



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



In the matter of:

ISCR Case No. 12-11914

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

08/31/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 3, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF acted under Executive Order (EO) 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).

Applicant answered the SOR on October 26, 2015, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 30, 2015. The evidence

included in the FORM is identified as Items 2-6 (Item 1 is the pleadings and transmittal information). The FORM was mailed to Applicant who received it on December 17, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She timely submitted Applicant exhibits (AE) A (1-11) and B. She did not object to any Government exhibits. Items 2-6 and AE A-B are all admitted into the record. The case was assigned to me on August 16, 2016.

### **Findings of Fact**

In Applicant's answer to the SOR, she neither admitted nor denied the allegations, but she provided explanations. Her answers will be taken as constructive denials. After a careful review of the pleadings and evidence, I make the following findings of fact.

Applicant is 57 years old. She is married and has eight children. She has worked for a federal contractor since November 2003. She has bachelor's degree. She has never served in the military.<sup>1</sup>

The SOR lists four delinquent debts totaling approximately \$17,205, which includes a judgment to a state for delinquent student loans in the amount of \$16,300. Applicant stated the reason for her financial difficulties was because her husband is a diabetic and is also a cancer patient who underwent chemotherapy 18 months ago. Her husband handled the family's finances, but she had to take over because of his condition after not doing so for over 25 years.<sup>2</sup>

The debts are supported by a credit report from July 2012 and court documents supporting the judgment entered in September 2010. The status of the debts is as follows:<sup>3</sup>

#### **SOR ¶ 1.a (Judgment for defaulted student loans-\$16,300):**

Applicant acted as a guarantor/cosigner on her daughter's student loans in September 2002. Her daughter apparently failed to make the required payments on the loan and the creditor sought payment from Applicant by filing a civil action. A default judgment was entered against Applicant in September 2010. As of March 8, 2016, the balance on the judgment was \$28,932. Applicant recently contacted the judgment holder and paid \$5,000 toward the judgment. She also set up a payment plan to pay \$400 monthly beginning in April 2016. This debt is being resolved.<sup>4</sup>

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<sup>1</sup> Item 2.

<sup>2</sup> Item 3-5.

<sup>3</sup> Items 3-4.

<sup>4</sup> Item 3; AE A 3-6.

**SOR ¶ 1.b (consumer debt- \$524):**

Applicant provided documentation that this debt was charged off by the original creditor in 2012. The letter further states the current account status as “closed-balance paid in full.” This debt is resolved.<sup>5</sup>

**SOR ¶ 1.c and ¶ 1.d (consumer debts- \$57 and \$324):**

Applicant claims these debts were paid years ago. They do not appear on the two most recent credit reports. These debts are resolved.<sup>6</sup>

Applicant did not provide any information about her current financial status or a budget. She claimed to have contacted a consumer credit assistance company, but she did not provide any details of the contact.<sup>7</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

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<sup>5</sup> AE A 11.

<sup>6</sup> Item 6; AE B.

<sup>7</sup> AE A 9.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant had delinquent debts and the judgment remains unpaid or unresolved. I find the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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's debts are resolved or are being resolved. She provided sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) applies. Applicant's husband's medical condition was a circumstance beyond her control. She presented sufficient evidence to show responsible action to address the judgment entered against her in 2010. I find AG ¶ 20(b) applies. Applicant presented no evidence of financial counseling. She presented evidence that the three small consumer debts are resolved and the large student loan judgment is being resolved. I find AG ¶¶ 20(d) and 20(e) 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 the 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 guideline 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 shown a track record of financial stability.

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 under Guideline F, 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
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Subparagraphs 1.a – 1.d:	For Applicant
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### **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 access to classified information is granted.

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Robert E. Coacher  
Administrative Judge