



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-12569  
)  
Applicant for Security Clearance )

**Appearances**

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

09/17/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 4, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 8, 2013, the Department of Defense (DOD) 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.

The SOR set forth reasons why DOD could not find under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. On June 12, 2013, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On June 24, 2013,

Department Counsel submitted the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 9.

On June 24, 2013, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant received the FORM on July 2, 2013, and did not submit any objections or additional matters within the allotted period. The case was assigned to me on September 3, 2013.

### **Findings of Facts**

Applicant is a 41-year-old employee of a federal contractor. She works part time as an executive/administrative assistant for two employers. She has worked for one of those employers since March 2011 and for the other since July 2010. She graduated from high school in 1990, has attended college since 2008, but has not yet earned a college degree. She is separated from her husband. She has two children, ages 16 and 20. She has held a security clearance since about 2004 without incident.<sup>1</sup>

The SOR alleged that Applicant had 29 delinquent debt, totaling \$34,201, and that she was granted a Chapter 7 bankruptcy discharge in January 2004. In her Answer to the SOR, Applicant admitted each of the SOR allegations with comments.<sup>2</sup>

In April 2003, a Special Agent of the Defense Security Service interviewed Applicant about her financial problems. During that interview, she stated that her problems started in 1996 when her husband lost his leg and her mother passed away shortly thereafter. She indicated that she had a kidney transplant and that she was spending about \$1,000 a month for medications. Her personal financial statement (PFS) in 2003 had a net monthly remainder of a negative \$1,327.<sup>3</sup>

Applicant filed Chapter 7 bankruptcy in October 2003. At the time of her kidney transplant, Applicant was employed with medical insurance. However, her employer filed for bankruptcy and Applicant lost her medical insurance. The hospital advised her that her kidney transplant, which cost approximately \$200,000, was not covered by medical insurance. Her medical bills prompted her to file Chapter 7 bankruptcy. In January 2004, her debts were discharged in that bankruptcy.<sup>4</sup>

From October 2006 to March 2007, Applicant was unemployed. She was unemployed again from December 2007 to July 2010. Although she was registered to work at a temporary employment agency from September 2009 to July 2010, she only worked one week during that period because she was sick and hospitalized.

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<sup>1</sup> Item 4.

<sup>2</sup> Items 1 and 3.

<sup>3</sup> Item 9.

<sup>4</sup> Items 4, 5, 6, 7, and 8.

Consequently, she was unemployed for almost three years between October 2006 and July 2010.<sup>5</sup>

In her e-QIP, Applicant stated:

. . . I had a kidney transplant in March 2003, since then I had health issues from 2006 to 2010 on and off. I have experienced renal rejection and will need another transplant or dialysis in the future. Severe health issues and lack of being able to work caused me to get behind on some financial obligations but I fully intend to satisfy all of my financial obligations.<sup>6</sup>

In her Office of Personnel Management (OPM) interview dated June 22, 2011, Applicant stated that her financial situation was further complicated because her husband was unable to work due to his disability. She indicated that his income was limited to social security disability payments. She and her husband now maintain separate residences.<sup>7</sup>

In her OPM interview, Applicant also reportedly stated that she was struggling to meet her living expenses. The summary of the interview further indicated:

[She] intends to work immediately on [the] delinquent debts and already has begun to contact creditors and has made several payment arrangements to begin resolving delinquent debt. [She] will continue to work with creditors to take care of her remaining debts. [She] also developed a financial plan to track her expenses and income, including payment agreements with delinquent creditors. [She] has reached the point of being able to remain current with her payments of monthly recurring expenses and is paying them on time. [She] intends to pay smaller delinquencies first and then begin working on the larger delinquencies. [She] avoids credit to [pay] recurring debts and will continue to do so in the future.<sup>8</sup>

In her Answer to the SOR, Applicant stated:

. . . I have a terminal kidney disease. I was diagnosed with this disease at 16 and this disease has led me to have a kidney transplant in March 2003. Since my transplant, I have had many complications which impact my ability to work. I went through a transition period after my transplant of having to pay for expensive medication out of pocket (\$3,000 a month) in order to be able to live or go without these medications. Without these

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<sup>5</sup> Items 4 and 5.

<sup>6</sup> Item 4 at 42.

<sup>7</sup> Items 6.

<sup>8</sup> Items 6.

medications I would die so I endured the hardship for a while until I received the necessary medical help. At one point I had to receive blood transfusions every other month in order to be able to function. In this time I accumulated excessive medical bills as well as other bills which I am in the process of paying through [an organization] and that I intend to satisfy. Last year my kidney transplant failed and I had to be put on home dialysis. I perform dialysis 7 days a week, every 4 hours and this allows me the freedom to still work and live a productive life. This current position has allowed me the flexibility to work from home or make-up work in case I am sick and thus giving me steady income. This allows me to make payments and keep track of my bills. I am currently and will continue to satisfy my financial obligations.<sup>9</sup>

The SOR debts were either placed for collection or had dates of first delinquency/ dates of last activity that span from August 2006 (SOR ¶ 1.x) to April 2013 (SOR ¶1.a). Eight of those debts were listed for collection in 2012. At least 15 of them, totaling \$4,630, are medical debts.<sup>10</sup>

In her Answer to the SOR, Applicant stated that she satisfied the debt for \$54 in SOR ¶ 1.i, but provided no proof of that payment. In admitting each of the other delinquent debts, she indicated that she was unable to pay off the debt or make payments under a repayment plan because of her health problems. She provided no proof of any payments toward the alleged debts.<sup>11</sup>

In the FORM, Department Counsel noted that Applicant submitted no documentary proof to corroborate her health problems, but also indicated there was no basis for suspecting her claims were not accurately reported. Department Counsel further indicated that Applicant needed to provide proof of her efforts taken to resolve her debts. Applicant failed to respond to the FORM.<sup>12</sup>

Applicant submitted a personal financial statement (PFS) dated November 30, 2012, that reflected her total net monthly income was \$2,800, that her total monthly expenses were \$1,878, and that her monthly debt payments were \$534, which left her a net monthly remainder of \$388.<sup>13</sup>

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<sup>9</sup> Item 4.

<sup>10</sup> Items 1, 6, 7, and 8.

<sup>11</sup> Item 3.

<sup>12</sup> FORM.

<sup>13</sup> Item 6.

## 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 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 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 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* EO 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 was granted a Chapter 7 bankruptcy discharge in 2004. Since then, she 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant presented a compelling case that her financial problems were the result of conditions largely beyond her control. She has had chronic health problems for

many years. She had a kidney transplant in 2003. Since then, she encountered many medical complications and had to pay out of pocket for expensive medications. Due to her medical problems, she was unemployed for about three years from October 2006 to July 2010. She began working again in July 2010 and has been working two part-time jobs since March 2011. In 2012, her transplant failed. She currently undergoes daily dialysis. Additionally, her husband is disabled and his income is limited to social security disability payments.

To merit full credit under AG ¶ 20(b), however, an applicant must not only establish that his or her financial problems were largely the result of conditions beyond his or her control, but also that he or she acted responsibly under the circumstances. Little is known about the steps Applicant has taken to resolve her financial problems. In November 2012, Applicant indicated that she had a net monthly remainder of about \$388. No evidence, however, was presented that she was using a portion of that remainder to pay off the smaller debts. In short, insufficient information was presented to establish that Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant's debts are ongoing and significant. They cover a number of years since her bankruptcy. Many of them are recent, indicating her financial situation has not stabilized. She provided no proof of payments toward any of the alleged debts. Insufficient evidence was presented to conclude that her financial problems are either under control or are being resolved. She presented no realistic plan for resolving them. From the evidence presented, I am unable to determine that her financial problems are unlikely to recur. AG §§ 20(a), 20(c), 20(d) do 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.

Minimal whole-person evidence has been presented in this case. Despite the presence of some mitigation -- particularly Applicant's chronic medical problems -- the record evidence leaves me with questions and doubts about her eligibility and suitability for a security clearance. In conclusion, Applicant failed to mitigate the financial security concerns.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.dd:	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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James F. Duffy  
Administrative Judge