



**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. 16-03889

**Appearances**

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

03/29/2018

**Decision**

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

**Statement of the Case**

On January 18, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).<sup>1</sup> On February 10, 2017, Applicant responded to the SOR, admitting four of the six allegations raised and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on May 2, 2017. The matter was scheduled for a June 15, 2017, hearing. The hearing was convened as scheduled.

The Government offered ten documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-10. Applicant gave testimony, introduced one witness, and offered seven documents, accepted without objection as Exs. A-G. The Government moved to withdraw the allegation noted as 1.d in the SOR.

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<sup>1</sup> 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 has been again amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017.

Noting no objection, the allegation was withdrawn. The record was left open through July 27, 2017, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on June 23, 2017. On June 27, 2017, Applicant submitted three additional documents. After review by the Government, they were admitted without objection as Exs. H-J. The record was closed on July 27, 2017. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is a 51-year-old associate with a consulting firm. She has worked for her present employer since December 2016, earning an annual salary of about \$120,000. She started this position after becoming unemployed in November 2015.<sup>2</sup> Applicant was first granted a security clearance in 2006. She has earned both a bachelor's degree and a master's degree. Applicant is single and has never been married. She has no children. Applicant has not received financial counseling.

In the past decade, Applicant has purchased four properties. Each one was bought as a new residence. With one exception, each property was retained as a rental property as she moved into her next property. (Tr. 44) While she once balanced three properties and lived in one, she now only owns one property, her home. She has no intention of again buying investment properties.

At issue in the SOR are the following delinquent accounts, as reflected in Applicant's credit reports:

1.a – Federal tax lien entered against Applicant in September 2015 in the approximate amount of \$92,401. Collection temporarily suspended. This debt concerns a property purchased in 1999 for \$125,000, but sold in 2013 for \$80,000. (See Tr. 45-47) The balance now owed is \$93,401, including considerable penalties and interest. (Tr. 47) Applicant apprised the Internal Revenue Service (IRS) she had recently become unemployed. By letter of June 2016, the IRS informed Applicant that it had temporarily closed this collection account due to its determination that Applicant did not have the ability to make payments on the debt. (Ex. A) Now employed, Applicant proactively contacted the IRS to inform it that she has the funds to make payments on the collection account, and is willing to do so. (Tr. 48) She presented a letter from her Certified Professional Accountant (CPA), who has helped her since at least 2015, indicating that he has contacted the IRS in order to devise a repayment schedule, and made an offer to settle the debt. (Ex. A)

1.b – State tax lien entered against Applicant in March 2012 in the approximate amount of \$ 630. Paid. Initially, Applicant was unaware that this debt was related to a utility

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<sup>2</sup> Applicant's unemployment status occurred because her project, which had paid her approximately \$127,000 a year, had ended, and she could no longer travel for new projects because she was helping her sibling, who had entered hospice care. (Tr. 43)

service that continued to bill her for water after she sold the property. (Tr. 51) This debt was paid out of proceeds from the 2015 sale of the property. (Tr. 51, 57-58; Ex. D)

1.c – 180-days past-due in the amount of \$56,080 on a real estate mortgage, on which a notice of default was filed in May 2015. Satisfied. This debt is related to what became an investment property. It was originally purchased in 2003 for \$215,000. In about 2009-2010, a tenant did not pay rent, destroyed the residence, and had to be evicted. Applicant tried to restore the home to habitability. Then in about 2010-2011, Applicant got very sick, was diagnosed with both Lupus and rheumatoid arthritis, and could not work on a full-time basis for a year or so. Therefore, she tried unsuccessfully to return the house to the mortgagor. This was at the time she owned three properties simultaneously and money was already tight. She withdrew about \$50,000 from her retirement account in the form of a hardship loan to make payments, but the home was ultimately sold through short sale. The mortgage and this past-due sum were satisfied from the proceeds. (Tr. 55-56; Ex. B).

1.d – Withdrawn.

1.e – Mortgage foreclosed upon in 2013 – Status unclear. This first mortgage is related to a property purchased in 2006 for about \$500,000. By the time Applicant tried to sell it in 2011, the value on the property had plummeted to about \$128,000. (Tr. 60) Her attempt to refinance was rebuffed. She also attempted to seek a loan modification or conduct a short sale, but without success. (Tr. 61) Despite her obtaining a short sale bid, the mortgagor was unmoved. The property went into foreclosure in November 2011. Therefore, Applicant filed a complaint against the lender to stay the foreclosure proceeding. Unsuccessful, the house went into foreclosure, ultimately selling at auction for \$128,000 in 2013. (Tr. 62) Applicant received a cancellation notice concerning the debt, but has no documentary evidence to substantiate this assertion. (Tr. 63-64) She intends to obtain a copy of the documentation previously sent to her.

1.f – Second mortgage on same property as above. Status unclear. This mortgage was charged-off. At present, it is unclear what the status is on this account with regard to a deficiency balance, if any. (Tr. 63-65) It represents a similar situation as the one described in 1.e , above.

Today, Applicant describes her financial situation as “stable.” (Tr. 65) She had about \$2,250 in her savings and checking accounts, and a retirement account with a balance of approximately \$225,000. The 2013 property sale settled all of Applicant’s debts and gave her sufficient money to update her home to meet her illness’ demands. She has no desire to invest in real estate again. Other than a \$15,000 vehicle, she has not made any major purchases in the past three years. Her CPA continues to help her with regard to her remaining unpaid debt and is actively working on her remaining tax issue and mortgage situation. Applicant is presently willing and able to pay off her remaining debt through reasonable payment plans or by direct payment with money now being saved. She has acquired no new delinquent debts.

## **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. Under the Directive, 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 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 two outstanding tax liens, was considerably past-due on a mortgage account, and had two loans that were charged-off or in foreclosure related to the same property. This is sufficient to invoke 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; and

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.

Under these facts, four 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; and

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

At least in part, Applicant's delinquent debt were the result of health issues that began to plague her around 2010-2011 and effected her ability to work. Her ability to address the debt was further complicated later by her period of unemployment from November 2015 to December 2016. In the interim, she tried to work with her mortgagors, attempted a short sale, hired a CPA to help with her tax issues, and was willing to rid herself of properties she could no longer afford. Given these facts, AG ¶ 20(b) applies.

At this point, Applicant has approached the IRS about instituting a payment plan on the federal tax lien on which the IRS had temporarily suspended collection (1.a); paid the balance owed on a state tax lien (1.b); satisfied the past-due amount owed on a mortgage (1.c); and is intent on finding paperwork showing that two accounts were

canceled, or institute payments on them if they are still outstanding (1.e-1.f). Given the effort thus far shown, I find AG ¶ 20(d) applies.

### **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 associate with a consulting firm. She started working there in December 2016, after a little over a year of unemployment. She now earns about \$120,000 a year in salary. She has maintained a security clearance without adverse incident since 2006. She has earned a master's degree. Single, she has no children. She has not received financial counseling.

For about a decade, Applicant moved from one property to another, retaining her last residence for rental purposes. At one point, she was balancing payments on three properties. Then, in 2010-2011, Applicant was diagnosed with Lupus and rheumatoid arthritis, and found it too difficult to work at full capacity. This adversely impacted her ability to generate income and make payments related to her properties. For the next couple of years, she worked with her mortgagors and banks, often without success on such matters as her requests for short sale or mortgage modification. Ultimately, however, she satisfied a state tax lien and satisfied a substantial due balance on one of her mortgages.

With her new job, Applicant is now able to make payments on a federal tax lien the IRS had temporarily suspended, citing to her then-inability to make payments. Contact about this plan has been conveyed by her CPA to the IRS and they are awaiting feedback from the IRS. Finally, two mortgage accounts on another property are seemingly addressed. Applicant believes the debts were cancelled, but she has no documentary proof to that effect. It is her aim to find sufficient documentary evidence to determine the status of those two debts.

Applicant has the motivation, intention, and financial means to address any remaining debts owed. She has the help of her CPA to assist her toward that goal. Applicant has acquired no new delinquent debts. She is now more conscientious about her finances. She has articulated a reasonable strategy for addressing any balances yet to be found unpaid. Given all these considerations, I find Applicant has 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
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e-1.f:	For Applicant

## **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.

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Arthur E. Marshall, Jr.  
Administrative Judge