



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



In the matter of: )  
)  
) ISCR Case No. 11-12665  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

04/29/2013

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to mitigate security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

**Statement of the Case**

On June 16, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On January 9, 2013, 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 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 for SORs issued after September 1, 2006.

Applicant provided an answer to the SOR, with additional information, dated February 1, 2013. She also requested that, in lieu of a hearing, her case be determined on the record by an administrative judge from the Defense Office of Hearings and

Appeals (DOHA). The Government compiled its File of Relevant Material (FORM) on February 20, 2013.<sup>1</sup> The FORM contained documents identified as Items 1 through 6. On February 20, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on March 4, 2013. Her response was due on April 3, 2013. Applicant timely filed additional information in response to the FORM. Department Counsel did not object to the information in Applicant's response to the FORM. On April 8, 2013, the case was assigned to me for a decision, and I marked Applicant's submission as Item A and entered it in the record.

### **Findings of Fact**

The SOR contains five allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.e.). In her Answer to the SOR, Applicant admitted three allegations (SOR ¶¶ 1.a., 1.c., and 1.e.). She denied the Guideline F allegations at SOR ¶¶ 1.b. and 1.d. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government and the Applicant. In addition to Applicant's response to the FORM, the record evidence includes Applicant's 2011 e-QIP; her responses to DOHA interrogatories;<sup>2</sup> and her credit report of October 19, 2012. The credit report establishes the debts alleged on the SOR. One of the delinquent debts was reduced to a judgment in July 2011. The remaining three debts are in charged-off status. The fifth debt alleged on the SOR was Applicant's home mortgage loan, which had been past due since January 2010. (See Items 4 through 6; Item A.)

Applicant is 38 years old, married, and the mother of three young children. She earned a bachelor's degree in 1996. She has worked for her current employer as a senior project manager since June 2010. She seeks a security clearance from the Department of Defense for the first time. (Item 4.)

In December 2009, Applicant's husband became unemployed. Applicant, her husband, and their children moved out of their home and into her parents' home in June 2010. While living in her parents' home, Applicant and her husband paid rent and contributed to the food and utilities of the household. (Item 4; Item A.)

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<sup>1</sup> The FORM is dated February 21, 2013.

<sup>2</sup> Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 3, 2011. On November 23, 2012, in response to DOHA interrogatories, Applicant signed a notarized statement in which she declined to agree that the investigator's summary accurately reflected her interview. She did not specifically change any facts in the interview; instead, she provided additional information about her maiden name, the spelling of her husband's name, and the names of individuals who supervised her at the companies where she was employed between 2005 and June 2010. She also stated that because of a short sale of her home and her husband's recent employment, she would be able to address her delinquent debts. (Item 6.)

Applicant's husband tried to find work as a freelance architect but was unsuccessful. He remained unemployed until he took a salaried position in October 2012. (Item A.)

Applicant is responsible for delinquent debts totaling over \$69,000. Her credit report shows that Applicant acquired a personal loan in January 2008. In July 2011, the creditor obtained a judgment against Applicant for failure to pay the loan. This delinquent debt totals \$23,787 and is alleged at SOR ¶ 1.a. (Item 1; Item 5.)

On November 23, 2012, in response to DOHA interrogatories, Applicant stated that she was "attempting to determine the debt holder in order to work out a payment plan." In her answer to the SOR, Applicant stated that she would begin making \$400 monthly payments on the debt on February 5, 2013. In response to the FORM, Applicant provided a document, dated February 25, 2013, from a debt collector, stating that, pursuant to her authorization, \$400 would be sent from her bank account to the creditor on March 5, 2013. (Ex. 6; Ex. A.)

The SOR alleges at ¶ 1.b. that Applicant owes a \$2,012 credit card debt, in charged-off status. Applicant's credit report shows that she opened the account in June 2009. In her answer to the SOR, Applicant denied this debt. She stated that she began making payments on the debt in December 2012, and she anticipated she would have it paid off in April 2013. In her response to the FORM, Applicant provided a document from the creditor reminding her that an authorized payment of \$401 would be deducted from her account in partial payment of the debt on March 25, 2013. The notice did not identify the balance owing on the debt, and Applicant did not provide documentation to corroborate payments made on the debt. (Item 1; Item 3; Item A.)

The SOR alleges at ¶ 1.c. that Applicant owes a delinquent credit card debt of \$41,677. She opened the account in the 1990s. Applicant's credit report shows that the account was closed by the credit grantor and became delinquent in 2012. In her answer to the SOR, Applicant stated that she had agreed to make monthly payments of \$1,000 on the debt, beginning on February 5, 2013. In her response to the FORM, Applicant provided a notice from the creditor reminding her that \$1,000 would be deducted from her bank account on March 5, 2013, in partial payment of the debt. (Item 1; Item 3; Item 5; Item A.)

The SOR alleges at ¶ 1.d. that Applicant is responsible for a \$2,151 credit card debt in charged-off status. Applicant's credit report shows that the account was opened in 2009 and became delinquent in 2012. In her answer to the SOR, Applicant denied the debt. She stated further that she began making payments on the debt in December 2012 and anticipated having it paid off in February 2013. In her response to the FORM, Applicant provided a document from the creditor stating that the debt had been settled for less than the full balance. (Item 1; Item 3; Item 5; Item A.)

The SOR alleges at ¶ 1.e. that Applicant became past due on her home mortgage loan in January 2010, and, in the summer of 2012, she sold the property in a

short sale. Applicant's credit report of October 19, 2012, shows a zero balance on Applicant's first and second mortgages on the property. In her August 2011 interview with an authorized investigator, Applicant stated that if she were able to sell her home in a short sale, she would then pay her delinquent debts. (Item 1; Item 5; Item 6.)

Applicant did not provide a personal financial statement. The record is therefore silent regarding her net income, her husband's net income, their monthly living expenses, the amount of income they have each month to pay delinquent debts, and any funds they have set aside in savings or retirement accounts. In her August 2011 interview with an authorized investigator, Applicant stated that she had not made payments on any of the delinquent debts alleged on the SOR since 2009. She also told the investigator that she had not had financial credit counseling. (Item 6.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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.” 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 two conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

When Applicant became delinquent on her home mortgage loan payments, she arranged a short sale of the property, and her credit report reflects that her home mortgage debt was resolved by the short sale. I conclude the SOR allegation at ¶ 1.e. for Applicant.

The record reflects that Applicant is responsible for several additional long-standing unresolved debts. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20(d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20(e)).

Applicant has a history of financial delinquency, and she has not sought financial credit counseling. She failed to provide a personal financial statement showing her family's net monthly income, current expenses, and resources for paying delinquent debts. Moreover, she only recently contacted her creditors to initiate payment of her delinquent debts. While to her credit, she supplied documentation that she had settled the debt alleged at SOR ¶ 1.d., she also provided documentation showing that her payment plans for the debts alleged at SOR ¶¶ 1.a., 1.b., and 1.c. were initiated in late 2012 or in early 2013. She has yet to establish a track record of timely and consistent payment of those delinquencies, which total over \$67,000.

Applicant acknowledged that she stopped paying the debts alleged on the SOR when her husband lost his job in 2009, and she attributed her financial delinquencies to her husband's loss of employment and her family's subsequent reduced income. While Applicant's husband's job loss and resulting unemployment were circumstances beyond her control, nothing in the record suggests that Applicant contacted her creditors and informed them of the reasons for her inability to pay her delinquent debts. By failing to inform her creditors of her inability to pay her debts for three years, Applicant did not act responsibly when confronted with circumstances beyond her control.

I conclude that AG ¶ 20(d) applies in part in mitigation to the facts of Applicant's case. However, I also conclude that AG ¶¶ 20(a), 20(b), and 20(c) do not apply in

mitigation to the facts of Applicant's case. Because Applicant did not dispute the legitimacy of the debts alleged on the SOR, AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, an 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a history of unresolved debt. While circumstances beyond her control prevented her from paying her delinquent debts, she failed to inform her creditors of these circumstances for three years. She provided documentation for recently-established payment plans, but failed to provide documentation demonstrating a track record of timely and consistent payment of three of her four delinquent debts. Her credit report reflected no mortgage debt resulting from a short sale of her home in the summer of 2012.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate security concerns about her financial considerations.

### **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.c.:	Against Applicant
Subparagraphs 1.d. and 1.e.:	For 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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Joan Caton Anthony  
Administrative Judge