



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 17-00797
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary Margaret Foreman, Esquire, Department Counsel  
For Applicant: *Pro se*

02/12/2018

**Decision**

HOGAN, Erin C., Administrative Judge:

On April 10, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006. The AG were superseded by new AGs effective on June 8, 2017. My outcome would be the same under either AG.

On June 21, 2017, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on July 26, 2017. Applicant received the FORM on August 31, 2017. Applicant had 30 days to submit a response to the FORM. She timely submitted a Response to the FORM. (Item 7) On October 10, 2017, the FORM was forwarded to the Hearing Office and assigned to me on February 1, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## Findings of Fact

Applicant is a 59-year-old employee of a DOD contractor seeking to maintain a security clearance. She has worked for her current employer since March 2015. She has held jobs that require a security clearance since 1985. Her highest level of education is high school. She is married and has two adult daughters, an adult step-daughter, and an adult step-son. (Item 2)

On February 28, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing in conjunction with her new job. (Item 3) A subsequent background investigation revealed Applicant had several delinquent accounts, to include a charged-off mortgage account in the amount of \$127,889 (SOR ¶ 1.a: Item 5 at 6; Item 6 at 1); a charged-off credit card account in the amount of \$1,575 (SOR ¶ 1.b: Item 5 at 4, 10; Item 6 at 2); a \$706 charged-off credit card account. (SOR ¶ 1.c: Item 5 at 10; Item 6 at 2); and a \$69 account placed for collection. (SOR ¶ 1.d: Item 6 at 2)

Additional delinquent accounts include a \$2,192 judgment filed in 2011 on behalf of a bank (SOR ¶ 1.e: Item 5 at 3; Item 6 at 4); a \$2,832 judgment filed against Applicant's husband's company in 2013 (SOR ¶ 1.f: Item 5 at 3); a \$195 cell phone debt that was placed for collection (SOR ¶ 1.g: Item 5 at 3); and a \$133,164 mortgage account placed for collection. (SOR ¶ 1.h: Item 5 at 8)

Applicant says several factors contributed to her and her husband's financial problems. In 2005, they discovered her husband's business partner had opened a new construction business and was funneling work to his new company. The business partnership dissolved in October 2008. Shortly after that, the housing downturn resulted in her husband losing several of his major customers. The construction business was insolvent by 2011. Applicant became the principal breadwinner. (Item 2 at 2-3; Item 3 at 51-52; Item 7 at 2-3)

In addition, Applicant's husband developed several medical issues, resulting in several surgeries in 2008, 2009, 2010, and 2014, which resulted in her husband being unable to work for months at a time. His last surgery left him unable to work for one year. Around the time of Applicant's husband's last surgery, Applicant was laid off in December 2014, because her contractor lost the contract. She was unemployed until March 2015. She looked for any job she could find. Her annual income at the time she was laid off was \$80,600. Her current annual income is \$45,926. (Item 2 at 2-4, 10-66; Item 3 at 13, 51-52)

When they started having financial problems, Applicant and her husband put two homes and three parcels of land up for sale. One home was sold at a short sale. The other home was sold for the value of the loan. They moved into the conference room of the building where her husband ran his construction business. They lived there for a year. In April 2010, they moved in with her daughter. Applicant paid her daughter what

rent she could afford. Her daughter eventually put her house up for sale, so they moved back into the conference room. (Item 2; Item 3 at 51-52)

Around 2009-2010, Applicant and her husband could no longer afford the taxes on the parcels of land they owned. They turned two of the parcels of land back to the banks. In 2012, they turned the third parcel of land back to the bank. Applicant claims the loan on the land was forgiven and the land was sold. They received a 1099 for the balance of the loan. (Item 2)

Applicant and her husband opened a seasonal farmer's market in the spring of 2010 in order to try to make some extra money. In 2011, looking for ways to earn extra money, Applicant's husband went into business with a friend to open up a barbeque restaurant. Over a period of two years, he renovated and converted the first floor construction office into a restaurant. The restaurant opened in September 2015. (Item 2)

