



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-03256
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

10/31/2016

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On November 7, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 Department of Defense after September 1, 2006.

On December 14, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 22, 2016. The case was assigned to me on April 22, 2016. On August 2, 2016, a Notice of Hearing was issued, scheduling the hearing for August 24, 2016. The hearing was held as scheduled. During the hearing, the Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. Applicant testified, called one witness and offered six exhibits which were admitted as Applicant Exhibits (AE) A – F. The transcript (Tr.) was received on September 1, 2016. The record was held open until September 1, 2016, to allow Applicant to submit additional documents. Applicant did not

submit additional documents. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her response to the SOR, Applicant admits the sole SOR allegation that she filed under Chapter 13 bankruptcy in February 2014.

Applicant is a 36-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. She has worked for her current employer since September 2010. She is a high school graduate. She is married and supports three children, ages 9, 10 and 14. (Tr. at 18, 31-32; Gov 1)

Applicant's background investigation revealed that she has a history of financial problems. She applied for a security clearance in 2011, but it was denied for financial issues. She filed for bankruptcy under Chapter 13 on February 26, 2014. She claimed total assets of \$46,408 and total liabilities of \$100,519. (SOR ¶ 1.a; Gov 1; Gov 6)

In her answer to the SOR, dated December 14, 2015, Applicant admits the allegation and indicates that she will complete payments on her payment plan in February 2016. During the hearing, she presented a copy of the Bankruptcy Judge's Order of Discharge, dated April 13, 2016. (AE A)

Several of the debts included in the bankruptcy were debts that Applicant incurred while she lived in another state. The largest is a home mortgage which was foreclosed after Applicant lost her job and was unable to make the payments. She also had two vehicles that were repossessed. (Tr. 35-36; Gov 5)

Before the bankruptcy, Applicant had two medical operations in 2011 and 2013. In 2011, she suffered a back injury. She had not worked with the company long enough to be awarded benefits so she did not have insurance. She incurred about \$30,000 in medical expenses. She was also unable to work for several days. She returned to work four days after surgery because she needed to earn money for the family. Her spouse stays at home to care for the children. (Tr. 37-38) In 2013, Applicant had knee surgery and was unable to work for three months. Medical insurance paid for the knee surgery. (Tr. 18, 21-22, 41-42)

Applicant decided to file for Chapter 13 bankruptcy, because she wanted to take care of her past debts and wanted to make payments towards the debts. She tried resolving the debts on her own, but the creditors were asking for payments that she could not afford. Aside from the medical debts, all of the debts were incurred before she began working for her current employer. She made \$500 monthly payments for the first five months of the payment plan. The payments increased to \$900 a month for the remainder of the payment plan. The payments were deducted automatically from her pay check. She took an online financial counseling class as part of the bankruptcy. (Tr. 39-40, 43, 45; Gov 5)

At present, Applicant does not have any delinquent accounts. One car is paid for and she is making payments on the other car loan. She is also paying on a jewelry store account. Her landlord provided a letter verifying that Applicant has been a tenant since February 2011 and has always paid her rent on time. She is current on federal and state income taxes. (Tr. 46, 49; AE B – AE F)

In her current job, Applicant's annual income was initially \$79,000. Her income has increased over the years as a result of pay increases and promotions. It is currently \$92,800. In November 2011, she was promoted to supervisor. She supervises 35 people. She has never received any disciplinary actions at work. (Tr. 31-32, 47-48)

Applicant and her spouse have reduced expenses. Examples include reducing the number of times they go out to eat, getting a cheaper cable television plan, and going on camping vacations in order to save on travel costs. Her spouse testified that Applicant has taken the high road to pay for her past while providing for her and the children. (Tr. 29-30, 49)

### **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 must be considered when determining 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to 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 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.

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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply. Applicant has had financial problems, most of which occurred when she lived in another state. She has been unable to satisfy these debts over the past several years. She finally chose to file for bankruptcy under Chapter 13. Her Chapter 13 Bankruptcy listed over a \$100,000 in total liabilities, including a mortgage foreclosure, and two automobile repossessions.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be

debt free, but is required to manage her finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies. Most of Applicant's debts occurred after a reduction of income in 2008 after she was laid off and as a result of medical issues when she did not have health insurance. Applicant took steps to resolve her accounts and finally opted to file for Chapter 13 bankruptcy. She does not live above her means. Her financial situation is now stable and Applicant's past financial problems do not cast doubt on her 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) applies. Applicant lost a job in 2008 and she was unable to pay her mortgage payments and automobile loans, resulting in the home foreclosure and two automobile repossessions. She attempted to resolve her debts, but the creditors were asking her to pay an amount she could not afford. In 2011, she injured her back a few months after starting her current job, but had not worked long enough to qualify for health insurance which resulted in approximately \$30,000 in medical bills. In 2013, she had knee surgery and was unable to work for three months. She attempted to resolve her debts, but opted to file for Chapter 13. As the sole provider for her family, she 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) applies because Applicant attended financial counseling as a requirement when she filed for bankruptcy under Chapter 13. She completed her Chapter 13 payment plan in April 2016. She reduced some expenses. Her financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant attempted to resolve her delinquent accounts, but could not afford the amount the creditors were asking that she pay. Health issues in 2011 and 2013 also set Applicant back financially. She opted to file for

Chapter 13 because her creditors would then receive some payment. Applicant successfully met the terms of her Chapter 13 repayment plan. Her debts were discharged in April 2016. She made a good-faith effort to resolve her accounts.

### **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 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 considered Applicant's six-year history of favorable duty performance with her current employer. I considered the challenges Applicant has faced over the past several years, both medical and financial. Her decision to file for Chapter 13 bankruptcy was reasonable. She met the terms of the Chapter 13 and her debts were discharged. Her financial situation is stable. Security concerns under financial considerations are mitigated.

### **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

Subparagraph 1.a:

For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ERIN C. HOGAN  
Administrative Judge