



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02050

**Appearances**

For Government: Benjamin Dorsey, Esquire  
For Applicant: *Pro se*

03/24/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On October 21, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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; Department of Defense 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 on September 1, 2006.

In an undated response, Applicant denied the majority of the 22 allegations raised under Guideline F. On December 17, 2015, she requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 6, 2016. The matter was scheduled on June 23, 2016, for an August 18, 2016, hearing. The hearing was convened as scheduled.

The Government offered three documents, which were accepted without objection as exhibits (Exs.) 1-3. The Government moved to withdraw the SOR allegation at 1.i. Applicant did not oppose, and I granted the motion. Applicant offered testimony,

but no documents. The record was held open through September 6, 2016, to afford Applicant the opportunity to submit documentation. The transcript (Tr.) was received on August 26, 2016. With no additional materials submitted, the record was closed on September 6, 2016. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 52-year-old parking facilities department administrator who started working for her present employer in the past year. She came to the position from a previous administrator position. Until it lapsed in 2014, she had maintained a security clearance since 2004. Applicant has completed some college coursework. She is currently single and the mother of two grown, financially independent children. Applicant testified that her only delinquent debts are those noted in the SOR. (Tr. 25)

Every two weeks, Applicant takes home, after deductions, about \$1,500, based on a 40 hour work week and an hourly wage of about \$26.03. (Tr. 21) There is a possibility for working overtime, but Applicant does not work the additional hours. This is a steep reduction from her income prior to 2009, when she earned about \$3,000 every two weeks. Applicant has a savings account, but it has a zero balance. (Tr. 23) She does not have a retirement account.

At present, Applicant pays between \$1,375 and \$1,450 per month for rent and water. (Tr. 23) Within the past year, she purchased a 2013 vehicle with her daughter as a co-signer on the automotive loan. She is responsible for \$401 monthly payments. Although this is her only vehicle, in 2015 she co-signed on her daughter's car. Applicant pays about \$200 a month for parking. She pays for a limited amount of groceries. (Tr. 25) At the end of the month, after she has paid for all of her regularly expenses, Applicant has a net remainder of about \$800. (Tr. 24-25) Applicant utilizes a budget instituted by her daughter, who makes suggestions to Applicant where the net remainder can be best applied to outstanding debts. (Tr. 25-26). Applicant has not received financial counseling.

With the SOR allegation at 1.i withdrawn, there are 21 SOR allegations, reflecting 21 delinquent debts amounting to about \$ 33,000. Applicant's financial difficulties began at the end of 2009, when she lost a relatively high paying job. (Tr. 56) That was followed by eight or nine months of unemployment before she found a lower paying position. As a result, her hourly wage went from about \$22 to \$18 an hour. (Tr. 50) Since that time, her hourly rate has fluctuated, primarily between these two rates, until she accepted her present position. She now earns about \$28 an hour. It is this recent financial boost that enabled her to have a monthly net remainder of about \$800. Before that time, she had little, if any, net remainder for excesses. Applicant specifically addressed the following:

1.a-1.b – Adverse judgments for \$1,282 and \$1,573. These were judgments obtained by a former apartment complex. Applicant does not believe she owes this entity anything. Regarding the first debt from 2010, Applicant was evicted from this

property after losing a job in 2009. She contacted the complex about the debt last year, which advised her to contact the corporate office. She was not then able to make a payment toward the debt. She has yet to call the company as advised. (Tr. 27-28) Its hours and a time change make it difficult for her to call. She has not tried writing the company. The second judgment noted is for the same rental. She is unsure which, or both, of these judgments have a balance that is actually owed. (Tr. 29)

1.c-1.h – Adverse judgments for \$640, \$2,071, \$622, \$1,898, \$2,174, \$2,402. These were judgments obtained by another apartment complex from which Applicant was evicted. When Applicant leased the apartment, she had just gone from unemployment to a position paying \$22 an hour. A decrease in her hourly wage to \$18, followed by an increase in her rent of \$1,400 to \$1,500, found her unable to afford her unit. She received company contact information from the apartment's front office, but she has not contacted the complex to discuss the adverse judgments or arrangements to pay off the balances owed. (Tr. 32-33) Applicant did not go to court to participate in the proceedings. (Tr. 34) She has not tried to have these removed from her credit report. She testified that nobody mentioned these debts when she was evicted from the complex. (Tr. 35) At the time, she thought she only owed them \$1,500, an amount she could not afford to pay. She did not leave a forwarding address.

1.j – Medical collection for \$30. Applicant testified that she paid this debt, but she provided no corroborating documentary evidence to that effect. (Tr. 37)

1.k-1.n – Medical collections for \$100, \$100, \$100, \$100. These accounts were opened between 2013 and 2014, when Applicant did not have health insurance. (Tr. 38; *compare* Exs. 2-3) Applicant has yet to pay this collection entity because she has “wanted to get everything all together.” (Tr. 37) She does not remember receiving the medical care the collection entity references. She believes one entry may have been for care administered to her son. The entity has called her, but she has not been able to return its calls. (Tr. 38)

1.o – Telecommunications collection for \$2,416. Applicant believes she fell behind on this account in 2010. Applicant has not yet contacted the entity. She does not feel she owes this sum and said she needs to contact this collection agency. (Tr. 39)

1.p – Collection account for \$555. Applicant does not recognize this account. She stated she disputed this entry in her credit report in about October 2015 by letter, but she has no documentary evidence corroborating her assertion.

1.q – Telecommunications collection for \$559. Applicant testified she started a repayment plan with this creditor in the fall of 2015, but could not afford to continue with the plan. She has no documentary evidence of this arrangement. (Tr. 43-44)

1.r – Auto lease rental for \$16,221. The leased vehicle was repossessed. The account was opened in 2008 with a date of last activity in 2012. She contacted the

creditor in 2015. Applicant disagrees with the amount cited as owed after the vehicle was auctioned. (Tr. 43-45)

1.s – Medical collection for \$208. Applicant learned that this debt is related to an emergency room visit in July 2014, but denies she was in an emergency room at that time. (Tr. 46) The record indicates the date of service may have been in 2011. (Tr. 46) She intends to have this looked into along with her other medical collection accounts.

1.t – Checking account collection - \$310. In late 2015, Applicant set up a repayment schedule to honor this debt, but was unable to execute the plan or make a payment on it. (Tr. 47-48) No evidence of this repayment schedule was introduced.

1.u-1,v – Telecommunications collections for \$85 and \$107. Applicant testified that she disputed these entries on her credit report with a credit reporting bureau in late 2015, but no documentary evidence was introduced corroborating this assertion. (Tr. 53-54) She stated that she has not yet been contacted about her dispute. (Tr. 54)

### **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 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 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 the applicant may deliberately or inadvertently fail to safeguard 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).

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant has multiple delinquent debts, amounting to about \$33,000 in delinquent debt. She denied most of the debts when set forth in the SOR, but acknowledged the majority of the debts alleged during the hearing. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) 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.

Applicant pinpoints the genesis of her financial distress to late 2009, when she lost her job, was unemployed for eight or nine months, then accepted a lower paying position. Since that time, until recently, her income has fluctuated between \$18 and \$22 an hour. She failed to document any initiatives she took to adapt to her changes in circumstance that would reflect a reasonable response to difficult financial conditions. Therefore, AG ¶ 20(b) only applies in part to the acquisition of her delinquent debts.

Despite allusions to disputes and disagreements over the debts alleged, Applicant failed to provide any documentary evidence showing she has formally disputed or sought verification regarding any of the delinquent debts at issue. She failed to provide documentation supporting her assertions that she either paid any debts or created any repayment plans. In her testimony, she stressed making oral communication with some creditors, often only to obtain contact information for the individual with whom she needed to speak regarding a debt, but she seldom seems to have followed through. Lacking financial counseling or documentary evidence of utilizing the formal dispute process, her case becomes one in want of tangible documentations reflecting some contemporaneous or current effort to address the debts at hand. With no documentation offered into the record, none of the other financial considerations security concerns 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). 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. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 52-year-old facilities administrator who has been in her current, most lucrative position for the past year. She has completed some college coursework and raised two children, who are now grown and independent. Applicant now earns

about \$28 an hour. Since 2010, she has worked at various jobs generating between \$18 and \$22 an hour, level at which she did not retain a monthly net remainder.

At issue are multiple adverse judgments related to two apartment communities, from which she has been evicted. As well, she has acquired multiple delinquent medical account balances, multiple delinquent telecommunication company accounts, the balance owed on a repossessed automobile, and other neglected obligations. Applicant described actions she took with regard to many of these delinquent accounts. She did not offer documentation regarding these debts or efforts to address them.

This process expects an applicant to employ a reasonable strategy or plan to address her delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented. Here, Applicant's documentary evidence was simply lacking. The burden in these proceedings is placed on the Applicant in terms of mitigation. Her offerings did not meet that burden. In light of these facts and considerations, I find that Applicant failed to mitigate financial considerations security concerns.

### **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.v:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge