



**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. 15-07290

**Appearances**

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

For Applicant: *Pro se*

06/23/2017

**Decision**

HOWE, Philip S., Administrative Judge:

On May 28, 2015, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On June 14, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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.<sup>1</sup>

Applicant acknowledged receipt of the SOR on June 30, 2016. She answered the SOR in writing on July 13, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 26, 2016, and I received the case assignment on October 6, 2016. DOHA issued a Notice of Hearing on

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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.

February 27, 2017, and I convened the hearing as scheduled on March 17, 2017. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through M, without objection. DOHA received the transcript of the hearing (Tr.) on April 5, 2017. I granted Applicant's request to keep the record open until March 31, 2017, to submit additional matters. On March 24, 2017, she submitted Exhibits N to R, without objection. 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 all the factual allegations in Paragraph 1 of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 48 years old. She has three sons. Applicant is not married. She is a production coordinator for a defense contractor earning \$52,000 annually. She has worked for her employer for 23 years. She is living in her home, which has been foreclosed upon by the bank. She has an associate college degree. (Tr. 32, 34-36, 70; Exhibit 1)

Applicant has extra income because the father of Applicant's third child's died on the job before the son was born 17 years ago. The child receives \$772 monthly in Social Security survivor benefits and \$567 biweekly in worker's compensation benefits that Applicant uses to support herself and her son. That is \$1,906 of compensation her son receives monthly. The total is \$22,872 annually. The Social Security benefits terminate in a short while when the son becomes 18 years of age. These funds are deposited directly into Applicant's checking account to be used for living expenses. With her job income and her son's income, Applicant had \$74,872 annually in income. (Tr. 39, 40; Exhibits 1-5)

Applicant has seven delinquent debts listed in the SOR. They total \$47,535, including the mortgage on her home. The remaining debts are a car loan and five credit card debts. She stopped paying on all her debts in 2014 when her house was being foreclosed and she consulted an attorney about filing Chapter 7 bankruptcy. He advised her not to pay any debts. She did not pay the mortgage from 2014 onward. During the time from 2014 to 2016 she moved out of the house twice and returned to maintain the property. She has not paid any of the debts listed in the SOR. Applicant filed Chapter 7 bankruptcy in March 2016. Applicant's Chapter 7 bankruptcy listed total liabilities of \$167,263. (Tr. 4157; Exhibits 2-5, B, D)

Applicant purchased her house in July 2010 for \$119,000. Applicant's oldest son helped with the expenses of the house. She also had a companion whose income of about \$2,800 monthly helped her afford the house. He moved out after 16 months and she lost that income. In November 2012 her son moved out of her house and moved into his own home. Her monthly mortgage payments were \$1,150. In July 2013 the

bathroom needed repairs and she could not afford the mortgage and paying for those repairs. Applicant started to have a difficult time paying her expenses. She began using credit cards to pay for her monthly purchases. She realized she was overextended financially and buying the house was a bad decision. (Tr. 41-50, 77, 85; Exhibits 1-5, B, I)

Applicant did not pay the full mortgage payment that month, submitting \$300 less than required. In August 2013 she sent in a complete payment, but it was returned by the bank as was the July payment because the mortgage lender wanted the exact amounts owed for each month. The bank also charged late fees and interest. Her financial situation worsened at that point. Applicant made payments on her other debts during the succeeding year. She also submitted a request for mortgage assistance. She was approved, sent in the new payment, and a month later the mortgage lender sent a letter to Applicant telling her she was in default on the loan and the house was in foreclosure proceedings (Subparagraph 1.a). For the next year Applicant tried to sell the house without success. (Tr. 42-49; Exhibits 1-5, I, J, K)

Applicant then consulted an attorney in September 2014 who advised her with her debt load that Chapter 7 bankruptcy was the best method for her to resolve her debt. Applicant moved out of her house and into an apartment, thinking the house was going to sell. Three days after moving, Applicant received a letter from some court, she testified, telling her the foreclosure was dismissed. Applicant then broke her lease and paid the fee so she could move back into her house to maintain it until it sold. (Tr. 49-51; Exhibit P-R)

While living in her house payment free Applicant did not use her work income or the payments for her son to pay off other debts. She was not certain why she did not make payments, but was doing what her attorney told her to do. During this period she replaced the carpet in the house because someone might buy the house. She also purchased cars for each of her sons. One car cost \$3,500, the second car \$2,000, and the third son received a car costing \$3,800. She paid cash for all cars. Her car had a bad transmission she could not afford to repair, so she leased a 2015 vehicle for \$420 monthly. She surrendered the vehicle before the lease ended and owed the balance of the lease amount of \$6,002 (Subparagraph 1.b). Applicant put that amount into her Chapter 7 bankruptcy. She then purchased a used 2013 model car after her bankruptcy was discharged in July 2016. (Tr. 51-57, 68-70; Exhibits 1-5, H)

Applicant's debts included the purchase of four computers that were placed on a charge account with the manufacturer for \$4,603 (Subparagraph 1.d). She did not pay that debt either and placed it in her Chapter 7 bankruptcy. The four other credit cards of \$4,801 (Subparagraph 1.c), \$3,016 (Subparagraph 1.e), \$2,495 (Subparagraph 1.f), and \$670 (Subparagraph 1.g) were not paid by Applicant and she included them in the bankruptcy. (Tr. 72; Exhibits 2-5)

After her bankruptcy was concluded, Applicant has been paying her monthly debts regularly. Applicant submitted a copy of a budget she prepared. She admitted

there were four other debts listed in her credit reports she has not paid, including a \$115 debt to a hospital. Only the \$115 was included in her Chapter 7 bankruptcy filing. She does not have credit cards. She uses a debit card for purchases. Applicant did pay her student loans in full in October 2016 and they are not the subject of an allegation in the SOR. She also has a health savings account for medical expenses. The only financial counseling Applicant received was part of the bankruptcy filing process. She stated she would only rent an apartment in the future because she decided she could not afford a house. (Tr. 63, 64-67, 73, 91; Exhibits D, E, F, I, L, N, O)

Applicant submitted six character letters from family, friends, and co-workers. One letter is signed by 10 co-workers. They attest to her integrity, skill, and excellent work ethic. They describe Applicant as honest and courteous. They also state they are aware of her past financial difficulties regarding her house. These character references also state Applicant is strong, independent, and raised three sons as a single mother. (Exhibit M)

### **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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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 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. 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* EO 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 personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Four conditions are applicable to the facts found in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant accumulated \$47,535 in delinquent debt from 2014 to the present.. Applicant has seven delinquent debts listed in the SOR. She had an unpaid mortgage on a house she purchased in 2010. She did not pay the mortgage on the house after 2014 and lived there for free. She had a car loan she did not pay, along with five credit card balances she did not pay as required. Meanwhile, she purchased, with the money she would have paid on her mortgage and debts, used cars for her three sons and herself. She could not afford the house without the income from her companion and her oldest son, both of whom lived in the house for many months. After they moved out, the burden fell on Applicant and she could not afford home repairs, the mortgage, and her other debts. She stopped paying all of them. The evidence raises all four 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. Five conditions are not applicable and the sixth condition is not relevant:

(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;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and/or there are clear indications that the problem is being resolved or is under control;

(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 behavior is recent and continued until she filed and was discharged in Chapter 7 bankruptcy in 2016. The financial condition was not beyond her control. She decided to purchase a house and later found out she could not afford it, even with an income in the \$60,000 to \$70,000 range without the additional income from her former companion and her son. She tried to sell the house in 2014 but was unsuccessful because of the approval needed by the mortgage lender, which was slow in coming. Having purchased the house in 2010, she should have taken action sooner. Meanwhile, she replaced the carpet in the home, rented two apartments when she thought she should vacate the house, moved back to the house, and purchased at least four cars for her family members. She did not act in a responsible financial manner.

Applicant did not initiate a good-faith effort to repay her debts. Instead, she did not pay them and finally filed Chapter 7 bankruptcy in 2015, which was discharged in July 2016. She spent too much money, had too many debts, and could not pay them. Her car purchases alone show she was not acting responsibly under her financial circumstances.

Applicant's past financial problems were discharged, not controlled by her actions. She had no legitimate basis to contest any debt. With her job and the money for her son from Social Security and state workers compensation, she had sufficient funds to pay her debts. She did not do so. She did not seek financial counseling before the problem became overwhelming. Her only financial counseling was done as part of the bankruptcy, required by law, not done voluntarily to solve her financial problem. All her actions between 2010 and the present show she could not properly manage her money. No 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 an applicant's conduct and all the 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.

AG ¶ 2(b) 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 the facts and circumstances surrounding this case. Applicant did not act financially in a responsible way. She did not manage her finances responsibly during a six-year period. She contends the circumstances have changed now that her children do not depend on her for support and her debts were discharged in bankruptcy. However, her past spending patterns, not paying her mortgage and at the same time purchasing automobiles for her family, are not actions showing that she knows how to manage her income responsibly. Based on the past performance, it is likely the behavior will repeat itself.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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