



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02488

Appearances

For Government: Andre Gregorian, Esquire, Department Counsel
For Applicant: *Pro so*

05/09/2018

Decision

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

Statement of the Case

On October 23, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ In an undated response, Applicant addressed the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on May 10, 2017. The matter was scheduled on May 10, 2017, for a June 14, 2017, hearing. The hearing was convened as scheduled.

The Government offered eight documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-8. Applicant gave testimony and offered nine documents, accepted without objection as Exs. A-I. The record was left open through July 17, 2017, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on

¹ 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) effective within the DOD on or after September 1, 2006. Since that time, the AG have been amended. The recently amended AG are in effect for any adjudication on or after June 8, 2017.

June 22, 2017. On July 18, 2017, Applicant submitted additional documents, which were accepted without objection as Exs. J-Q. On August 1, 2017, documents noted as Exs. R-U were also accepted without objection, and the record was closed. After review of the record as a whole, I find Applicant mitigated finance-related security concerns.

Findings of Fact

Applicant is a 51-year-old analyst who has worked for the same defense contractor since 2013. She presently earns about \$73,000 a year. She earned a high school diploma in 1984. Applicant is married and has three children, ranging in age from 15 to 21. She received financial counseling in 2012.

At issue in this case are concerns related to Applicant's financial fitness based on 13 allegations, which address delinquent debts, a dismissed Chapter 13 bankruptcy petition, a tax lien, delinquent taxes, and failure to file income taxes for tax year (TY) 2010. She attributed her financial woes to managing her late father's estate since 2013, her daughter's unexpectedly high college costs, and two periods of unemployment.

In 2001, Applicant began work as a public transportation conductor. In May 2007, however, her vehicle was struck by a tractor-trailer on her way home from work. Her injuries were severe and prohibited her from returning to work. After 14 months of unemployment, she returned to the workplace in July 2008, albeit at a notably reduced salary from what she had earned previously.

From 2008 to 2011, Applicant was steadily employed. In July 2011, she was subject to a layoff. Applicant remained unemployed until May 2013. During these two years, she was supported by her husband, a bus driver earning about \$80,000. Without her full-time income, the family's financial situation suffered, although she maintained a part-time position she began in 2004 and at which she continued through 2013. (Tr. 18-19) That part-time job, as a process server, varied in income from zero to a couple of hundred dollars a week. Both during her 2007-2008 and 2011-2013 periods of unemployment, during which time the family relied on Applicant's husband's income, the couple was "going back and forth . . . trying to rob Peter to pay Paul." (Tr. 21)

In the interim, in October 2012, Hurricane Sandy damaged her dying father's house. (Tr. 69) Applicant's father passed away the following month. Applicant was named coexecutrix of the estate. She and her sister tried to restore the home to its pre-hurricane condition and make small improvements on the property in order to put the house on the market. Meanwhile, they had been making contributions toward their late father's mortgage to keep it current. Applicant has been paying about \$600 a month toward that effort. She hopes to use some of her share of the sale to recoup the money she was paying on her late father's home and address any remaining debts that she might have.² (Tr. 71) The sale was completed on August 25, 2017. (Ex. R)

² Applicant, along with her sister, the other co-executrix, has been contributing \$175 to \$300 a month toward maintaining her late father's mortgage. (Tr. 71-72) After sale of the property, the proceeds will be split between four siblings.

The sisters found an interested buyer for the house early on, and a deposit was collected. (Tr. 69-70; Exs. F-G) Unexpectedly, however, the potential purchaser died, quashing the sale. (Tr. 70) At the time of the hearing, another buyer had been found, and the property was poised to go to settlement within a few days after the hearing. (Tr. 70) That action will complete and relieve Applicant of her co-executrix duties.

At issue in the SOR are the following allegations:

1.a – Past-due mortgage (\$91,751 on total balance of \$412,572) – *In repayment*. Applicant had a monthly obligation of about \$2,300-\$2,400 a month for mortgage payments. She fell behind on her mortgage during her last period of unemployment, in early 2012. The mortgagor would not work with her, despite her explanations as to her present circumstances. It was around this time she was advised to file for bankruptcy in order to avoid foreclosure. (Tr. 24; see allegation 1.d, below) Although her husband was against the idea, she pursued the bankruptcy process solely for that reason. (Tr. 24) She did not want to see her children homeless. (Tr. 24) After the hearing, it was discovered she was behind by two payments, a situation she worked through with the lender. (Ex. L) One of the two past-due payments has been completed, with another anticipated in 30 days. (Ex. T)

For two years, Applicant made payments on the bankruptcy, ultimately abandoning the bankruptcy payment schedule once a reasonable home loan modification was arranged in 2016, allowing her to honor her mortgage debt directly and in full. In the process, the total balance of the loan was reduced from \$412,572 by \$223,537. (Ex. M) This was accomplished by the issuance of an Internal Revenue Service (IRS) 1099-C (Cancellation of Debt) for that sum. (Ex. A; Tr. 29) She and her husband now make monthly payments of about \$2,100 toward the new home loan balance. (Exs. K, M, and S)

1.b – Collection account (\$1,356) – *In dispute*. This debt is related to the rental of a trumpet. (Tr. 39) Applicant claims the store damaged the instrument while cleaning it. Due to the damage, Applicant ceased making payments on the trumpet. Applicant has disputed this account. (Ex. N) She is willing to honor the debt if the amount is correctly owed. (Tr. 41-42)

1.c – Collection account (\$608) – *Paid*. In January 2017, Applicant arranged to make three payments to satisfy this debt. (Tr. 42) Evidence of satisfaction was provided. (Tr. 42-43; Ex. B)

1.d – Chapter 13 bankruptcy filing from January 2012 – *Voluntarily abandoned*. This petition was dismissed in January 2015 for failure to make payments. As noted above, this action was taken by Applicant solely to avoid foreclosure on Applicant's family's home. She insisted the petition be a Chapter 13 bankruptcy so she could still make payments honoring her debts, rather than filing for Chapter 7 bankruptcy. She made monthly payments of up to \$1,700 for about two years while seeking a loan

modification on her mortgage. (Tr. 25) Once a home loan modification was arranged, she abandoned the Chapter 13 bankruptcy to address her debts directly. (Tr. 26)

1.e and 1.f – Collection accounts (\$1,519 and \$1,519, respectively) – *In dispute*. These debts are related to gym memberships. After signing the membership agreements, the gym determined Applicant's husband was not sufficiently fit to work out at the club. (Tr. 43) Applicant and her husband thought his denial was for a trial membership. Since he could not use the gym, Applicant did not go to the gym. Later, it was discovered they had signed full membership agreements, even though the gym would not honor her husband's application or membership. Applicant requested the gym to cancel the memberships since her husband could not work out with her. The issue has since been put in dispute with a leading credit reporting bureau. (Ex. P)

1.g – Telecommunications collection (\$505) – *Developing repayment plan*. In her SOR Answer, Applicant noted that she had planned to pay this balance by March 2017. She failed to make the payment when she became absorbed with addressing her late father's estate issues. (Tr. 47) Applicant is still planning to honor this debt. (Tr. 47, 78) She is working with the telecommunication entity on a payment plan. (Ex. U)

1.h and 1.i – Medical collection accounts (\$206 and \$45, respectively). *In dispute/Paid*. The first account is of unidentified origin, while the second account is a collection agent. After research, Applicant stated she now knows the basis for the charge at 1.i and that that it was satisfied "years ago"; she is still unclear as to the basis for the charge at 1.h. (Tr. 47-48). She showed that she disputed the account at 1.h with a leading credit reporting bureau. (Ex. O)

1.j – Applicant has gambled since she was a young adult. Throughout her life, Applicant has dabbled in some form of wagering. Sometimes, it involved making small bets on games of Yahtzee with her children, other times it involved playing slot machines when she and her husband or friends went to a nearby casino for dinner or entertainment. (Tr. 34-35) She resides in an area with multiple gaming and slots casinos nearby which offer other forms of entertainment. If she gambles outside the home, she limits both her losses and her gains to \$50-\$100 a visit. She does not visit such places on a regular basis. It is recreational wagering and not an addiction.³ It has not significantly contributed to her delinquent debts to the extent such activities represent her entertainment expenses, as opposed to spending money on other form of entertainment (*ie.* movies, books, etc.) She has never concealed her gambling or borrowed money to make wagers.

1.k – Federal tax lien entered in February 2012 (\$7,491). *Satisfied*. During the bankruptcy process, this balance was split and the halves made attributable to both Applicant and her husband, respectively. (Tr. 50) A partial release on the lien balance was issued in May 2016, while a full release was issued in March 2017. (Tr. 49-51; Exs.

³ Gambling debts were accidentally included on Applicant's bankruptcy petition by her lawyer. (Tr. 81-82) They do not reflect genuine gambling debts. (Tr. 32-33)

C-D) It was satisfied through payments and refunds, in both the case of Applicant's share and that owed by her husband. (Tr. 52-57, 59; Exs. K and S)

1.l – Failure to timely file state and federal income tax returns for TY 2010. – *Filed late.* Applicant filed the tax returns for TY 2010 in December 2011, rather than in the spring of that year. (Tr. 62) Applicant no longer remembers the reason why she was almost eight months late with her filings. (Tr. 62-63) Applicant posits it was an anomaly and simply the result of oversight or an accident. (Tr. 64 Ex. T) She may have been distracted by her father's declining health. She had never before filed taxes, state or federal, late. (Tr. 64)

1.m – Balance owed (\$1,000) to state taxing authority. *Developing repayment plan.* Having been previously unaware of this owed balance, Applicant had not incorporated the sum into her balance sheets. She has adjusted her withholdings to have repayment on the debt come from tax refunds. (Tr. 68) In the meanwhile, she is waiting for the proceeds from the imminent sale of her late father's home to pay off any additional balances owed. (Tr. 68; Exs. F-G) As a good faith gesture, she has made an initial payment of \$50 on this debt. (Ex.U)

Much of Applicant's remaining financial distress is related to her late father's house and her dealing with other duties related to his estate. Those financial distractions will soon pass. While Applicant is currently living paycheck-to-paycheck because of those burdens, she stays within her income as she honors her monthly obligations, including payments on the debt noted at SOR allegation 1.a. (Tr. 72) With the sale of her late father's home near completion, Applicant will soon have at least a net monthly surplus of \$600, the sum saved from paying her father's mortgage. Moreover, her daughter just graduated from college, liberating Applicant from the high costs of educating that child. (Tr. 72) While her son plans on attending college, Applicant and her husband will only be paying for part of his expenses and he will use student loans to finance the balance. In addition, Applicant has readjusted her IRS withholdings to assure future tax years will yield refunds, not sums due.

Applicant and her husband maintain retirement accounts. Applicant's retirement account has a balance of about \$30,000. (Tr. 74) Applicant has not had any major purchases in recent years, except for an automobile purchased for Applicant's son for only \$600-\$800. (Tr. 74-75) Applicant's own car is a Nissan Sentra purchased used. Applicant's only vacation was to another state several years ago to see childhood friends. Otherwise, the family has been "streamlining" their costs and expenses while maintaining their budget. (Tr. 76)

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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting adequate evidence to rebut, explain, extenuate, or mitigate admitted facts or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

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 or sensitive information.

Here, the Government introduced credible evidence indicating that Applicant had acquired multiple delinquent debts, filed for a subsequently dismissed Chapter 13 bankruptcy action, had a federal tax lien entered against her, failed to timely file a state and a federal tax return for TY 2010, owed \$1,000 to her state taxing authority, and gambled. This is sufficient to consider financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

AG ¶ 19(h): borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

AG ¶ 19(f): concealing gambling losses, family conflict, or other problems caused by gambling.

Under these facts, the following conditions could potentially mitigate the finance-related security concerns posed here:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed her financial woes to managing her late father's estate and making payments on his mortgage since 2012, unexpectedly high college costs related to her daughter's education, and two highly two notable periods of unemployment.

During the approximately five years at issue, Applicant maintained a part-time job, pursued financial counseling, economized, and tried to live within budget. Given these facts, AG ¶ 20(b) applies.

With regards to her debts, Applicant has made notable strides. A past-due balance on her mortgage of approximately \$91,000 has been significantly reduced to about \$2,300 or \$2,400 by leveraging her lender to permit a loan modification and by catching up on payments. She has earnestly disputed the accounts at SOR allegations 1.b, 1.e, 1.f, and 1.h. She has satisfied the obligations at 1.c, 1.i, and 1.k., and is working on devising repayments plans for the delinquent accounts noted at 1.g and 1.m. She voluntarily abandoned the Chapter 13 bankruptcy action, noted at 1.d, in order to personally and directly honor her debts, including her mortgage.

Applicant explained that her gambling was purely a social activity, limited to games at home with her children or to minor wins or losses on her nights on the town. (1.j). Finally, she provided evidence that her TY 2010 taxes, which were filed approximately 10 months late through accident or oversight, have been filed (1.l) Only the \$1,000 owed to her state taxing authority, noted at SOR allegation 1.m, lacks evidence of progress, although she wrote after the hearing she has made a first payment of \$50 to that entity. Given the effort thus far demonstrated, and the increase in income soon to be realized with the sale of her father's home and her daughter's graduation from school, Applicant now has the ability and the commitment to honor her significantly reduced debt balance. The financial counseling she received should help her continue to live within her present budget. I find AG ¶ 20(c), AG ¶ 20(d), and AG ¶ 20(e) apply. Due to a lack of documentary evidence regarding her \$50 payment to her state taxing authority, however, AG ¶ 20(g) does not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 51-year-old analyst earning about \$73,000 a year. She has worked for the same defense contractor since 2013. A high school graduate, she is married and has three children, ranging from 15 to 21.

Applicant received financial counseling in 2012, around the time she filed for Chapter 13 bankruptcy protection as a ploy to protect her home from foreclosure. She progressed on her bankruptcy payments until the end of 2014, when she finally convinced her mortgagor to approve a home loan modification. This measure helped her avoid foreclosure and get her back on surer footing with regard to her mortgage.

Presently, she has a past-due balance of under \$3,000, a situation she was poised to address within 30 days after her last submissions.

With regard to her other debts, Applicant has either paid them or arranged to have them subject to a repayment plan. She has a sound basis for disputing four of the debt balances reflected in the SOR. While the federal tax lien has been satisfied, she has yet to provide sufficient documentary evidence showing she has started making payments on a \$1,000 debt owed to her state. She has, however, credibly explained that she was 10 months late in filing her TY 2010 state and federal tax returns due to distraction or oversight. She also credibly explained that her gambling is a social activity with strict limits for wins and losses, and not an unbridled or abused activity that would be the cause of significant debt. In addition, she explained that an entry by her attorney regarding gambling losses on her bankruptcy petition was an error.

While Applicant has more work to be done to put the entirety of her debts and issues to rest, she has made a highly significant start. With the sale of her father's home and the completion of her obligations as his estate's co-executor, as well as the graduation of her daughter, Applicant now has considerably more available income to apply to her last remaining debt balances and to save for future contingencies. Given her progress to date, and her knowledge that resolution of these matters are a predicate to maintaining a security clearance, I find Applicant 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:	FOR APPLICANT
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Subparagraphs 1.a-1.m:	For Applicant
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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. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge