



**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. 15-04623

**Appearances**

For Government: Rhett E. Petcher, Esquire

For Applicant: *Pro se*

10/06/2016

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

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

In a response notarized on January 12, 2016, Applicant admitted all allegations raised under Guideline F and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. The matter was scheduled on May 20, 2016, for a June 22, 2016, hearing. The hearing was convened as scheduled.

The Government offered eight documents, which were accepted without objection as exhibits (Exs.) 1-8. Applicant offered testimony and one document, which was accepted without objection as Ex. A. The record was held open through July 6, 2016, in the event the parties wished to submit additional material. The transcript (Tr.)

was received on June 30, 2016. On July 6, 2016, Applicant submitted four additional packets of documentation, accepted without objection as Exs. B-E. The record was then closed. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 33-year-old consultant with a defense contractor, for which she has worked since 2011. She has earned a high school diploma, attended some college courses, and has worked in positions in support of the United States Government since she was 17 years of age. She is a single mother of three minor children, ranging in ages from early teen to a one-year-old. At issue are 21 delinquent debts amounting to a sum in excess of \$32,300. She has not received formal financial counseling.

At least a decade ago, at about age 22 or 23, Applicant was first granted a security clearance. At the time, she was earning about \$25,000 a year. She was informed that her financial situation potentially posed a security concern. Consequently, she was urged to repair her credit status. (Tr. 13, 21) Applicant tried to approach the issue as her salary rose to about \$40,000 a year, but she found she was only getting further into debt by the time her second child was born.

Applicant believed that she had satisfied her student loans on her own and she stopped acquiring new credit cards. She testified that when she could, she would make occasional payments to one of her creditors or “at least give them something to let them know that, you know, [she had not] forgotten about it.” (Tr. 24) At one point, she worked with a debt consolidation company, but she abandoned their arrangement.<sup>1</sup> (Tr. 40) Later, in about September 2015, she solicited the aid of a law firm to dispute credit report entries and “help get things off [her] credit.” (Tr. 13) The firm’s focus was limited and it did not consolidate her debts. She eventually discontinued her arrangement with that firm, too.

Applicant then enlisted the services of a debt consolidating company in late May 2016. (Exs. A, E) Under its plan, she is to pay the company \$359 a month to be put toward about \$17,228 in estimated debt.<sup>2</sup> (Ex. E) This includes the costs related to a car repossession she thought she could address by herself, but her efforts were financially foiled by the birth of her third child. Under the company’s plan, Applicant would be left with a net monthly remainder of about \$610. (Ex. E; Tr. 62)

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<sup>1</sup> Applicant stated, “I stopped working with them. I’m not quite sure what the reason was. I don’t know if I was unhappy with their company or I couldn’t keep up with the payments or something.” (Tr. 40)

<sup>2</sup> Applicant signed her enrollment agreement on May 25, 2016. (Ex. E) She testified that she made her first payment on the plan in June 2016, shortly before the June 22, 2016, hearing. (Tr. 15, 66) Applicant submitted bank statement excerpts with her post-hearing materials, but there is no clear evidence reflecting that single payment to the debt consolidator. See Exs. A-E. Consequently, there is no documentary evidence reflecting an established, regular, and timely repayment record toward that plan.

Presently, Applicant is back in school. She has no delinquent debts related to her academic return and her current student loan of \$5,000 is in deferral. (Tr. 20, 63) She enjoys her work and finds that her annual salary of \$60,000 helps her meet her most necessary needs. It is her goal to one day buy a house, but she understands that she must first devote more effort toward fixing her credit and addressing her debts.

Applicant receives no child support from the two fathers of her children. (Tr. 16-18) The state has had difficulty making official contact with the father of her eldest child, although she knows where he resides. She hopes to start receiving some financial support from the father of her two younger children if he wins a pending Social Security disability appeal. (Tr. 18-19) She accepted the characterization that she simply has not been able to financially afford the expenses needed to support her family. (Tr. 24-25)

The delinquent debts at issue in the SOR include:

1.a - \$2,480 adverse judgment from November 2014 – This debt is related to a balance owed to an apartment complex. At the June 2016 hearing, Applicant testified that she had been working with them to obtain a repayment plan under which she could make monthly \$200 payments. (Tr. 26) After the hearing, she introduced a “recurring credit card agreement,” dated January 2016, under which \$223 would be charged to her credit card each month toward satisfaction of the debt. (Ex. B) In January 2016, she made a single payment to the complex under this agreement. (Tr. 27) Presently, she is negotiating another arrangement with the complex. (Tr. 29)

1.b - \$2,569 state tax lien entered in January 2010 – Applicant was told that she could negotiate a repayment plan with the state after she paid a certain percent of the balance owed. To date, no payments have been made toward that percentage.<sup>3</sup> (Tr. 33) Since 2010, other state-related debts have arisen, increasing the balance owed to the state at issue through a collection entity. (Tr. 30-34)

1.c - \$808 telecommunications collection balance – Applicant failed to pay her final cable bill before moving, resulting in a balance owed. This debt is now incorporated within her repayment plan. (Tr. 37-38)

1.d - \$15,384 delinquent balance remaining owed after resale of a vehicle repossessed in 2014 – Applicant could not keep up with the payments on an approximately \$22,000 automobile after she became pregnant with her youngest child. This debt is now incorporated within her repayment plan. (Tr. 43-44)

1.e-1.f - \$169 and \$201, respectively – These two unpaid, charged-off accounts are related to sums owed by Applicant to a former credit union. They are not part of her repayment plan. She intends to pay them independently in the future. (Tr. 43-45)

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<sup>3</sup> Elsewhere, Applicant stated that she “did pay them three hundred and something dollars” in 2015. Ex. D, a credit union monthly statement extract, reflects that \$320 was paid to the comptroller of her state on August 25, 2015. It is unclear, however, whether this sum was for unpaid taxes.

1.g - \$636 telecommunications collection balance - This debt is now incorporated within Applicant's repayment plan. (Tr. 45)

1.h - \$636 telecommunications collection balance – It is unclear whether this debt entry is a duplicate of the above or a separate debt. Applicant provided no documentary evidence indicating it was a duplicate. This debt is now incorporated within her repayment plan. (Tr. 46-47)

1.i - \$611 charged-off credit union account balance – Thus far unaddressed, Applicant is trying to have this debt included in her repayment plan. (Tr. 47)

1.j - \$1,330 adverse judgment from September 2008 – Applicant has no knowledge of what this account represents and her former law firm could not identify the debt. She does not know if it was ever formally disputed. She is waiting for her repayment plan company to investigate the account before taking further action. (Tr. 48-49) There is no documentary evidence of other action taken.

1.k – 1.l - \$2,461 and \$2,214, respectively – Applicant testified that these student loan accounts, indicated in her credit report as having been opened in May 2008, have been satisfied. (Tr. 49-50; Ex. 6 at 5) There may be some confusion between the student loans at issue and the ones for which she provided documentation after the hearing (Ex. C), which indicate a disbursement date of February 5, 2005. Without more information or explanation, the provided documentation fails to show that the two student loans specifically at issue have been satisfied.

1.m - \$1,000 collection account for telecommunications balance - This debt is now incorporated within Applicant's repayment plan. (Tr. 51)

1.n - \$540 collection account for telecommunications balance - This debt is now incorporated within Applicant's repayment plan. (Tr. 52)

1.o – 1.p - \$250 and \$250, respectively – Applicant acknowledges that these two debts have separate and distinct account numbers, but feels they may be duplicate entries for the same debt. No documentary evidence was introduced to that effect. They are not included in her repayment plan and have not been otherwise addressed.

1.q, 1.r, 1.t and 1.u - \$205, \$200, \$150, \$65, respectively – Applicant admits responsibility for these delinquent debts, which are related to parking or driving tickets. (Tr. 54). Applicant testified that she satisfied these debts in 2014, but provided no documentary evidence to that effect. (Tr. 54-55).

1.s - \$152 – Applicant admits responsibility for this automobile insurance-related debt, which remains unpaid. (Tr. 55-56)

Applicant is unaware of any other delinquent debts. (Tr. 58) She currently maintains a secured, paid-in-advance, credit card, with which she hopes to improve her

credit rating.<sup>4</sup> She does not currently own a car. She stated that she takes home about \$1,800 every two weeks. (Tr. 60) At the time of the hearing, she had approximately \$30 to \$40 in her banking account, and she contributes an unspecified amount to a 401k account through her workplace. (Tr. 62) Other than the tax issue noted above, she is current on her state and federal taxes. Her strategy for ultimately addressing the debts at issue is through her repayment plan company, which she stated is willing to work with her in terms of payment amounts in light of her income. (Tr. 65-66)

## **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 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, 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. Section 7 of Executive Order 10865 provides that decisions shall

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<sup>4</sup> It is unclear whether this is the credit card noted in Ex. B, upon which she makes payments to the debt noted at SOR allegation 1.a.

be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b).

### **Analysis**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence purporting to show Applicant was delinquent on multiple debts, including a state tax lien, student loans, and automobile repossession. This is sufficient to invoke financial considerations disqualifying conditions:

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

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

Five conditions could mitigate these finance-related security concerns:

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;

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

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

For at least a decade, Applicant has had financial issues which she knew could adversely affect her security clearance eligibility. She has made more than one attempt to address them. Despite expressions that she would address her delinquent debts, no documentary evidence was introduced indicating that she has followed through with any of her plans to notable fruition. Even her most recent repayment plan seems to be so new that she has yet to establish a record of timely repayment toward her debts. Today, the relevant debt balances remain virtually unaddressed.

Applicant provided scant information regarding conditions that could show her financial distress was created by conditions largely outside of her own control. At best, she attributes her delinquent debts to insufficient income, a growing family, and, to a lesser extent, a lack of child support from the fathers of her children. No extraordinary periods of unemployment were noted. Indeed, she stressed she has worked in support of the government since she was a teen. No significant illnesses or deaths in the family were referenced, and she has not been divorced. Moreover, she provided no documentation reflecting her efforts to secure financial assistance from the father of her eldest child. While she hopes to receive some financial assistance from the father of her youngest children in the future, that hope is first predicated on his winning a Social Security disability appeal. Consequently, such financial assistance, at this point, is speculative. Further, little evidence was shown demonstrating what continued efforts she took throughout the years to responsibly meet the challenges of her financial distress. Finally, there is no documentary evidence showing that her limited dealings with a debt consolidation company and a law firm included formal financial counseling.

Applicant testified that she retained a law firm to dispute incorrect or dated information from her credit report, but she provided no paperwork showing such efforts were attempted, successful, or based on a reasonable belief that such adverse information was posted in error. With the exception of a credit union statement showing the sum of about \$320 was expended toward a state debt, and her assurance a single payment toward her latest repayment plan was made, there is scant evidence she has successfully executed any efforts to address the delinquent debts at issue. Consequently, none of the financial considerations mitigating conditions apply.

### **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). 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 incorporated my comments under

the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a highly credible 33-year-old single mother who has worked in support of the United States Government since she was a teenager. Although she is endeavoring to complete a college education, she recognizes that she only has a net remainder of about \$600 a month after meeting her current expenses. Meanwhile, her three children are growing and, it may be assumed, maturing in their needs. Consequently, her financial distress is something she strives to end.

There is no indication, however, that Applicant's income will soon increase to help meet her financial needs. She testified that her present repayment plan administrators are willing to work with her if her payments are too high, and she hopes to receive supplemental child support income from one of the fathers of her children if he wins an outstanding Social Security appeal. Those factors, however, are not currently fully realized aspects of Applicant's endeavor to address her delinquent debts.

Over the past decade, as Applicant's income increased, so did the size and financial needs of her family. By her own admission, Applicant simply lacks the income to address all of her family's needs, as well as her delinquent debts, with her current income. Therefore, this clearly is not a situation where an applicant is necessarily living beyond her means or refusing to honor her debts. The result, however, remains that the facts presented at this time, and in the absence of a more sustained record of debt repayment through her repayment plan, are insufficient to mitigate financial considerations security concerns.

This process does not demand that an applicant satisfy, or even address, all delinquent debts at issue. It does, however, expect that an applicant develop and implement a reasonable strategy or plan to address one's delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented and sustained. Applicant has failed to do that here. Under these facts, I find that Applicant has not mitigated financial considerations 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.u:

**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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge