



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-02473
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not provide sufficient evidence to mitigate security concerns raised by her history of financial issues, which has included filing for bankruptcy three times. She has twice had her debts discharged through Chapter 7 bankruptcy, with the most recent discharge occurring in 2014. She failed to show that financial issues, which have dogged her since at least 1999, are unlikely to reoccur. Clearance is denied.

**Statement of the Case**

On December 10, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and initially requested a decision on the written record without a hearing. On May 2, 2016, she requested a hearing to establish her eligibility for continued access to classified information.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

On January 19, 2017, a date mutually agreed to by the parties, a hearing was held.<sup>2</sup> Applicant testified at the hearing and both parties offered exhibits, which were admitted into the administrative record without objection. (Government Exhibits 1 – 6 and Applicant’s Exhibits A and B.) Applicant timely submitted a post-hearing document (Exhibit C), which was also admitted into the record without objection. The transcript (Tr.) was received on January 26, 2017, and the record closed on February 10, 2017.

### **Findings of Fact**

Applicant is a 40-year-old personnel security specialist. She was hired by her current employer in March 2015, and has held similar positions with different federal contractors for the past 15 years. She submitted a security clearance application in 2012, to maintain the clearance needed for her position. She was initially granted a security clearance in 2001.<sup>3</sup>

Applicant’s financial problems date back to at least 1999, when she filed for and had her debts discharged through Chapter 7 bankruptcy. Applicant states that what led her to file for bankruptcy in 1999 was her former spouse’s reckless spending.<sup>4</sup>

Applicant again filed for bankruptcy in 2002. She filed under Chapter 13 to save her former home that was under threat of foreclosure after she fell behind on her mortgage payments. After three years of making the required Chapter 13 plan payments, Applicant stopped paying and the bankruptcy was dismissed. Applicant states that she stopped paying into the Chapter 13 plan because she was able to negotiate a mortgage modification. She subsequently sold the property and now rents.<sup>5</sup>

In 2014, Applicant again filed for Chapter 7 bankruptcy. When Applicant initially met with her bankruptcy attorney, she had not yet filed her federal tax returns for 2010 and 2011 and her state tax returns for 2009 – 2011. She then filed the overdue tax returns. Applicant initially testified that she had filed these tax returns on time and owed nothing upon filing the returns. Her 2014 bankruptcy petition reflects that, at the time she filed her petition, her past-due federal and state tax debt for 2009 – 2011, totaled nearly \$20,000. After some questioning, Applicant acknowledged that she had not filed the tax returns in question before filing for bankruptcy.<sup>6</sup>

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<sup>2</sup> Correspondence, the notice of hearing, and case management order are attached to the record as Appellate Exhibits (App. Exh.) I – III.

<sup>3</sup> Tr. 9, 34; Exhibit 1.

<sup>4</sup> Tr. 45; Exhibit 4.

<sup>5</sup> Tr. 41-43, 46; Exhibit 4. *But see*, Exhibit 1 at 31 (Applicant did not disclose her failure to timely file tax returns and pay her taxes. At minimum, her 2009 state tax returns and taxes were past-due by the time she submitted her October 2012 clearance application).

<sup>6</sup> Tr. 34-39, 46, 52-58; Exhibit 5 at 27, 30.

In addition to past-due federal and state taxes, Applicant's 2014 bankruptcy petition reflects delinquent debts for three automobile loan accounts, credit cards, traffic tickets, and other consumer-related debt. Applicant's unsecured debt totaled over \$115,000. Her debts were subsequently discharged through Chapter 7, including the past-due 2009 – 2011 state taxes.<sup>7</sup>

During the current security clearance review, Applicant explained that her recent bankruptcy filing resulted from a number of outside factors. Notably, divorce, repeated changes in employer and salary, raising four children on her own without child support, and medical bills incurred for the care of her youngest child who is disabled.<sup>8</sup>

Applicant claims that her financial situation has improved markedly since the 2014 bankruptcy discharge. She points to three positive changes: (1) landing a new job in 2015 with a resulting pay increase, (2) receiving medical and financial support from the government for her disabled child, and (3) a reduction in her childcare expenses.

Applicant earned an associate's degree in June 2016 and, at hearing, claimed that her student loans were still in a non-payment grace period (deferment status). Applicant's hearing took place over six months after she graduated. She further claims that, after paying recurring monthly expenses, she has a positive cash flow of about \$2,500 to \$2,600. She, however, does not have a savings account. She received financial counseling through the bankruptcy process and retained a firm to challenge outdated information appearing on her credit reports.<sup>9</sup>

At the hearing, Applicant first stated that she used a written budget to manage her personal finances. But, when Department Counsel asked if she had a copy of the budget, Applicant quickly changed her testimony to state that she did not "write it [her budget] down." (Tr.59). Applicant also stated at hearing that since receiving the Chapter 7 bankruptcy discharge in 2014, her monthly pay increased by about \$300 a month and her monthly childcare expenses were reduced from \$400 to \$0. When further questioned about her current finances, Applicant acknowledged that she was no longer receiving the \$680 a month from her sister, which is referenced in her 2014 bankruptcy petition. The petition further reflects that Applicant was running a monthly deficit of \$700.<sup>10</sup> Applicant provided no documentation to corroborate her claims regarding her purported current positive financial situation.

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<sup>7</sup> Tr. 34-39, 52-58; Exhibit 5 at 27, 30; Exhibit C.

<sup>8</sup> Tr. 27-29, 30-33, 43-46; Answer; Exhibit 1.

<sup>9</sup> Tr. 33-60; Exhibit B. The SOR alleges a delinquent student loan account. In her Answer, Applicant stated that the debt was included with her 2014 bankruptcy petition. She provided a document with her Answer showing that one of her student loan accounts was satisfied. (Exhibit A) It is unclear from the record, the status of Applicant's other multiple student loan accounts. Applicant's 2015 credit report lists 12 student loan accounts in deferment status. (Exhibit 2)

<sup>10</sup> Tr. 47-52, 59-60; Exhibit 5 at 37, 41.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline F, Financial Considerations

Applicant's nearly 20 year history of financial issues raise the financial considerations security concern, which is addressed at 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.

Thus, the security concern is not limited to a consideration of whether a person with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to a person's financial problems cast doubt on their judgment, self-control, and other qualities essential to protecting classified information.<sup>11</sup>

The following disqualifying and mitigating conditions were raised and considered in assessing Applicant's case:

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

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

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; and

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

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<sup>11</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

Applicant's financial situation was negatively impacted by several matters beyond her control. She resolved her delinquent debt through bankruptcy, which is a lawful and legitimate avenue by which a person can handle financial problems that are beyond their financial means to resolve.

However, the record also reflects that Applicant has routinely used bankruptcy as a way to manage her personal finances. She had her debts twice discharged through Chapter 7 and recently had past-due state taxes discharged in this manner. She failed to follow through with a Chapter 13 plan. Instead, after her lender agreed to modify her mortgage, she stopped paying into the plan and, thus, stopped repaying her overdue creditors. Years later, during the pendency of her current clearance review, she resolved her past-due debts through Chapter 7. Applicant failed to present sufficient evidence of a consistent track record of debt repayment that would leave me with confidence she will handle all her legal obligations, including her security obligations, in a responsible fashion.

Additionally, it has only been three years since Applicant last filed and had her debts discharged through Chapter 7. In light of her history of financial issues, this is far too little time from which I can accurately and safely conclude that she will manage her financial obligations going forward in the manner expected of all clearance holders.

Furthermore, Applicant has yet to implement the money management advice that she received through the bankruptcy process. Her testimony regarding a purported positive net monthly remainder was unsupported by the record evidence. More troubling was Applicant's testimony claiming that she had timely filed her state and federal tax returns and owed no past-due tax debt.<sup>12</sup> She only corrected her testimony after it was pointed out to her that her bankruptcy petition – a document that she declared under oath was true and accurate – showed past-due federal and state tax debt.

In conclusion, Applicant failed to meet her burden of persuasion. Specifically, I find that the mitigating conditions listed at AG ¶¶ 20(b) and 20(c) have some limited applicability. However, even when these matters are considered together with the favorable whole-person factors present in this case (some of which are noted below), it is insufficient to mitigate the security concerns at issue.

### **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 the relevant circumstances. An administrative judge should consider the

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<sup>12</sup> Applicant's failure to timely file her federal and state income tax returns and failure to timely pay her taxes were not specifically alleged in the SOR. However, her 2014 Chapter 7 bankruptcy, which included past-due 2010-2011 federal taxes and 2009-2011 state taxes, was alleged. Accordingly, Applicant was on notice that the underlying circumstances giving rise to her bankruptcy discharge, which included her tax situation, was a security concern.

non-exclusive factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant has held a clearance for over 15 years without apparent issue. She recently earned an associate's degree while working a full-time job and raising four children, including one who is disabled, on her own without receiving child support from. This evidence raises favorable inferences regarding Applicant's eligibility.

However, this favorable evidence is insufficient to fully mitigate the serious security concerns raised by Applicant's nearly 20 years of financial issues. She has repeatedly failed to pay her lawful financial obligations and also failed to clearly demonstrate that similar security-significant issues will not recur.<sup>13</sup> Furthermore, her testimony regarding her finances fell far short of what I would expected of any clearance holder, much less a personnel security specialist with 15 years of experience. In short, Applicant did not present sufficient evidence of financial reform to fully mitigate the security concerns at issue. Her financial situation is not under control and continues to raise questions about her judgment, reliability, and trustworthiness.

### **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 (Financial Considerations):      **AGAINST APPLICANT**

Subparagraphs 1.a -1.d:      **Against Applicant**

### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>13</sup> See ISCR Case No. 14-04926at 2 (App. Bd. Dec. 20, 2016) ("A person who fails repeatedly to fulfill legal obligations, such as paying taxes . . . and addressing other debts in a reasonable manner, does not demonstrate the high degree of reliability required of those granted access to classified information.").