



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



In the matter of: )  
)  
) ISCR Case No. 17-01889  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/12/2018  
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**Decision**  
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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 31, 2016, Applicant submitted a security clearance application (SCA). On June 7, 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. (Item 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 Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented by the DoD on September 1, 2006.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on June 19, 2017, and requested that her case be decided by an administrative judge on the written record in lieu of a hearing. (Item 1) On July 7, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven items, was mailed to Applicant and received by her on July 24, 2017. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. She responded to the FORM in a timely manner. She did not object to Items 1 through 7, which are admitted into evidence. Likewise, Department Counsel did not object to Applicant's Exhibit A, (AE A), which is admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 13, 2017.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 31 years old and employed by a Federal government contractor since July 2015. She is married to her spouse since 2006. She has two sons, ages 8 and 6, and a 16-year-old stepdaughter. She earned a Bachelor's degree in 2009. (Item 2)

In May 2017, Applicant had 11 delinquent accounts totaling \$52,914. (Items 1, 4, and 5) Under the Financial Section of her SCA, she disclosed several delinquent debts and listed that the family suffered tremendous financial strain after her husband was laid off twice from his job within the last year and a half. During this time she was a stay-at-home mother to their two young sons. Their annual income had been approximately \$80,000, but then it dropped to \$25,000. This large reduction in income caused severe financial hardship.

Applicant stated in her answer that she and her husband are both currently employed full time with the same Federal government contractor. They decided to file for Chapter 7 bankruptcy relief in May 2017 after they were unable to pay the accumulated debt from two years of reduced income. The delinquent accounts cited in the SOR were included in their bankruptcy. In July 2017, the bankruptcy court issued an Order to Show Cause to the debtors inquiring why the case should not be dismissed for their failure to pay the filing fee. (Items 1, 6 and 7) Applicant provided documentation, after receipt of the FORM, showing the earlier Order to Show Cause had been dismissed after the court allowed them to pay their filing fee in installments. Their Chapter 7 bankruptcy is currently pending. None of the debts at this juncture have been discharged. A review of the debts listed in the bankruptcy records included unpaid state tax, consumer debts, medical accounts, the deficiency balance totaling almost \$22,000 for a repossessed vehicle, an unpaid utility account, and over \$32,000 for Applicant's unpaid student loans. Their liabilities totaled \$210,579. (Item 6) No other evidence was provided by Applicant. (AE A)

## 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 AG 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(c), 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. 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 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 an applicant may deliberately or inadvertently fail to 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 provides conditions that could raise security concerns. The following are potentially applicable:

- (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's financial problems began in late 2014 after her husband was laid off by his employer. At the time, Applicant was not working, and the family income dropped from \$80,000 to \$25,000. During the last two years after her spouse was laid off, they accumulated at least 11 delinquent accounts totaling \$52,914. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 experienced financial hardship after her spouse was laid off twice by his employer within a relatively short period of time. This situation was beyond Applicant's control and adversely affected her finances. There is insufficient information to determine whether the circumstances are likely to recur. Her spouse has since found new employment, as did Applicant in July 2015. Applicant must also establish that she acted responsibly under the circumstances for the full application of the mitigating condition. Applicant filed for Chapter 7 bankruptcy relief almost two years after obtaining full-time employment. She did not provide sufficient information to explain why she chose to file bankruptcy over setting up payment arrangements with her creditors. There is insufficient evidence to determine that she acted responsibly under the circumstances. She did not provide a budget to substantiate her current financial standing. The debts are unresolved and pending in bankruptcy. AG ¶¶ 20(a) and 20(b) do not apply.

The filing of a bankruptcy case in the United States Bankruptcy court requires the debtors to enroll in financial counseling. Applicant's bankruptcy petition disclosed that she and her husband received a briefing from an approved credit counseling agency within 180 days prior to filing the bankruptcy petition. (Item 6) AG ¶ 20(c) applies.

There is no evidence to show that Applicant is adhering to the rules set by the bankruptcy court in order to have her debts discharged. The record evidence in this case shows only that the case is pending and the debts are not resolved. AG ¶ 20(d) 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 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG (d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's explanation of suffering severe financial strain after her husband had been unexpectedly laid off twice from his employer within a relatively short span of time. The family income was reduced by more than two-thirds during this period. Both of his job lay-offs were incidents beyond her control. Applicant and her spouse have since found steady employment with the same Federal government contractor. Applicant did not provide an explanation as to why she waited almost two years to file for bankruptcy in May 2017, despite obtaining full-time employment in July 2015. There is insufficient evidence to show that she acted responsibly under the circumstances, or otherwise made a good-faith effort to repay overdue creditors.

In reviewing all the evidence of record, I conclude that Applicant has not mitigated the security concerns raised by her delinquent debt cited under Guideline F. Applicant is attempting to resolve her accumulated debt through a Chapter 7 bankruptcy, but there is no evidence that those debts have been discharged. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude

Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

### **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
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Subparagraphs 1.a-1.k:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge