



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-04311
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns stemming from her financial problems. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 30, 2016, 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on February 15, 2016, and she elected to have the case decided on the written record in lieu of a hearing. On May 4, 2016, Department Counsel submitted his file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on May 12, 2016. She was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit material to refute, extenuate, or mitigate the security concerns. She did not respond to the FORM. The case was assigned to me on April 7, 2017.

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-5.<sup>1</sup> FORM Item 3 consists of an unauthenticated summary of an interview with a government investigator conducted on November 21, 2014. In the FORM, Department Counsel advised Applicant that she could object to FORM Item 3 and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant did not respond to the FORM, and she raised no objections. Given Department Counsel's advisement and Applicant's work experience, I find her waiver to be knowing and intelligent.<sup>2</sup> FORM Items 2-5 are admitted into evidence as Government Exhibits 2-5, without objection.

### **Findings of Fact**

The SOR alleges five delinquent debts, and Applicant admitted all five debts. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 69 years old. She received a bachelor's degree in 1971. She was married from 1969 until her husband's death in October 2015. She has two adult children. From April 1998 to September 2009, she was employed full time as an executive assistant. Between September 2009 and May 2012, she was intermittently unemployed, self-employed, and employed part time. She has been employed full time since May 2012.<sup>3</sup>

Applicant's October 2014 and December 2015 credit reports establish the five alleged debts, which became delinquent between June 2008 and January 2014. All of the debts are mortgage-loan accounts for rental properties.<sup>4</sup>

In her response to the SOR, Applicant explained that her husband was unemployed from 2005 through 2013. She also explained that she has no plans or means to repay any of the alleged delinquent debts. She claimed that the loans were

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<sup>1</sup> FORM Item 1 consists of the SOR and Applicant's response to the SOR, which are pleadings and are entered into the administrative record.

<sup>2</sup> See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

<sup>3</sup> GE 2; GE 3; Response to SOR.

<sup>4</sup> GE 4; GE 5.

foreclosed upon or were in the foreclosure process and that she was not delinquent on any other accounts. She provided no documentation to corroborate any of her claims, or to establish that she is no longer responsible for the debts in the SOR.<sup>5</sup>

## **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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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).

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<sup>5</sup> Response to SOR.

## Analysis

### Guideline F, Financial Considerations

The security concern 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's five delinquent debts total approximately \$138,013. These debts became delinquent between 2008 and 2014. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>6</sup> Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

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<sup>6</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

Applicant's financial struggles date from 2008 and are ongoing. There is no evidence of any steps taken to resolve the five alleged debts. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control, and (2) Applicant acted responsibly under the circumstances. Applicant attributed her financial delinquencies to her and her husband's lengthy unemployment. In addition, her husband's death impacted her financial situation. These events constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.<sup>7</sup> In her response to the SOR, Applicant states that she is unable to repay the alleged delinquent debts and that she is current on her remaining accounts. However, she has not provided any documentation of any debt-resolution or mitigation efforts as to the alleged accounts or evidence that she is current on her other financial obligations. There is insufficient evidence to conclude that Applicant acted responsibly to address her delinquent debts or to develop and implement a reasonable debt-repayment plan. AG ¶ 20(b) does not apply.

There is no evidence that Applicant has sought credit counseling. There is also no evidence of her monthly income or expenses to establish that her financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."<sup>8</sup> There is no documentation of any payments or debt-resolution efforts by Applicant on the alleged debts. AG ¶ 20(d) does not apply. Absent substantial evidence of debt-resolution efforts and financial responsibility, I find that security concerns about Applicant's financial problems remain.

### **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

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<sup>7</sup> See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

<sup>8</sup> See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

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 have incorporated my comments under Guidelines F and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant's financial problems occurred as a result of her husband's long-term unemployment, followed by his death in 2015, as well as her own sporadic employment. Nonetheless, she has provided no documentary evidence of any efforts to resolve or mitigate her delinquent debts. As a result, the totality of the record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations and 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.e.:	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.

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Eric H. Borgstrom  
Administrative Judge