



**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. 15-02541

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

March 29, 2017

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On November 27, 2012, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On November 22, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on December 10, 2015, and requested her case be decided on the written record in lieu of a hearing. On February 2, 2016, Department Counsel submitted the Department's written case. A complete copy

of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on February 10, 2016.<sup>1</sup>

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit additional information. The case was assigned to me on August 22, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 34 and married. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment. She served on active duty with the Navy from 2002 to 2006.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant admitted all the allegations in the SOR under this Paragraph. Those admissions are findings of fact. SOR subparagraphs 1.a through 1.d, and 1.f through 1.m are consumer debts. The total amount of money Applicant owes on those debts is approximately \$35,853. The remaining allegation is in relation to a vehicle that was repossessed in about 2007. (SOR 1.e.) The existence and amount of the debts is supported by credit reports dated December 15, 2012; and February 18, 2015. (Items 4 and 6.) A credit report dated October 5, 2015, does not show any delinquent debts. (Item 7.)

Applicant states in her Answer that the bills were incurred when she was going to college in 2006 and 2007. She further states:

I ended up losing everything and dropped out of college. Since then I have tried to pay all my bills on time. I believe I haven't even been late since that terrible time. Sadly though I couldn't afford to pay my current bills and the late ones so I never got to pay them. I believe most are off my credit now. That doesn't make it right but I have tried to do better since then.

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<sup>1</sup> Department Counsel submitted seven Items in support of the SOR allegations. Item 5 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on January 9, 2013. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in conduct that shows questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Applicant admitted the single allegation under this paragraph.

Applicant filled out her e-QIP on November 27, 2012. (Item 3.) Section 26 of the e-QIP concerns Applicant's financial record. One of the subsections under that section is entitled, "Delinquency Involving Routine Accounts." Applicant was asked whether, in the past seven years, she had defaulted on a loan, had possessions or property voluntarily or involuntarily repossessed, had bills or debts turned over to a collection agency, had a credit card suspended, whether she had been 120 days delinquent on a debt, or whether she was currently 120 days delinquent on a debt. Applicant responded, "No," to this question. This was a false response. Applicant had delinquent debts that were in collection, and an automobile that had been repossessed, as set forth under Paragraph 1, above, which fit the question.

In her Answer Applicant stated, "The reason I wrote no is because I believed it was longer than 7 years already. I was mistaken on the time frame."

Applicant did not submit any evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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, “Any 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.

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

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, based on documentary evidence, had twelve delinquent accounts that she could not resolve. There is also evidence of one automobile repossession on her record. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that neither of the above mitigating conditions apply to Applicant. Applicant maintains that her debts occurred because she overextended herself while attending school. She states that she is able to pay her current debts, but is unable to pay her substantial delinquencies, which continue to date. Applicant did not submit a budget or any other financial records that would support her statements. It is Applicant’s responsibility to set forth her financial situation in a sufficient way so that I can make a finding that she has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). I am unable to do so in this case. Given the state of the record, I cannot find that her current financial situation is stable. I do not find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant maintains that she did not intentionally falsify her 2012 e-QIP about her financial situation. Rather, she states that any falsification was unintentional and the result of her belief that she did not have to mention the debts because they were over seven years old. There are two problems with this argument. First, Applicant filled out the questionnaire in 2012, and she went to school in 2006 and 2007. Applicant knew the dates she was in school because she put them on her questionnaire in Section 12 of Item 3. She said in her Answer that she fell behind on her debts during her time in school. So, if she knew when she was in school, she knew the debts had been incurred in the last seven years. Second, Applicant seems to argue that it is the date a debt is incurred that is important to the question. Rather, it is the fact that the debts were still owed within the last seven years that is important. Under the particular facts of this case, I find that her answers were intentionally false.

I have reviewed the potential mitigating conditions set forth in AG ¶ 17, and find none of them apply to the facts of this case. In particular, I have examined the span of time, about four years when the record closed, since the falsification. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 2 is found against Applicant.

### **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):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant's financial irresponsibility and personal misconduct were recent, voluntary, and occurred when she was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

WILFORD H. ROSS  
Administrative Judge