



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03335 <sup>1</sup>
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

09/11/2015

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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 granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 20, 2011. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on October 31, 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,

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<sup>1</sup>The Statement of Reasons (SOR) and other documents in the case file show the case number as 14-03335. The data base lists the case number as 12-03335. The number in the data base is being used in this decision.

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 on November 7, 2014. She submitted a notarized, written response to the SOR allegations dated November 17, 2014, and 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 June 17, 2015. Applicant received the FORM on June 22, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted an undated response. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on August 25, 2015. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibit (AE) A.<sup>2</sup>

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.i of the SOR with explanations. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 44 years old, works in logistics support for a DOD contractor. She began her current employment in December 2011, after she retired from active military duty. Applicant served in the United States Navy from February 1992 until she retired, effective February 2012. During her years in the Navy, Applicant received five Good Conduct medals, two Achievement medals, Global War on Terrorism Expeditionary medal, meritorious unit commendation, and other medals and commendations.<sup>3</sup>

Applicant graduated from high school. She attended three technical schools for various training programs. In October 2011, she began college. Applicant married in February 1996, and she separated from her husband in February 2009. She and her husband live in separate states several hundred miles apart. They do not have a formal separation agreement, and there is no indication that either are seeking a divorce. She

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<sup>2</sup>Applicant marked the exhibits in her response as Item 1, her response to the FORM and argument as Item 2, and her DD Form 214 as Item 3. Her documents have been renumbered as follows: her response to the FORM and argument is AE A; her DD form 214 is AE A-1; her three credit reports are AE A -2 through AE A-4; and her e-QIP is AE A-5. The last exhibit is a duplicate of Item 3.

<sup>3</sup>Item 3; AE A-1.

has two sons, ages 16 and 13. The record lacks any evidence of criminal conduct, alcohol misuse, or drug abuse.<sup>4</sup>

During her personal subject interview (PSI), Applicant advised that her financial problems began when her husband quit working, leaving her as the sole provider for the family. She lacked sufficient income to pay all their bills, causing her to fall behind in payments on several debts. He later moved out-of-state and has not provided any financial support to her.<sup>5</sup>

Applicant prepared a personal financial statement in January 2014, which is the most recent document in the file about her income. She earned \$3,208 a month in gross income and received \$2,415 in net income from her job. She also received \$1,398 in military retirement and disability income for a total net monthly income of \$3,813. Her monthly expenses include \$1,569 for rent, \$186 for utilities, \$721 for car expenses, \$200 for food, \$50 for clothing, and \$175 for miscellaneous items. She has approximately \$800 a month for debt payment.<sup>6</sup>

The record contains eight credit reports. The Government submitted four credit reports dated October 8, 2011, June 25, 2013, February 11, 2014, and February 19, 2015. Applicant submitted four credit reports dated November 11, 2014, June 23, 2015 (2), and July 6, 2015. The October 2011 credit report provides the most detailed information about the debts at issue in this case. This credit report is the only credit report which shows each of the debts identified in the SOR. It also shows that Applicant paid three judgments between February 2008 and June 2011 and that she paid or settled nine collection debts. In addition, the credit reports show that she brought current 14 past-due debts.<sup>7</sup>

SOR allegation 1.a relates to an unpaid credit card debt of \$1,060. The 2014 credit reports show this debt as paid, and the Government concedes that the debt is resolved. SOR allegations 1.b through 1.i are not listed on the remaining seven credit reports. During her PSI on October 28, 2011, she told the investigator from the Office of Personnel Management (OPM) that she had negotiated a plan to pay the \$1,798 debt in allegation 1.c at the rate of \$300 a month until paid, beginning in November 2011 and that she negotiated a plan to pay the \$1,060 debt in allegation 1.a at the rate of \$200 a month until paid beginning in October 2011. She did not provide proof of these payments, but the credit reports show the second debt as paid. She also advised the OPM investigator that she was attempting to arrange payment plans for the debts in allegations 1.b (\$1,260) and 1.f (\$419). In her January 2104 sworn response to interrogatories dated December 23, 2013, Applicant indicated that she had paid the

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<sup>4</sup>Item 3; Item 4; AE A-1.

<sup>5</sup>Item 4.

<sup>6</sup>Item 4.

<sup>7</sup>Item 2; Item 5 through Item 8.

debts in SOR allegations 1.b through 1.h in full and that the debts had been removed from her credit reports. Concerning the \$15,903 debt in allegation 1.i, Applicant told the OPM investigator that this debt related to a boat her husband purchased, that she transferred the debt to her estranged husband for inclusion in his bankruptcy case, and that it was removed from her credit reports.<sup>8</sup>

Applicant has not provided copies of cancelled checks, bank statements, or other paid receipts on the debts listed in the SOR. The October 2011 credit report indicates that the \$15,903 debt is a student loan debt for a college not listed as one of the vocational schools or the college attended by Applicant. Her most recent credit reports reflect that her education loans belong to the United States Department of Education and are in deferment status until at least May 2017. This listing of this debt as owed by Applicant appears to be an error on the October 2011 credit report. The record lacks documentation showing that Applicant received financial or credit counseling.<sup>9</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.

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

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<sup>8</sup>Item 2; Item 4 through Item 8; AE A-2 through AE A-4.

<sup>9</sup>Item 8; AE A-2.

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 after her husband quit his job, and they later separated. Most of the debts had not been shown as resolved when the SOR was issued. 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 husband quit his job, leaving Applicant to provide for the family. They later separated, and he moved out-of-state. He has never provided financial support to the family nor has he paid any of the marital debts. The credit reports reflect that Applicant paid nine debts and three judgments before October 2011 and that she brought current 14 other past-due accounts that were contemporaneous to the debts listed in the SOR. Her actions in response to her credit problems from her separation and her husband's conduct are reasonable under the circumstances. AG ¶ 20(b) applies to show that Applicant is responsible about paying past-due debts.

The record lacks any evidence of credit counseling. However, Applicant's statements that she negotiated a payment plan for the debts in allegations 1.a and 1.c are credible as the credit reports reflect that 1.a was paid and support her statement that she negotiated a payment plan and paid the debt in 1.c. Her statements that she paid the debts in SOR allegations 1.b through 1.h are credible given her history of debt payment as shown on the credit reports. AG ¶¶ 20(c) and 20(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. 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When Applicant and her husband both worked, they were able to pay their monthly expenses and other debts. He decided to stop working, which started her financial crisis as she was the sole wage earner in the family. Not long after, she and her husband separated. He moved out-of-state and continues to live in another state several hundred miles away. Applicant chose not to ignore the debts. She started paying these debt by 2009 and by 2011, she had paid nine debts and three judgments. She also brought current another 14 debts. She continued to work to resolve her debts by developing payment plans with her creditors and complying with the plans as shown by the payment of

allegation 1.a. While the record lacks documentary evidence that Applicant paid SOR debts 1.b through 1.h, her statements in her response to the interrogatories that she paid these debts is credible given her established track record for payment of her old debts as shown by the credit reports. The credit reports listing of the largest SOR debt is in error because the credit report indicates that this debt belongs to a college not attended by Applicant, and the credit reports only listed education debts are held by the United States Department of Education. Applicant's past debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a position of trust. Applicant has shown an ability to take care of her finances and pay debts owed. Her past debts do not raise a concern about her ability to hold a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	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 eligibility for a security clearance. Eligibility for a security clearance is granted.

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MARY E. HENRY  
Administrative Judge