The current status of the debts alleged in the SOR are as follows:

SOR ¶ 1.a, \$127,889 charge-off account: Applicant states this was the loan for one of the parcels of land she and her husband owned. The loan was forgiven by the bank and a 1099 was filed to pay taxes on the remaining balance after forgiveness. The president of the bank wrote a letter affirming that this occurred. The debt is not listed on her most recent credit report, dated September 24, 2017. (Item 2 at 5,74)

SOR ¶ 1.b: \$1,575 charged-off account: Applicant has been making \$50 monthly payments to the collection agency. In June 2017, she increased the payments to \$50 twice a month. The balance as of June 13, 2017 was \$1,325. The balance on her September 2017 credit report is \$1,075. (Item 2 at 5-6, Item 7, encl 3, at 7-12, 18)

SOR ¶ 1.c: \$706 charged-off credit card account: Applicant settled this account in June 2017 for \$360. (Item 2 at 6; Item 7, encl 2, at 4-6, 23)

SOR ¶ 1.d: \$69 account placed for collection: Applicant states that this was a chiropractor bill which she incurred while unemployed. She claims she has since paid the bill. It does not appear on her September 2017 credit report. (Item 2 at 6; Item 7, encl 5, at 14-47)

SOR ¶ 1.e: \$2,192 judgment: Applicant says that this reflects the balance owed on the loan when they turned in one of their properties to the bank. She admits it remains delinquent. They were supposed to make three payments to the bank. They were able to make two payments, but not the last payment. The bank sued them for the entire balance. In September 2017, Applicant reached out to the court to set up a payment plan of \$50 a month. It is unknown whether court accepted this offer. The judgment is not listed on her September 2017 credit report. (Item 2 at 6; Item 7, encl 4, at 13)

SOR ¶ 1.f: \$2,832 judgment: Applicant denies this debt. She claims the judgment was entered against her husband's construction company. He was unable to pay a subcontractor because the contractor defaulted on the contract. This is not on Applicant's September 2017 credit report. (Item 2 at 6)

SOR ¶ 1.g: \$195 charged-off cell phone account: Applicant claims this is a disputed charge after she cancelled a contract with a cell phone company. The company told Applicant that she would get service inside a metal building, (i.e. her husband's construction company). She and her husband tried the service for three months. The only way to get a cell phone signal was to go outside. When she called to complain, the cell phone company promised to provide a signal booster. They never received a signal booster so they cancelled the contract. In her response to the FORM, Applicant mentioned that she would contact the cell phone company to settle the account. (Item 2 at 6; Item 7 at 1, 34)

SOR ¶ 1.h: \$133,164 account with a bank placed for collection: In her response to the SOR, Applicant said that this debt was for another land parcel that she and her husband turned into the bank. She believed the loan was forgiven and they received a 1099 for the loan forgiveness. She said she was working with her accountant to obtain this information. In her response to the FORM, Applicant stated that she contacted the bank and they requested a financial statement and two years worth of income taxes (i.e. tax returns) in order to provide a 1099. It is not clear whether this is to verify a 1099 previously issued or to evaluate whether the bank will issue a 1099. The debt is not listed on her September 2017 credit report. (Item 2 at 6; Item 7 at 1)

Applicant has done everything she can to stay current with her creditors and to resolve outstanding debts. Her most recent credit report from September 2017 indicates that she resolved several debts that were not alleged in the SOR, which indicates that she has worked to keep her debts under control. In addition to her full-time job, Applicant works part-time hours at the seasonal farmer's market and at her husband's restaurant. (Item 7 at 19-22, 24-32, 35, 36)

### **Whole-person Factors**

The Director of Security for Space and Naval War Systems Center Atlantic, states he met Applicant ten years ago while she was serving as an assistant to a Secure Room Manager in a very large restricted area. She performed flawlessly in her role. Applicant has always been timely, trustworthy, and professional. He is aware of her current financial situation. He has no doubt that she will work through her financial challenges and continue providing for her family. He recommends her for a security clearance. (Item 2 at 67)

The president of Applicant's current employer states Applicant is an employee in good standing. Applicant receives compliments for her diligence and focus on customer service. Applicant has never given her cause to doubt her honesty and integrity. (Item 2 at 68)

Applicant's certified public accountant (CPA) wrote a letter noting that her firm has prepared Applicant and her husband's business and personal tax returns since 2003. She notes that Applicant's husband's construction business was seriously affected by the economic downturn in 2009. The business' gross revenues decreased by over \$1,000,000 in 2009 and has never really recovered. She said Applicant and her husband are honest and trustworthy individuals who found themselves in unfortunate circumstances beyond their control. She verifies that they relinquished some of their real estate holdings and worked on their remaining debts with only Applicant's income to support them. They make payment arrangements with their debtors and once one debt gets paid, they begin working on another. She says that they had to make payment arrangements with her firm in order to get their income tax filings up to date. Applicant's husband has had health issues, which has made it difficult for him to work since 2008. She describes Applicant and her husband as good people who are doing the best they can with the resources they have. (Item 2 at 69)

A former Facility Security Officer (FSO) has known Applicant since 2004. She worked with her, was her FSO, and her friend. Applicant has always been honest and trustworthy. Applicant was diligent in all aspects of her security training. (Item 2 at 72)

Other co-workers and supervisors describe Applicant as "trustworthy and dependable." She was the "go-to" person if you wanted something done quickly. She was an asset to the organization. (Item 2 at 70, 71 and 73)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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. The administrative judge's over-arching 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 access 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 that 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 EO 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

All of the above disqualifying conditions apply because Applicant incurred significant delinquent debts. The mortgage accounts in the SOR account for \$261,000 of the debt. The remaining six delinquent accounts total approximately \$7,569.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

The concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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

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

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

AG ¶ 20(a) partially applies because most of Applicant's financial issues happened as a result of the 2008 housing crash which adversely affected her husband's construction business. Although Applicant is still working to resolve her remaining delinquent debts, the record evidence reveals that Applicant has been working on paying off her debts to include several that were not alleged in the SOR.

AG ¶ 20(b) applies because circumstances beyond Applicant's control adversely affected her financial situation. The dissolution of her husband's business partnership in 2008, the housing market downturn in 2008, her husband's health issues, Applicant's job loss, unemployment, and her reduced income all contributed to her ability to pay her creditors. Circumstances beyond her control contributed to Applicant's financial problems. Although, she is still resolving some delinquent accounts, I find she acted responsibly under the circumstances. For several years, Applicant provided the majority of the family income, including when her annual income went from \$80,000 annually to \$45,000. She and her husband realized they could not afford their real estate payments so they put their two houses and three parcels of land up for sale. They were able to sell the houses. They eventually returned the three parcels of land back to the banks. Applicant paid what she could and is working on resolving several outstanding debts. It is remarkable that during these past challenging years, Applicant only incurred delinquent consumer debt of \$7,569. It indicates that she was watching her expenses. For this reason, I find Applicant behaved responsibly under the circumstances.

AG ¶ 20(d) applies with respect to the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.e. Applicant resolved the debt alleged in SOR ¶ 1.a by turning the property back into the bank. The bank provided a letter indicating they were satisfied with this outcome. Applicant either paid or is in payment agreements with the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e. She demonstrated a good-faith effort to resolve her debts. I am confident that she will continue to work on resolving her remaining debts.

### **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 the 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.

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 Applicant's favorable employment history. I considered that she is held in high regard by her superiors and co-workers. I considered all of the circumstances beyond Applicant's control, which contributed to her financial problems. She is doing her best to resolve the delinquent debts. The security concerns raised under financial considerations are mitigated.

### **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.h:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ERIN C. HOGAN  
Administrative Judge