



**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. 15-03588

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

06/21/2017

**Decision**

HOWE, Philip S., Administrative Judge:

On September 22, 2014, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E.<sup>1</sup> 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, effective September 1, 2006.

Applicant acknowledged receipt of the SOR on April 4, 2016. She answered the SOR in writing on April 20, 2016, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on May 4, 2016. Department Counsel was prepared to proceed on January 27, 2017, and I

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

received the case assignment on February 13, 2017. DOHA issued a Notice of Hearing on February 27, 2017, and I convened the hearing as scheduled on March 15, 2017. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified and submitted Exhibits A through F, which were received without objection. DOHA received the transcript of the hearing (Tr.) on March 29, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. She denied the factual allegations in Paragraph 2 of the SOR (Tr. 8). She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 46 years old, married and has one child. She has a high school degree. She works for a defense contractor as a video teleconference operator. She started that job about three years ago. Her income is about \$34,500. Her husband is employed. They moved around the country for employment purposes in the past five years. She was unemployed from April 2004 to September 2005, while her husband was deployed with the Army National Guard. She was also unemployed from February 2012 to November 2012. Applicant then moved from her home state to another state. She was laid off from her job in her second state of residence in March 2014 and was unemployed until September 2014, when she obtained her current job in her current state of residence. Her husband has had some periods of unemployment since 2005. He is currently employed. Applicant is the main wage earner in the family. Her daughter requires special education and care because of past problems. (Tr. 15-38; Exhibit 1)

Applicant owes 17 delinquent debts totaling \$18,112. They consist of debts owed to medical providers, telephone service companies, an unpaid portion of an apartment lease, and utility company charges for service. The medical debts are for Applicant and her daughter's medical needs. The debts date back to 2010 at least. She paid two debts, the medical account for \$87 (subparagraph 1.k) and the dental debt for \$51 (subparagraph 1.o). She is paying on the utility debt for \$521 (subparagraph 1.n) at the rate of \$20 monthly deducted from her checking account for the past two years. The current amount owed is about \$120. Applicant has resolved or is resolving these three debts. (Tr. 43-45, 49, 73; Exhibits 1-4, A, B, F)

Applicant was aware of her delinquent debts after the interview with the government investigator in October 2014. After receiving the SOR on March 24, 2016, Applicant entered a debt management and repayment plan with a non-profit debt counseling organization. Applicant stated her creditors, except for the utility company, were not contacting her and demanding payment, so she concentrated her attention on her family and paying for the usual monthly food, transportation, clothing, and rental costs. The not-for-profit debt management program has eight delinquent debts listed in it for the first segment to be repaid. The amount of the debts listed in the program is

\$4,768. Those debts will be repaid in 29 months. Then the remaining debts will be added to the program, Applicant will keep paying her monthly \$200 and within the total term of the repayment program, 60 months, the SOR-listed debts will be resolved. The program was recommended by her local credit union. Since April 2016 when she enrolled in the program, she has had \$200 monthly deducted from her paycheck. The money is used by the program to pay the delinquent debts. The 14 debts are being resolved in an orderly manner through the debt management plan. They are being paid through that plan. Applicant submitted copies of her agreement with the not-for-profit organization. (Tr. 40-76; Exhibits 2, 3, C, D)

Applicant admitted that when she had back surgery in October 2016, she had to stop payments to the repayment program because she was out of work for four months. She started again paying the \$200 monthly into the plan in March 2017, and will keep doing so until her debts are resolved. Applicant has health insurance and is paying \$62 monthly on the deductible cost of the surgery. She had an earlier back surgery in 2010 on which she owes \$5,330 (subparagraph 1.p). That debt will be placed in the repayment program according to the plan's outline. (Tr. 40-73, 78; Exhibits 2, 3, B, C)

Applicant's car was destroyed in an accident with a tractor trailer truck in January 2017. The transportation company paid her for the value of her 2011 car. She purchased a new automobile for which she pays \$420 monthly, the same amount as her older car. She needed reliable transportation and thought a new car would save her on repair costs. She lives about a half hour driving time from her job at a government installation. (Tr. 60-63; Exhibits 2, 3, A, B)

Applicant is current on all her Federal and state income tax returns. She uses her tax refunds of about \$2,100 annually to pay bills and get caught up on other debts. She has a savings account at her credit union with a minimal amount in it. She does not have a checking account. She uses her debit card for purchases. She also has three credit cards, each having balances of about \$280 on them. She pays the required minimum payment on each monthly. Applicant has not obtained any financial counseling. (Tr. 58-68; Exhibits 2, 3, A, B)

Applicant filed a Chapter 7 bankruptcy in November 2004. She was discharged in February 2005. She filed that bankruptcy because she had spent too much money with her credit cards because neither she nor her husband had good jobs. (Tr. 34, 35)

Applicant did not disclose her delinquent debts on the September 22, 2014 e-QIP in response to Section 26 questions about unpaid financial obligations. She asserted she forgot to list any because they were older debts and she thought the question referred to her current debts. She could not remember the specific debts and could not list them. She also claims she checked the wrong box in the answer section because she misunderstood what information was sought by Section 26. The question asked for a list of unpaid debts within the last seven years and contained further specific questions about the status of her financial obligations. She also testified she completed

a lot of forms when she was starting her job and was overwhelmed by all the questions. (Tr. 76-80; Exhibit 1)

Applicant submitted a favorable letter of recommendation from her supervisor. He describes her as responsible, organized, and efficient. She has great rapport with her customers. He receives positive comments about her. Applicant also submitted two employee evaluations showing she was marked as “good” or “very good” in all categories. (Exhibit E)

### **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, administrative judges apply 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(a), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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.

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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three conditions are applicable to the facts found in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$18,112 in delinquent debt from 2010 to the present time that remains unpaid. Applicant has 17 delinquent debts listed in the SOR. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service 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 lost employment several times since 2012. Her husband is not regularly employed. They have moved three times since 2012. She was laid off one time because the company downsized. She has had two back surgeries in the past seven years. Her daughter requires medical attention regularly for her problems. All of these conditions adversely affected her ability to constantly pay her debts. She has now paid two debts and is paying a third utility debt. Her remaining delinquent debts she has taken action to place in a not-for-profit debt management and repayment program on which she pays \$200 monthly. Applicant acted responsibly under the circumstances that she has. AG ¶ 20 (b) is established. AG ¶ 20 (c) is also applicable because of the not-for-profit debt repayment organization she is using to resolve remaining debts.

Applicant initiated a good-faith effort to repay three debts. She sought advice from her credit union about how to resolve the remaining debts. She voluntarily undertook that action last year and is actively engaged in repaying her 14 remaining debts. AG ¶ 20 (d) is established.

### **Guideline E: Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline at AG ¶ 16 contains seven disqualifying conditions that could raise security concerns. One disqualifying condition may apply:

(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.

Appellant failed to list her delinquent debts on her e-QIP in September 2014. She admitted she knew there were unpaid debts, but misunderstood the question and did not want to list anything incorrectly. Therefore, she denied having any delinquent debts. AG ¶ 16 (a) requires a deliberate effort to falsify information on Applicant's e-QIP. Her record of employment and moving three times in about four years is reasonable to support her contention that she forgot the specifics of her debts and with the pressures of filling out many employment forms when she started her current position. Her assertion that she misunderstood what she was to enter on the e-QIP and checked the incorrect box is reasonable. There was no deliberate falsification here, based on her testimony and demeanor.

The guideline at AG ¶ 17 contains seven conditions that could mitigate security concerns. Without any deliberate falsification there is no need to apply any mitigating conditions.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is the main wage earner in her family. Her husband works when he can find a job. Her daughter has problems requiring Applicant's attention on a daily basis. Applicant has to work and manage the home. She has had to move her family three times in the past five years to find employment and lower the cost of living so they can survive. Applicant is paying her debts in an orderly manner. It will take time to do so, but she is trying her best to manage her family finances and pay her current bills and the debts that arose when she and her husband were unemployed, and when Applicant could not work because of back problems.

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 from her 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:	FOR APPLICANT
Subparagraphs 1.a-1.r:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge