



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-06108
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

08/05/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On October 17, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2016. A notice of hearing was issued on June 8, 2016, scheduling the hearing for July 19, 2016. Government Exhibits (GX) 1-6 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-B at the hearing, which were entered into the record without objection. The transcript was received on July 27, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations under Guideline F and provided an explanation for the debts.

Applicant is 58 years old. She was divorced in 1996, and has two adult children as a result of her marriage. She has been with her current employer since 2004. She attended community college on two separate occasions in 2010 and 2013. (GX 2) She completed a security clearance application in 2014. (GX 1) She has held a security clearance since 2005. (GX 1)

The SOR alleges nine delinquent debts for an approximate total of \$30,000. Included in the delinquent debts are eight collection accounts and a Chapter 7 bankruptcy that was discharged in 2002. (GX 5) Applicant attributes the 2002 bankruptcy to unemployment from 2001 until 2002. (GX 6) The amount discharged in bankruptcy was about \$14,000. (Tr. 18)

Applicant explained that she has not paid any of the debts listed in the SOR. She also acknowledged in her investigative interview that she owes about \$5,000 in back rent to an apartment complex because her then significant other asked her to rent a larger apartment so that they could live together with his two children. (Tr. 27) About one month after renting the larger apartment, he lost his job and could not contribute to the rent. Applicant supported him and his children until 2014. (Tr. 24) Applicant moved out of the apartment and is living with her daughter. Her friend and his children stayed in the apartment. She admits that she is responsible but does not have the money to pay. She intends to pay all her debts when she is financially able to do so. (Tr. 13)

Applicant emphasized that she came to the hearing to defend her moral character and to state for the record that she is not someone who lives above her means. (Tr. 13) Although she has been with the same employer for many years, she had a pay cut due to a transfer to another department. (Tr. 34) Applicant had planned to file for bankruptcy in 2015, but she does not have the money to engage a lawyer. (Tr. 32) She plans to save money so that she can afford an attorney to file for bankruptcy in the future. (Tr. 33) Applicant added that she probably could pay the smaller debts listed on the SOR, but she had to buy a used car. An amount of \$500 was taken from her paycheck each month and she had little money left. (Tr. 33)

As to SOR allegation 1.a, a collection account in the amount of \$13,683 for a 2008 vehicle, Applicant tried to arrange a payment plan, but she could not afford a monthly payment. At the time she had two cars, one of which she wanted to sell.

As to SOR allegation 1.b, in the amount of \$11,231 for a collection account that was also for a vehicle, that Applicant could not afford to make payments. She had hoped to sell one car but that did not occur. (Tr.50)

As to SOR allegation 1.c, a charged-off account in the amount of \$885 that was the result of a 2013 loan that remains delinquent. (Tr. 29) She stated that she started to

pay because the original amount was \$1,000. She had no documentation or evidence to show any payments.

As to SOR allegation 1.d, in the amount of \$513, Applicant does not recognize the account. Also, SOR allegation 1.h for \$61 is not known to Applicant. (Tr. 30)

As to SOR allegation 1.e, in the amount of \$295 for a phone account, Applicant has not addressed the debt.

As to SOR 1.f, in the amount of \$139 for a phone account, Applicant has not addressed the debt.

As to SOR 1.g, in the amount of \$84 for a cable company, Applicant has not paid the debt. (Tr. 32)

As to SOR allegation 1.i in the amount of \$3,813, this is a student loan. She stated that her state tax refund was intercepted for the loan. She believes the amount was about \$590. She has not made any other payments on the loan. (Tr. 31)

Applicant works about 48 hours in a two-week period. She earns about \$27.40 an hour. She took a seasonal part time job in December. (Tr. 37) Before this year, she worked full time (2014) earning about net monthly \$2,400. She was stressed due to her dad's death and trying to take care of her mother. (Tr. 38) She provided some financial support to her mother. She states that she has nothing left at the end of the month. (Tr. 40) She has obtained some credit counseling. (Tr. 43)

Applicant submitted two letters as character references. Applicant's pastor advised that he has known her for 20 years and attests to her high moral character, as well as her reputation for honesty and integrity in the community. She is an example to both church members and residents in the community. (AX A)

Applicant's ex-husband wrote that he has known her for 40 years. He stated that she is a mature individual who has never violated any laws. She has appropriate judgment and integrity. Applicant volunteers in the community and provides food and clothing to the homeless. (AX B)

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

## Analysis

### Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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. It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Government produced credible evidence that Applicant incurred delinquent debt from collection accounts, student loan, and vehicle repossessions, and a 2002 bankruptcy. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's financial difficulties occurred in the past nine years. She has not addressed any of the SOR debts. She still has a significant amount of delinquent debt. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant had no idea that her friend would lose his job and not be able to pay his share of rent for the larger apartment. However, she has not paid any of the SOR debts or made any payment arrangements. She said she could pay some of the smaller debts but has not done so. There were some circumstances beyond her control, but she was not proactive on the financial issues until the issue of her security clearance arose.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. Applicant has not produced any evidence that she has paid any of the debts on the SOR. She claimed that she had made a few payments on some, but there is no documentation to substantiate her claim. She intends to pay the small bills but has not done so. A promise to pay in the future is not sufficient mitigation. FC MC AG ¶ 20(c) (the person has received or is receiving

counseling for the problem) has some application, but there are not clear indications that the problem is being resolved, or is under control.

### **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(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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 59 years old. She has been with her current employer since 2005. She is divorced and has two adult children. She has held a security clearance without incident for years. She stopped working full time in 2013 due to stress. She aided her mother after her father died. She submitted excellent character references. She could not foresee that her friend would lose his job and not contribute to the rent. She had some early unemployment and filed for a bankruptcy in 2002, which was discharged.

Applicant admits that she has not paid or resolved any of the debts alleged in the SOR. She did not even make an attempt to pay the very small ones. She states that she does not have the ability to pay her bills and is living check to check. She decided to work part time in 2014 and that has resulted in a lower pay. She does not need to have paid all her delinquent debts, but she has not presented any track record of payments or progress. She was on notice about the debts during her investigative interview, and stated that she would try to resolve them. She now plans to file for bankruptcy, but does not have the money for filing. Thus, it is unclear when the petition may be filed. Applicant had a 2002 bankruptcy, which along with present delinquent debts shows a pattern of financial difficulties. She also acknowledged that she owes \$5,000 to the apartment complex that is not listed on the SOR, which also has not been paid.

Applicant has not presented sufficient information to carry her burden of proof in this case. She has not mitigated the financial considerations security concern. Any doubts must be resolved in favor of the Government.

**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.j	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. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge