



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03000
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

08/15/2014

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 15, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on February 20, 2014, detailing security concerns 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and she submitted a notarized, written response to the SOR allegations dated March 17, 2014. She requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on May 28, 2014. Applicant received the FORM on June 19, 2014. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. DOHA assigned this case to me on August 11, 2014. The Government submitted eleven exhibits, which have been marked as Items 1-11 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked and admitted as Item 1.

### **Findings of Fact**

In her Answer to the SOR, Applicant neither admitted nor denied the factual allegations in the SOR. Instead, she responded to the overall concern, denying that she and her husband lived beyond their financial means. She explained the reason for her financial problems and acknowledged that some of her credit cards had not been paid. Her answer is treated as a denial.<sup>1</sup> After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 56 years old, works for a DOD contractor as a consultant. She began her current employment in October 2011.<sup>2</sup>

Applicant was born and raised in Trinidad and Tobago. She and her family emigrated to the United States many years ago. She became a United States citizen in 2008. She recently completed a certificate course through a local university. Applicant married her first husband in 1978, and they divorced in 1984. They had one daughter, who is 36 years old. She married her present husband in 1990. Her husband adopted her daughter.<sup>3</sup>

In 2007, Applicant and her husband decided to sell their home (House A) and to purchase a smaller home (House B) to reduce their monthly mortgage payment. They

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Item 1; Item 5; Item 10.

<sup>3</sup>Item 1.

retained the services of a real estate agent and signed a contract to sell House A. At the same time, they purchase House B, a smaller and less expensive home. When House A did not sell, they listed House B for rent through a real estate agent. They rented House B for at least one year beginning in August 2008. During this time, they paid their mortgages.<sup>4</sup>

In June 2009, Applicant was laid off from her job. Shortly thereafter, her husband was laid off from his job. Financial problems ensued. In August 2009, Applicant and her husband applied to the mortgage lender for House A for a loan modification. At the same time, they sought mortgage and financial counseling through a local government center. The mortgage lender granted their modification request in April 2010 after they had paid the trial payments set up by the mortgage lender. They are current on these mortgage payments.<sup>5</sup>

In the fall 2009, Applicant and her husband also applied to the mortgage lender for House B for a loan modification. They made the required trial payments; however, the mortgage lender denied the loan modification and initiated foreclosure proceedings. Applicant and her husband retained a real estate agent to sell House B. The real estate agent obtained two short-sale contracts on House B. The mortgage lender rejected both contracts, then foreclosed on the property in 2011. The mortgage lender provided Applicant and her husband with a 1099-A tax form, which reflected that the value of the property reclaimed was more than their debt. Applicant did not have any tax liability for debt forgiveness as she did not owe any money on House B after foreclosure.<sup>6</sup>

Applicant and her husband incurred additional tax debt for the tax years 2007 and 2008. She and the IRS agreed on a payment plan for her unpaid taxes in 2010. She paid the monthly payment from July 2010 through October 2012. She and her husband resolved nearly \$21,000 in tax debts by October 2012 through these payments and tax refunds. Applicant paid two other credit card debts of \$528 and \$3,559 in 2010.<sup>7</sup>

Applicant advised that she is disputing the \$518 debt in SOR allegation 1.d and is part of a class action suit connected with the \$7,980 debt in SOR allegation 1.b. She has not provided documentation showing the current status of her dispute or the class action suit.<sup>8</sup>

Applicant has not resolved any of the debts identified in the SOR, which total more than \$81,000. She advised in her interrogatory answers that she had worked with

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<sup>4</sup>Item 5.

<sup>5</sup>Items 5, 7, 8, 9.

<sup>6</sup>Item 5.

<sup>7</sup>Items 6, 8, 9.

<sup>8</sup>Item 5.

attorneys and financial advisors to resolve her debts. She attached to her SOR response a letter from an attorney advising that she and her husband had retained the attorney to assist them with the preparation and filing of a Chapter 13 bankruptcy petition. Applicant and her husband plan to reorganize their debts to optimize their budget and savings for retirement. They will have 60 months to do so under a Chapter 13 plan. As of May 2014, she had not yet filed her bankruptcy petition.<sup>9</sup>

Applicant's tax return transcripts for the tax years 2009 through 2012 reflect an increase in household gross income from \$69,400 in 2009 to \$145,687 in 2012. She did not provide a financial statement showing her monthly net income and her monthly expenses.<sup>10</sup>

Applicant advised that she and her husband used their retirement income to pay their bills after losing their jobs. Their tax returns do reflect use of their retirement savings, which were included as taxable income. Applicant and her husband exhausted their savings and retirement funds paying expenses while unemployed.<sup>11</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, 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, 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 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.

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<sup>9</sup>Items 1, 3, 5, 11.

<sup>10</sup>Item 6.

<sup>11</sup>Items 3, 5, 6.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when she and her husband lost their jobs in 2009. The loss of income created high levels of debt. The SOR debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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's financial problems arose in 2009 when she and her husband lost their jobs within months of each other. They immediately applied for mortgage loan modifications on Houses A and B. Over the next year, they worked with the mortgage lenders on their request. The mortgage lender for House A approved their loan modification, and the mortgage lender for House B denied their request and foreclosed on House B. They negotiated a payment plan with the Internal Revenue Service (IRS) to resolve their unpaid taxes for the years 2007 and 2008. By 2012 they had resolved their more than \$21,000 in tax debt. They also paid two other loans in 2010. AG ¶ 20(b) is partially applicable because of these actions. It is not fully applicable because Applicant has not established that she has taken any action to resolve her SOR debts which are more than \$81,000 nor has she shown that she has taken action on her debts in the last two years.

AG ¶ 20(c) is partially applicable because Applicant received financial counseling when she started the loan modification process. At this time, the SOR debts are not under control or resolved. AG ¶ 20(d) applies to the two small debts and Applicant's mortgages as she initiated actions to resolve these non-SOR debts. However, at this time, the resolution of the SOR debts is unknown, and AG ¶ 20(d) is not applicable to these debts.

### **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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's

financial problems arose because of circumstances beyond her control. (See AG ¶ 2(a)(2).) When they recognized a change in the economy starting, Applicant and her husband decided to downsize their residence, a good decision. Their mistake was to purchase a second house before their primary residence had been sold. When they realized that their primary residence would not sell, they rented their smaller home. This decision allowed them to pay their bills until 2009 when she and her husband became unemployed within months of each other. (See AG ¶ 2(a)(4).) She was unemployed for more than a year. The length of her husband's unemployment is unknown. This loss of income created huge financial issues for them. They used their retirement savings to keep their bills paid and applied for mortgage loan modifications. Again, they made good decisions. They acted responsibly about their tax debt and paid two smaller bills. They talked with professionals to get guidance on how to resolve their financial problems. They took steps to correct their financial situation through 2012.

Applicant provided a letter, indicating that she would be filing a Chapter 13 bankruptcy petition. A Chapter 13 bankruptcy requires a plan to pay debts. At this time, the record does not contain any evidence showing that her petition has been filed, the status of her bankruptcy petition, what debts are included in the petition, or a copy of her plan to resolve her debts. Her current monthly income and expenses are unknown as the record lacks evidence of either. From 2008 until 2012, Applicant took reasonable actions to gain control of some of her debts. For the last two years, she does not appear to have taken any further actions to resolve her debts. The filing of a Chapter 13 bankruptcy petition is a step in the right direction, although at this time, the record lacks evidence showing that it has been filed, a plan approved, and payments under such a plan have been made as allowed. Given her past actions, Applicant most likely will comply with a payment plan. However, until she demonstrates such compliance, it is too soon to grant her a security clearance.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her finances under Guideline F.

### **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.f:	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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MARY E. HENRY  
Administrative Judge