



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12262
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

10/10/2014

**Decision**

LYNCH, Noreen, A., Administrative Judge:

On April 22, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 7, 2014. The case was initially delayed due to Applicant's medical condition. A notice of hearing was issued on August 20, 2014, scheduling the hearing for September 23, 2014. The hearing was held as scheduled. Government Exhibits (GX) 1-6 were admitted into evidence without objection. Applicant testified, and submitted a binder, which was marked as Applicant Exhibit (AX) A, which was admitted into the record without objection. I kept the record open until October 7, 2014 for Applicant to submit additional documents. She submitted additional information, which was marked as AX B, and entered into the record. The transcript (Tr.) was received on September 30, 2014. Based on a review of the

pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the SOR allegations ¶¶1. a-1.j with explanations for several debts that were paid.

Applicant is a 37-year-old security specialist for a defense contractor who graduated from high school and attended college, but she has not yet obtained a degree. Applicant is married and has three children. She has been with her current employer for about two years. (Tr. 38) Applicant has held a security clearance since 2006. (GX 1)

The SOR alleges indebtedness for ten delinquent debts including four judgments, medical accounts, collection accounts, a charged-off account, and a mortgage loan account that is 180 days or more past due with an approximate balance of \$254,000. The total amount of delinquent debt is approximately \$36,770. Credit reports confirm her delinquent debts. (GX 3 through 6)

Applicant disclosed her multiple financial issues on her latest security clearance application. The explanation for her accumulated debts is a combination of loss of her employment for one year, medical conditions, including four surgeries, her husband's unemployment in 2008, and his deployment to Iraq.

Shortly after Applicant and her husband married in 2006, they purchased a home for \$260,000. Applicant and her husband had no difficulties paying their bills. However, in 2007- 2008, various hardships befell them. Applicant had a baby in 2008, and shortly thereafter her husband lost his job. Applicant became very ill after the birth of her daughter and required surgery. (Tr. 48) After surgery, Applicant was sent to a rehabilitation center. (Tr. 51) At that time in 2009, Applicant was on short-term disability. Applicant became employed again in April 2010. However, she again required surgery in 2010. She was unemployed again from June 2011 until May 2012, when she started her present employment. (Tr. 55)

Applicant could not afford the mortgage payment and immediately contacted the bank. A forbearance payment of \$800 a month was set. This lasted a short period of time (one year). Applicant tried to sell the house on at least three occasions. (AX A) She obtained a contract but the bank would not accept the amount. (Tr. 57) She also tried to rent the home in 2010. Applicant obtained the assistance of a management company and paid them \$500 to start the process of negotiating with the mortgage company to modify the home mortgage loan. (Tr. 61) The representative from the management company was to contact the mortgage company but she did not. The company went bankrupt and Applicant lost the \$500. (Tr. 64) Applicant attempted a short sale in 2012. The market price was about \$199,000. The home almost sold in 2012, but with a lien on the house, it could not sell. (Tr. 65) The two liens were from the judgments entered by the bank.

Applicant's husband could not find a job for almost a year, and decided to join the military so that he could support his family. On October 13, 2009, he was deployed to Iraq for one year. Applicant's husband received a lower salary than when he was employed as a civilian. (Tr. 12) As of February 2013, he is in the Army Reserves and works as a property manager for a company. (Tr. 32)

Applicant's monthly net income is approximately \$4,449. Her husband's net monthly income is \$3,814. Applicant has no car note. She follows a budget. She has about \$300 net monthly remainder.

In June 2013, Applicant consulted an attorney who advised her to file Chapter 7 bankruptcy. (AX A). The attorney advised Applicant to include the house in bankruptcy. She was also advised to stop any payment plans that she had. On February 3, 2014, Applicant and her husband took the mandatory credit counseling course. Applicant stated that the debts alleged in the SOR are included in the bankruptcy. (Tr. 67) She submitted a final copy of the petition for the Chapter 7 bankruptcy that was filed on October 3, 2013. (AX B)

Regarding the other allegations in the SOR, debts in ¶ 1.a and ¶1.d are paid. She provided receipts to substantiate the payments.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admitted that she acquired delinquent debt in the amount of \$36,700. She also admitted that there is a past-due mortgage on her house. Her admissions and the credit reports confirm her debts. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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 financial difficulties occurred as the result of multiple job losses for herself and her husband, illness, multiple surgeries and her husband's deployment to Iraq. The combination of these events is unlikely to recur. They purchased a house but due to financial difficulties could not maintain the mortgage loan. Applicant attempted to either sell or rent the house on many occasions. She tried a short sale. She paid two small bills. She wanted to pay her creditors but was unable. In 2013, after obtaining legal advice, she was advised to file for Chapter 7 bankruptcy. This is a legal means of resolving debts. She received the required financial counseling. Applicant provided documentation concerning the bankruptcy petition and the date of filing. AG ¶¶ 20(a) through (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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 37 years old. She is married and has three children. She has held a security clearance since 2006 without incident.

Applicant and her husband suffered a multitude of losses. Applicant was ill, had surgeries, was in rehabilitation, was unemployed for about a year, and her husband also lost his employment. In desperation, he joined the military to gain employment. He was deployed to Iraq. In 2006, Applicant and her husband purchased a home. Shortly thereafter, she suffered the above circumstances, which were beyond her control. She could not afford the mortgage payments and could not sell the house, despite repeated attempts. In 2013, she was advised to file for Chapter 7 bankruptcy. This is a legal means to resolve debts. Applicant was caught in a perfect storm of misfortune which is unlikely to recur. Applicant's good faith efforts to resolve her financial difficulty, and the bankruptcy filing and information that she provided mitigate the security concerns. She has provided sufficient information to meet mitigation requirements imposed by the guideline governing her finances. I do not have doubts about Applicant's judgment and trustworthiness. Applicant has mitigated the security concerns 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.j: 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's security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge