



**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. 15-07198

**Appearances**

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

For Applicant: *Pro se*

06/07/2017

**Decision**

HOWE, Philip S., Administrative Judge:

On March 17, 2015, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On April 27, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) 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.

Applicant answered the SOR in writing on May 19, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 14, 2016. The case was assigned originally to another administrative judge on January 30, 2017, and was reassignment to me on February 28, 2017. DOHA issued a Notice of Hearing on February 27, 2017, and I convened the hearing as scheduled on March 13, 2017. The Government offered Exhibits 1 through 5, which

were received without objection. Applicant testified and submitted Exhibits A through J, without objection. I gave Applicant two weeks, until March 31, 2017, to submit copies of those exhibits from her originals to Department Counsel and me. On March 30, 2017, she submitted them and they were entered in the record. DOHA received the transcript of the hearing (Tr.) on March 29, 2017. The record closed on March 31, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in all Subparagraphs of Paragraph 1, except Subparagraphs 1.b and 1.e of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 42 years old, and divorced since October 2013. She has two Associate's degrees she obtained after she was laid off from work at two factories that were purchased by foreign companies. Her benefits after losing both those jobs included unemployment and retraining. She has an adult son who works and lives independently. Applicant worked for a government agency from 2003 to 2005 in the GS-3 pay grade. She resigned from that position to remove her son and herself from her marital situation after her husband developed mental issues. Her most recent job was with a government contractor on a military facility. She had an interim security clearance, which was revoked when the SOR was issued. She was then unemployed from April 2016 to August 2016. She now works for a private home health care company for \$12.00 per hour. She was earning \$21.75 at her government contractor job. (Tr. 21-36, 65-67; Exhibits 1, E)

The SOR contains 21 delinquent debts totaling \$12,890. The delinquencies started in 2013. Of these debts, 10 are under \$100 each and total \$620. Of the remaining debts, five are under \$500 and total \$1,050, and four are under \$1,000 each, totaling \$2,574. These 19 delinquent debts total \$4,244, and include a car repossession and a series of medical debts. None of them were paid after becoming delinquent. Applicant also filed and was discharged in Chapter 7 bankruptcy in 2005 of debts, including credit cards, utility bills, and medical bills for her son and former husband, and the "bad" checks her husband wrote. Applicant has not paid any of the debts listed in the SOR. She did pay current debts while she earned money at her government contractor's job. (Tr. 38-45, 50; Exhibits 2-5, B-D)

Applicant has additional medical debts since the SOR was issued. They are \$85 and \$169 (delinquent in December 2015). She will dispute the first debt because she was supposed to be on a government insurance plan that was backdated to her unemployment in May 2016; but the credit report shows the first date of delinquency was October 2015, so it is not related to her illness in 2016. (Tr. 47, 48; Exhibit 4)

One credit report shows a charged-off debt of \$6,953 that was for a car repossession listed in Subparagraph 1.b of the SOR. Applicant contends the SOR-listed repossession debt is not the \$7,328 amount alleged in the SOR, but closer to \$5,000 because the car was fixed and sold at auction. She submitted proof of the debt as being \$4,525.51 plus interest at 25.80% as of April 21, 2014, when a civil lawsuit was filed against her by the creditor listed in Subparagraph 1.b to collect payment on the loan agreement. This debt remains unresolved. (Tr. 36-38, 50; Exhibit 2- 4, D)

While obtaining her two Associate's degrees, Applicant obtained student loans for living expenses. They total about \$20,000 and are currently deferred. She hopes to arrange an income based repayment plan if she is rehired by her government contractor sponsor. (Tr. 35, 59; Exhibits 2-4)

Applicant telephoned a credit counselor she saw advertised on television seeking advice about her debts. That service advised her to pay her current debts to keep them from falling into delinquency and to pay the remaining debts in an order starting with the highest interest rates first. She has a budget currently that she testified consisted of paying her current debts on time. She does not have a checking account, only a savings account to which her debit card is connected. She does not have credit cards. (Tr. 53-55, 59, 60; Exhibits 2-5, B)

Applicant submitted several documents showing she completed various security training courses when she was working for the defense contractor that employed her. She also submitted two character letters from persons who worked with her at the same time and location. Both letters stated Applicant was trustworthy, hard-working, and a valuable member of the organization. (Tr. 17-20; Exhibits A, F-J)

### **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, these guidelines are applied in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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. 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* 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$12,890 in delinquent debt from 2013 to the present time that remains unpaid. Applicant has 21 delinquent debts alleged in the SOR and a 2005 Chapter 7 bankruptcy. 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. Two conditions may be 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant was divorced from her mentally ill husband in 2013. She was unemployed periodically after companies for whom she worked were sold. She was laid off, while qualifying for retraining and unemployment compensation. She resigned from one job in 2005 because of the stress and concerns she had about the actions of her mentally ill husband. She was paying her current debts with her latest government contractor employment, but she was not able to pay her past debts that are listed in the SOR. Her delinquent debts are not under control or being resolved because none of

them have been paid in the past four years. AG ¶ 20 (b) applies partially because of her employment and family situation.

Applicant telephoned a credit counselor she saw advertised on television. As a result of that discussion, she focused on paying her current debts to keep them from becoming delinquent and the delinquent debts that had the highest interest rate. Applicant did not specify those particular debts. Other than the debt alleged in 1.a, all remaining debts are unresolved. AG ¶ 20 (c) has limited application because her credit counseling consisted of only session. There are no indications that her financial situation is under control or coming 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.

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 facts and circumstances surrounding this case. Applicant lives from paycheck to paycheck while being unable to repay past delinquent debts. Her situation is caused by her inability to find consistent employment in her home area with secure benefits. Her present job pays \$12 hourly, allowing her only to pay her current living expenses. Applicant's marital history and employment history are unfortunate, but her hope to be able to obtain employment with which to repay the SOR-listed debts is speculative and not evidence of a plan to resolve her financial obligations. At this time, Applicant has not established a sufficient record of managing her debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b to 1.v:	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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PHILIP S. HOWE  
Administrative Judge