6) She answered “no” to all questions asked in Section 26. This included answering “no” to Question 26.d, which asks if she had a lien placed against her property for failing to pay taxes when in fact the state had entered a tax lien against her in 2010. She said she was unaware of the tax lien when she completed her e-QIP. (SOR Answer) She asserted, but failed to document, that the state tax lien had been paid. (Item 5) She also asserted she was unaware of her delinquent accounts until she reviewed her credit bureau report (CBR) in September 2010. (Item 5)

In 2006, Applicant was terminated from her job for falling asleep on the job. She was dealing with depression and the death of her brother. She failed to list her termination on her e-QIP because she “was ashamed for being fired.” (Item 2)

In 2007, an Internal Revenue Service (IRS) audit determined she owed \$12,000 in federal income tax for improperly claiming her cousin’s children on her 2004, 2005, and 2006 income tax returns. (Item 5)

In October 2010, Applicant was interviewed concerning her financial delinquencies. (Item 5) In June 2012, she answered written interrogatories concerning her delinquent accounts. She has provided no documents showing payment of any SOR debts.

In October 2010, at the time of Applicant’s personal subject interview, her annual income was \$50,000 and her monthly expenses were approximately \$2,000. (Item 5) Her monthly net remainder (monthly income less monthly expenses) was approximately \$1,000. (Item 5) When asked during the interview about various delinquent accounts, she stated she intended to dispute a number of her accounts with the credit bureau and intended to make payment arrangement on any account she owed. She planned on having all of her obligations paid within two years. (Item 5)

## **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 must be considered in evaluating an applicant’s eligibility for access to classified information.

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<sup>2</sup> The Army’s Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program includes substance abuse prevention, education, treatment, and urinalysis testing.

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 interests of 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 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 Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

Adjudicative Guideline (AG) ¶18 articulates the security concerns relating to financial problems:

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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. She has one unpaid tax lien, a charged-off account, and 15 collection accounts, which total approximately \$13,000. The evidence supports application of disqualifying conditions AG ¶19.a, "inability or unwillingness to satisfy debts" and AG ¶19.c, "a history of not meeting financial obligations."

Applicant has been aware of the security concerns over her unpaid accounts since her October 2010 interview. At that time, she stated she would be disputing certain accounts and arranging payments on those accounts she owed. She has provided no documents establishing payment on any of the accounts or arranging repayment on her delinquent accounts. She asserts the state tax lien and other debts were paid, but submitted no documents showing payment.

Applicant established she was divorced in 2009, which is a factor beyond her control. However, she failed to document how that divorce caused her inability to pay the SOR debts. She married in 1981 and divorced in 2009. However, during the marriage, she lived with her husband only one month. This indicates the financial impact caused by the divorce would be minimal.

It has been more than two years since she was questioned about her delinquent accounts and even the smallest debt of \$88 (SOR 1.g) remains unpaid. Applicant's delinquent debts are numerous, ongoing, and remain unpaid. There is insufficient evidence to conclude her actions happened under unusual circumstances or that they are unlikely to recur. She disputes certain debts, but has provided no documented proof to substantiate the basis of her disputes. There is no evidence she has received financial counseling, nor is there a clear indication that her financial problems are being resolved. There is no evidence of a good-faith effort to repay his creditors. I find none of the mitigating conditions apply.

## Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 provides a condition that could raise a security concern and may be disqualifying in regard to falsification of Applicant's security clearance application:

(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.

The SOR alleged Applicant intentionally falsified three sections of her September 2010 e-QIP by failing to disclose derogatory information about a job termination, using cocaine, and her financial delinquencies.

Applicant stated she purposely did not mention her urinalysis or ADAPT testing when she completed the form. She failed to list her termination because she was ashamed of being fired. These were intentional, willful actions of Applicant failing to provide truthful answers. She says she should have been cleared of the 2004 urinalysis, which was positive for cocaine. She has failed to establish this as true. Mere assertion without collaborating documents is insufficient for a favorable finding.

The Government has shown Applicant's e-QIP answer concerning her finances was incorrect, but this does not prove her omission was a deliberate effort to conceal facts from the Government. In responding to the financial questions she stated she did not know the requested information and a credit report would be needed to determine the state of her finances. At the time she completed the e-QIP she was unaware of the state tax lien. Intent to deceive or mislead the Government does not require direct evidence and can be inferred from circumstantial evidence, but this is not the case here. Her answer to the financial questions put the Government on notice that she might have financial problems and that further investigation into this matter was necessary. As to her responses to the financial questions only, I find her answers were not a deliberate omission, concealment, or falsification. However, the disqualifying conditions apply to her responses to the questions concerning her illegal drug use and her employment record. I find against her as to personal conduct.

## **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. Under these circumstances I am not persuaded Applicant will establish repayment plans and address her delinquent accounts. She has too much outstanding debt and offered too little proof that she is satisfying her debt to conclude her debt no longer constitutes a security concern. There is no evidence that even the smallest of the debts listed in the SOR has been paid. Her actions in failing to inform the Government of her work termination and positive cocaine urinalysis on her security clearance application were intentional acts for which there is no mitigation.

The issue is not simply whether all her debts are paid. It is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations and 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, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.s: **Against Applicant**

Paragraph 2, Personal Conduct:           AGAINST APPLICANT

Subparagraphs 2.a and 2.b:           Against Applicant

Subparagraph 2.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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge