



**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. 15-05953

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

August 21, 2017

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On March 10, 2015, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). (Item 5.) On February 13, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 Department of Defense on September 1, 2006.<sup>1</sup>

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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.

Applicant answered the SOR in writing on March 8, 2016, and requested her case be decided on the written record in lieu of a hearing. (Item 4) On April 22, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 8, was provided to Applicant, who received the FORM on April 27, 2016.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. This period would have ended on May 27, 2016. She submitted additional information that was received by DOHA on May 25, 2016. Department Counsel had no objection and the documentation is admitted into evidence as Applicant Exhibit A. The case was assigned to me on December 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 37, a college graduate, and married with two children. She is employed by a defense contractor and seeks a security clearance in connection with her employment.

### **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 denied allegation 1.g. She admitted the remaining seven allegations (1.a through 1.f, and 1.h). Applicant also submitted additional information to support her request for access to classified information.

The SOR alleged, and Applicant admitted, that she owed approximately \$5,500 in past-due indebtedness to various creditors. As stated, she denied allegation 1.g, which alleged she owed \$9,370 to a creditor for a repossessed automobile. Support for the existence and amount of the debts is found in various admissions by Applicant, and credit reports submitted by the Government dated March 28, 2015; and January 21, 2016. (Items 4, 5, 6, and 7.)

According to Applicant, in 2009 she and her husband were in an automobile accident, in which he was seriously injured and subsequently unable to work in his career field. They had problems making ends meet with just one income until she obtained work with her current employer in March 2015. Her new job came with an increase in pay, which allowed them to begin to get back on their feet financially. (Item 4, Item 5 at Section 13.)

The current status of the debts is as follows:

1.a. Applicant admitted she owed a past-due medical bill in the amount of \$68. Applicant paid this debt in full on May 13, 2016, as reflected in a receipt from the creditor. (Applicant Exhibit A at 3.) This debt is resolved.

1.b. Applicant admitted she owed a past-due medical bill in the amount of \$317. Applicant paid this debt for a reduced amount on April 30, 2016, as reflected in a receipt from the creditor. (Applicant Exhibit A at 4.) This debt is resolved.

1.c. Applicant admitted she owed a past-due medical bill in the amount of \$50. Applicant paid this debt in full on May 10, 2016, as reflected in a receipt from the creditor. (Applicant Exhibit A at 5.) This debt is resolved.

1.d. Applicant admitted she owed a past-due medical bill in the amount of \$782. The creditor is the same as the one set forth in allegation 1.e. Applicant's planned resolution of both debts will be discussed below.

1.e. Applicant admitted she owed a past-due medical bill in the amount of \$3,756. Applicant stated in her response to the FORM, "I contacted the agency and offered to pay them \$100 a month to cover this debt." The creditor agreed to receive this amount from Applicant. She further stated, "My focus has been on paying some of the smaller debts . . . so I scheduled my first monthly payment for the end of May [2016]." As stated, Applicant's response to the FORM was due on May 27, 2016. (Applicant Exhibit A at 1.) This debt is not resolved, but she has reached a reasonable agreement to repay it with the creditor.

1.f. Applicant admitted she owed a past-due medical bill in the amount of \$192. Applicant paid this debt in full on May 6, 2016, as reflected by her cancelled check to the creditor. (Applicant Exhibit A at 6.) This debt is resolved.

1.g. Applicant denied that she owed \$9,370 toward a loan for an automobile that she voluntarily surrendered in approximately 2009. The car had to be surrendered because Applicant and her husband could no longer afford the payments due to the automobile accident they were in that year. She stated that she never received information as to any balance being owed. In her response to the FORM she stated that the debt had been transferred among several different companies. Applicant contacted the current creditor, who informed her they had no documentation as to what was owed. After consulting an attorney, Applicant sent a dispute and validation letter to the creditor on April 16, 2016. She submitted both the letter, and the certified mail receipt showing when it was mailed. Applicant had not received a response to this letter as of the date the response to the FORM was due. (Item 5; Applicant Exhibit A at 1, 2, 10-11.) This debt is in dispute.

1.h. Applicant admitted she owed a past-due medical bill in the amount of \$358. The actual debt is \$483. Applicant agreed to make four payments of \$120.75 to resolve the debt. She submitted evidence showing that she had made two of the four payments as of the time her response to the FORM was due. (Applicant Exhibit A at 7-9.) This debt is being resolved.

Applicant stated that her current financial condition is stable. She submitted the most recent receipts from her monthly creditors, all of which indicate that there are no past-due amounts. This includes payments on her student loans, which have been consistently paid on time. (Items 6, 7; Applicant Exhibit A at 2, 15-22.)

## **Mitigation**

Applicant submitted her most recent performance evaluation from her employer. The evaluation showed that she “Achieved/Substantially Achieved Commitments.” (Applicant Exhibit A at 12-14.)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, and a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility and 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 national security eligibility. 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 or sensitive 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 *a/so* Executive Order 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 personal 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions apply to the facts found in this case:

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

Applicant admitted that she had several past-due debts, which she was previously unable to satisfy. The evidence is sufficient to bring these two disqualifying conditions into effect, and thereby transfer the burden to Applicant to mitigate them.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of them have applicability to the facts of this case:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant's financial difficulties began in 2009, when she and her husband were in an automobile accident. Seven of the eight debts alleged in the SOR are medical in nature. The other, resulting from the automobile repossession, was directly related to the accident. Her husband was unable to work in his field due to the injuries he suffered. Until she obtained her current employment in 2015 Applicant was not in a financial position to both pay her current indebtedness and pay her old, past-due debts.

Applicant submitted evidence that she had paid four of the formerly delinquent debts in full, and one was being paid in installments. She stated that she would begin paying two other debts on an installment basis, pursuant to the agreement she made with the collection agency holding them. Finally, she showed that she had a reasonable basis to dispute the debt in allegation 1.g, since she had never received information as to any past-due amount due after the voluntary surrender of the automobile. She supplied a copy of her dispute and validation letter to the creditor, which is an appropriate way for her to request such information.

Applicant's current financial situation is stable, which she showed with current documentation. As the DOHA Appeal Board has stated, "An applicant is not required to

show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan.”<sup>2</sup> All four of these mitigating conditions apply to this case. Paragraph 1 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for national security eligibility 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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding her financial situation. After recovering from the adverse financial effects of an automobile accident that was not her fault, she has reestablished financial responsibility and eliminated any potential for pressure, coercion, or duress from those financial issues. Overall, the record evidence does not create substantial doubt as to Applicant’s present suitability for national security eligibility and a security clearance.

### **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 through 1.g:

For Applicant

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<sup>2</sup> ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

## **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 a security clearance. National security eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge