



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12227
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray Blank, Esq., Department Counsel  
For Applicant: *Pro se*

07/29/2013

---

**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. The Statement of Reasons (SOR) alleged 11 collection or unpaid accounts, which totaled more than \$30,000. Her financial problems were due to circumstances beyond her control, and she has acted reasonably under the circumstances. The financial considerations security concerns have been mitigated. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on December 19, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On January 28, 2013, Applicant answered the SOR and requested a

---

<sup>1</sup> 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) effective within the DoD on September 1, 2006.

hearing. On May 15, 2013, I was assigned the case. On June 4, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 31, 2013. I admitted Government's Exhibits (Ex) 1 through 8 and Applicant's Exhibits A through F, without objection. Applicant and her fiancé testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. G and H) was submitted and admitted into the record without objection. On June 24, 2013, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, Applicant denied owing some of the debts and admitted the remainder. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 52-year-old truck driver who has worked for a defense contractor since June 2011, and seeks to obtain a security clearance. Applicant's supervisor states Applicant is an honest, hard-working, dedicated worker. (Ex. A) He states, there "is no other owner operator team within our organization that can be counted upon more for unquestioned acceptance of responsibility and superior customer service." (Ex. A)

In 2000, Applicant was 40 years old and working as an over-night stocker at a large discount store. (Tr. 42) In December 2000, she married. Her husband was a truck owner and driver who taught her how to drive a truck. (Tr. 42) She worked for one trucking company and he another. Following their marriage, she purchased a car with a 26 percent interest rate and had a few other minor debts. Her husband thought paying such a rate was ludicrous and convinced her to file for Chapter 7 bankruptcy protection. (Tr. 48, 49) In February 2001, Applicant filed the Chapter 7 and in April 2002, her debts were discharged. (Ex. 2, 5)

Applicant's ex-husband started building a trucking company, which he ran as a sole proprietorship. Both the company and their home<sup>2</sup> were solely in his name. (Ex. 2, Tr. 49) Applicant worked in the trucking company's office. (Tr. 28, 36) Her ex-husband eventually purchased 13 highway truck tractors with little or no money down. (Tr. 44) Her ex-husband had a gambling problem, started using company funds for personal use, and started using narcotics. (Tr. 34) He used their credit cards for gambling and started pawning their possessions. (Tr. 46) The first four or five years of her marriage were free of verbal and physical abuse. (Tr. 44) The trucking company went out of business.

In March 2007, Applicant joined with her husband in filing for Chapter 11<sup>3</sup> bankruptcy protection. (Ex. 3, 4) The bankruptcy listed assets of \$1,456,187 and liabilities of \$2,163,282. (Ex. 4) The liabilities included \$1,830,293 in secured debt for 13

---

<sup>2</sup> The divorce decree awarded the home to her ex-husband. (Ex. 2) The home has since gone to foreclosure.

<sup>3</sup> A Chapter 11 bankruptcy is used when a business, either a corporation or sole proprietorship, is unable to pay its creditors and seeks protection.

semi-trucks model years 2005 through 2007. (Ex. 4) In June 2007, the Chapter 11 was dismissed and the matter was converted to a Chapter 7. (Ex. 2) When the matter converted to a Chapter 7, Applicant was removed from the bankruptcy because the statutorily required eight year waiting period for her to again file for Chapter 7 bankruptcy protection had not elapsed. In June 2007, her ex-husband's debts were discharged. All the documents concerning the trucking business and the 2007 bankruptcy remain in her ex-husband's possession.

When the company ended, Applicant intended to end the marriage. Her ex-husband talked her out of it, and they started driving separate trucks for another company. (Tr. 45) Her ex-husband spent a month in jail for destroying a motel room. (Tr. 40, 45) Two years after the bankruptcy, in July 2009, she separated from her ex-husband and was divorced in January 2010. (Ex. 2) Following the divorce, her ex-husband was imprisoned for two years for narcotics possession. (Tr. 33) Her ex-husband has also threatened to kill her fiancé. (Tr. 33)

In 2006, Applicant and her fiancé, a truck owner and driver, met when he was dispatched to carry loads where Applicant's husband ran his trucking company. (Tr. 37) Her fiancé, having observed how Applicant's ex-husband treated her and how he ran the business, asked his company not to send him to the location again, but was told as a senior driver for the company he was expected to go. (Tr. 32) Eventually, he left the area and did not return. He did not see Applicant again until 2009. (Tr. 37) They have been together for approximately four years and drive together and, at one time, hauled mostly explosives and radioactive material. (Tr. 38) They borrowed \$12,000 from their employer to replace a truck engine and have repaid the loan. (Tr. 30) The household's debts are paid on time and they receive no calls or letters from creditors demanding payment. (Tr. 35)

