



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-11009  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

04/29/2013

**Decision**

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 November 14, 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 (Ans) the SOR on December 5, 2012, with supplemental information provided on December 21, 2012, and she requested a hearing before an administrative judge. The case was assigned to me on January 30, 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 March 12, 2013. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and submitted exhibit (AE) A (further subdivided into letters A through E), which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 20, 2013.

### Findings of Fact

Applicant admitted the debts listed in the SOR at ¶¶ 1.a – 1.d, and 1.h – 1.i. She denied the debts listed in SOR ¶¶ 1.e – 1.g. 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 54-year-old employee of a defense contractor. She has worked for her current employer since 2010 as an administrative assistant. She has a high school diploma and some college. She is divorced and has no children. She has no military experience and has never held a security clearance in the past.<sup>1</sup>

The SOR alleged a Chapter 7 bankruptcy discharge in 2005 and nine delinquent debts totaling about \$15,056. The debts were listed on credit reports obtained in August 2012, May 2011, and January 2011.<sup>2</sup>

Applicant moved to her current location in 2010 primarily to help care for her 89-year-old father. She previously lived in another state and had worked in the private sector. When she moved and obtained her current job, she was earning less money than from her previous job and her expenses were greater. Most of the SOR debts arose before her move to assist her father.<sup>3</sup>

The 2005 bankruptcy discharge alleged in SOR ¶ 1.a was necessitated due to Applicant's debt to the IRS of about \$46,000 for federal taxes for years 1994 through 2000. Her then-boyfriend told her he would file and pay her federal taxes for those years. He failed to do so, and her large tax obligation resulted. She attempted to work with the IRS to resolve the debt through an offer and compromise settlement, but was unable to settle the matter. She turned to bankruptcy protection as a way to discharge the tax debt to the IRS.<sup>4</sup>

The debt in SOR ¶ 1.b is a judgment for a delinquent state tax debt in the amount of \$2,094. The debt is for state income taxes that she owed for the income she derived while working in that state in tax year 2008. Applicant admitted this debt in her answer.

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<sup>1</sup> Tr. at 6, 80; GE 1.

<sup>2</sup> GE 3-5.

<sup>3</sup> Tr. at 22, 26; GE 2, 3 - 5.

<sup>4</sup> GE 2, 6; Ans.

In March 2013, she made a \$200 payment (although there is no evidence her check has cleared the bank) toward this debt. This debt is unresolved.<sup>5</sup>

The debt in SOR ¶ 1.c is a collection account for a telecommunications debt in the amount of \$447. Applicant provided documentary evidence showing she recently contacted the collection company in an attempt to resolve this debt. She has not received a response. This debt is unresolved.<sup>6</sup>

The debt in SOR ¶ 1.d is a collection account for a credit card debt in the amount of \$3,641. Applicant acknowledged this debt, but believes she is dealing with the original creditor, not the collection agency. She stopped corresponding with the collection agency. This debt is unresolved.<sup>7</sup>

The debt in SOR ¶ 1.e is a collection account in the amount of \$650. There is no information on the underlying debt. Applicant denied this debt and stated she had no knowledge of it. It appears on her credit report dated August 2012, but does not appear on the credit report supplied by Applicant dated March 2013. This debt is resolved and I find for Applicant on this SOR allegation.<sup>8</sup>

The debt in SOR ¶ 1.f is a collection account for a credit card debt in the amount of \$4,578. Although she denied this debt in her answer, she acknowledged this debt at the hearing. Her last contact with the creditor was in 2009. She will attempt to settle this debt. This debt is unresolved.<sup>9</sup>

The debt in SOR ¶ 1.g is a collection account for an insurance premium debt in the amount of \$117. Applicant disputes this debt claiming that she does not owe anything to this company. She did not provide any documentary evidence to support her dispute. This debt is unresolved.<sup>10</sup>

The debt in SOR ¶ 1.h is a collection account for a credit card debt in the amount of \$1,238. Applicant acknowledged this debt and indicated to an investigator that she planned to pay it. This debt is unresolved.<sup>11</sup>

The debt in SOR ¶ 1.i is a collection account for a credit card debt in the amount of \$2,000. Applicant initially acknowledged this debt, but later testified that she believes

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<sup>5</sup> Tr. at 66; GE 2; AE A.E.

<sup>6</sup> Tr. at 32; GE 2, 3 - 5; AE A.C.

<sup>7</sup> Tr. at 54-56; GE 2, 3 - 5; AE A.E.2A.

<sup>8</sup> Tr. at 79; GE 4; AE A.E.1.

<sup>9</sup> Tr. at 57-58; GE 4.

<sup>10</sup> Tr. at 35-36; GE 4.

<sup>11</sup> Tr. at 37; GE 2, 4.

this debt is a duplicate debt of the debt listed in SOR ¶ 1.d. The amounts and creditors are different for both debts. She did not provide any supporting documentation. This debt is unresolved.<sup>12</sup>

The debt in SOR ¶ 1.j is a collection account for a consumer debt in the amount of \$321. Applicant provided documentary evidence showing she recently contacted the collection company in an attempt to resolve this debt. She has not received a response. This debt is unresolved.<sup>13</sup>

Applicant's budget shows that after expenses she has a monthly disposable income of about \$207. This budget showed \$750 for rent, which she is longer paying because she is living with a family member who is not charging her rent. The budget also shows her paying \$200 to her father for a \$7,000 loan she took from him, but she is no longer making these payments. She previously contacted a debt counseling service who took about \$2,000 from her without helping resolve her debts. She participated in credit counseling through her bankruptcy, but has not done anything more. She is currently paying a company \$50 a month to "clean up" her credit reports by disputing entries, but that company will not resolve her debts. She stated she is current on her federal and state taxes. She presented character letters from family, friends, and former coworkers. They attest to her loyalty, selflessness, work ethic and dedication. All recommend her for a security clearance.<sup>14</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

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<sup>12</sup> Tr. at 37, 54-55; GE 3.

<sup>13</sup> Tr. at 32; GE 2, 3 - 5; AE A.B.

<sup>14</sup> Tr. at 31, 62, 72, 80; GE 2; AE A.D.

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;
- (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's debts are recent and multiple. Her debts remain unpaid and she has no apparent plan to deal with them. Her poor financial record, particularly her bankruptcy, which was necessitated because she failed to pay federal income taxes for multiple years, and her failure to establish a plan to pay the remaining debts cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was impacted by moving to another state to assist her father and obtaining a lower-paying job in the new location. These are conditions beyond her control; however, in order for this mitigating condition to fully apply, Applicant must also act responsibly. Although Applicant made recent contact with two of her smaller balanced creditors and made a small payment toward the state tax judgment, she failed to establish a payment plan with the remaining creditors. Her inaction toward these debts does not constitute responsible behavior in dealing with her debts. AG ¶ 20(b) partially applies.

Applicant received financial counseling when she went through her bankruptcy in 2005, but none since then. Except for the debt listed in SOR ¶ 1.e, her debts are not resolved or under control. AG ¶¶ 20(c) partially applies. Since no good-faith effort was

made toward paying those debts and her overall financial situation remains unresolved, 20(d) does not apply.

Applicant disputed two debts (claiming SOR ¶1.d and ¶1.i were duplicate debts and that ¶ 1.g was not her debt), however, she failed to provide any documentation to support her disputes. AG ¶ 20(e) does not 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 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 her move to assist her father and her character evidence. I must also consider that she has done very little to resolve her debts. Additionally, her bankruptcy petition in 2005 was pursued because she owed over \$40,000 in federal tax debt. 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 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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Robert E. Coacher  
Administrative Judge