



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-01549
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

02/12/2018

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).<sup>1</sup>

<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on June 21, 2017, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 13, 2017. The evidence included in the FORM is identified as Items 3-9 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on September 20, 2017. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to any of the Government's evidence, nor did she submit any evidence on her behalf. Items 3-9 are admitted. The case was assigned to me on December 19, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.f. She denied the allegations in SOR ¶¶ 1.c-1.e, and 1.g-1.j. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 51 years old. She has worked for a defense contractor since October 2011. She had periods of unemployment from November 2009 to April 2010, and January 2007 to May 2007. She is twice divorced and has two adult children. She has a high school diploma. She received an entry level separation from the Marine Corps before completing boot camp.<sup>2</sup>

The SOR alleged Applicant experienced a home foreclosure in 2009 and a dismissed Chapter 13 bankruptcy in May 2010. The SOR also alleged Applicant had eight delinquent debts or judgments totaling approximately \$49,801. The allegations are supported by credit reports from January 2016 and April 2017, court records, Applicant's statement to a defense investigator in May 2016, and Applicant's SOR admissions.<sup>3</sup>

Applicant admitted her home was foreclosed when she could not make the payments. She also admitted that she filed for Chapter 13 bankruptcy in 2008. A payment plan was established in 2008 requiring her to make \$91 monthly payments for 60 months. In 2010, when she was unable to make her payments under the plan, her Chapter 13 bankruptcy was dismissed. She claimed she was unable to make the payments because of losing her job.<sup>4</sup>

Applicant did not present documentation showing payment or the establishment of payment plans for the remainder of the SOR debts. She disputed some of the debts, but she failed to present documentary evidence supporting her disputes. When asked

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<sup>2</sup> Item 2.

<sup>3</sup> Items 2, 4-9.

<sup>4</sup> Items 2, 6.

by a defense investigator about some of the disputed debts, Applicant indicated she would contact the creditors to find out more information. She presented no evidence showing any contact with the creditors for the SOR debts. There is no evidence of financial counseling. The debts remain unresolved.<sup>5</sup>

## **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 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.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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<sup>5</sup> Items 2, 4-5, 7-9.

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**

AG ¶ 18 expresses the security concern for financial considerations:

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 notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant has delinquent debts and judgments that remain unpaid. She lost her home through foreclosure due to nonpayment and she failed to complete a Chapter 13 payment plan resulting in dismissal of her bankruptcy case. I find all the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following 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 credit counseling service, and 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 debts are recent and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's periods of unemployment may be considered a condition beyond her control, however, she failed to take responsible actions to address her debts. She attempted to use Chapter 13 bankruptcy to resolve her debts, but she failed to make the monthly plan payments resulting in dismissal. I find AG ¶ 20(b) partially applies. She also failed to address the remaining SOR debts. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do not apply. She disputed some of the debts, but she failed to produce documentation to substantiate the basis of the disputes. AG ¶ 20(e) does not 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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's periods of unemployment, and the circumstances that led to her financial difficulties. Applicant has not established a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.<sup>6</sup>

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.j:	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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Robert E. Coacher  
Administrative Judge

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<sup>6</sup> I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.