The 2007 bankruptcy listed five medical accounts: \$900 owed a doctor, \$252 owed a hospital, \$426 owed a health center, \$1,021 medical debt (SOR 1.e), and another hospital was also listed without an amount provided.<sup>4</sup> (Ex. 4, Tr. 4) These five unpaid medical accounts totaled approximately \$3,300. Applicant contacted the creditors and was told the \$199 medical debt (SOR 1.a) is in her ex-husband's name. (Tr. 54) She has reduced the balance due on another medical debt (SOR 1.b) from \$1,385 to \$657. (Ex. 8, F, Tr. 55) She is disputing a \$657 dental bill (SOR 1.c) because this was her ex-husband's dentist, and she never went to this dentist for treatment. (Ex. 57) She asserted she had paid an \$81 medical bill (SOR 1.d). (Tr. 59) She paid a \$730 city debt (SOR 1.i). (Ex. B, C, Tr. 64) She also paid a \$93 cable bill (SOR 1.m). (Ex. D)

The \$439 debt (SOR 1.f) and the \$5,014 debt (SOR 1.g) were amounts owed the trucking company's business attorney. (Tr. 60, 61) Both of these debts were included in the 2007 bankruptcy. (Ex. 4) The \$14,000 debt (SOR 1.h) was a business line of credit opened in June 2006. (Ex. 6, Tr. 62) The July 2011 credit report lists this account as included in the 2007 Chapter 7 bankruptcy. (Ex. 6) The \$6,502 automobile loan (SOR

---

<sup>4</sup> It is unclear from the record any correlation between the SOR medical bills and those medical debts listed in the 2007 bankruptcy.

1.i) was for a Ford pick-up truck that was listed as a secured asset in the 2007 bankruptcy. At the time of the divorce, Applicant's ex-husband kept the truck. (Tr. 63)

### **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.

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly 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.

In 2001, Applicant sought bankruptcy protection and was dismissed from a business bankruptcy filed in 2007. The SOR lists five unpaid medical debts and six collection accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five 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.

The debts were incurred prior to 2007, when Applicant's ex-husband's trucking company filed for bankruptcy protection. Her ex-husband's responsibility for a number of these debts ended with the 2007 bankruptcy. However, when the bankruptcy changed from Chapter 11 to Chapter 7, Applicant was dismissed from the action because it had been less than eight years since her 2001 Chapter 7 filing. The 2001 filing was the result of Applicant following her husband's direction to file for bankruptcy to end payment on a car note with 26% interest.

The debts were incurred more than six years ago, but remain unpaid. There are eleven debts of which five of the debts are simply listed as unpaid. There is no allegation that these five medical debts have been charged off or are in collection. The debts were incurred under circumstances unlikely to recur. Her ex-husband's trucking business failed and the amounts owed the company's attorney (\$439, SOR 1.f and \$5,014, SOR 1.g) were discharged in bankruptcy as was the company's \$14,000 line-of-credit debt. Although married to the owner of the company, these were company obligations.

Two of the medical debts (\$199, SOR 1.a and \$657, SOR 1.c) belong to Applicant's ex-husband. One is an obligation from his dentist and the other a medical bill in his name. Although listed in the 2007 bankruptcy, her ex-husband chose to keep his pick-up truck at the time of their divorce. The \$6,502 truck debt (SOR 1.i) has been placed for collection. Applicant is unlikely to again incur financial problems due to her ex-husband's actions. The business obligations, her ex-husband's medical bills, and the debt on the pick-up truck are unlikely to recur. Additionally, these debts do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experience both divorce and her ex-husband's trucking business failing along with the financial burden associated with each. These are events beyond her control. AG ¶ 20(b) applies.

Under AG ¶ 20(c), Applicant is living within her means and not receiving any calls or letters from creditors demanding payment. Following the 2007 bankruptcy, she has not received any demands from the creditors listed in the bankruptcy asking her to pay the delinquent obligations. She and her fiancé borrowed \$12,000 from their

company to repair their truck and have repaid the loan. Applicant has paid three of the debts: SOR 1.d (\$81), SOR 1.l (\$730) and SOR 1.m (\$93). She is making payments on SOR 1.b and has reduced the amount owed from \$1,385 to \$657. These payments represent good faith efforts to repay these four creditors. There are clear indications the financial problems she experienced while married to her ex-husband no longer exist. Her current finances are under control. AG ¶ 20(c) and ¶ 20(d) apply.

Under the circumstances of this particular case, I do not find Applicant's 2001 bankruptcy filing or the business bankruptcy that followed the failure of her ex-husband's trucking business to be of financial significance. I find for her as to the two bankruptcies (SOR 1.j and 1.k).

### **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. Applicant was married to her ex-husband for a ten-year period ending in 2010. Early in the marriage they did not experience financial problems. In fact, her ex-husband's credit was sufficient for him to purchase 13 highway tractors. Her ex-husband's gambling, misuse of company funds, and narcotic use resulted in the failure of the trucking company. The first four or five years of her marriage were free of verbal and physical abuse. However, the abuse finally ended the marriage. When the marriage ended, Applicant was given a chance to start again. She and her fiancé pay their debts as required and have a sound financial picture.

The issue is not simply whether all Applicant's debts have been paid, it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) She has paid some of her debts and is making payments on another obligation. The remaining debts are either debts from her ex-

husband's trucking business or personal debts belonging to her ex-husband. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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, Financial Considerations:                   FOR APPLICANT

Subparagraphs 1.a – 1.m:                                   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.

---

CLAUDE R. HEINY II  
Administrative Judge