



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



In the matter of:

ISCR Case No. 18-00243

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

July 25, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On February 16, 2018, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on March 20, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 26, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on May 2, 2018, and the hearing was convened as scheduled on June 12, 2018. The Government offered nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. Applicant testified on her own behalf.

The record remained open until close of business on June 28, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted seven Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1, through 7, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 20, 2018.

### **Findings of Fact**

Applicant is 48 years old. She is married with two adult children. She has a Bachelor's degree in business management. She holds the position of Goods Movement Specialist with a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant is indebted to nine separate creditors totaling approximately \$160,000, including over \$50,000 in tax liens to the government, and almost \$50,000 in defaulted student loans. In her Answer, Applicant admits each of the allegations. Credit reports of the Applicant dated February 3, 2009; September 13, 2017; and April 20, 2018, reflect that each of these debts were owing at one point. (Government Exhibits 4, 5 and 6.) Applicant has been working for her current employer since December 2008.

Applicant has always been the sole financial provider for her family. Her husband is a custom upholsterer and the furniture industry has unstable work patterns. In 2008, he lost his job, and they were forced to use credit cards to subsidize their income. Applicant explained that given their situation, they decided not to share bank accounts. Applicant was able to carry her own financial obligations, but was unable to pay her husband's. In 2002, he suggested that they file for Chapter 7 bankruptcy to dismiss their credit card debt which, at that time was under \$50,000.

In 2009, Applicant and her husband were audited by the Internal Revenue Service (IRS) twice in two years. It was at that time that they discovered that beginning in 2006, the accountant that they had hired to file their income tax returns had errors in the returns without their knowledge. Applicant did not have the supportive evidence to backup the return because the information that had been provided on their income tax returns was wrong. (Tr. p. 39.) Some deduction were taken improperly. (Tr. p. 40.) The tax returns erroneously indicated that Applicant's husband was self-employed when he was not self-employed. Thus, the accountant had taken deductions that were not warranted. As a result, a large tax debt was assessed against the Applicant. To remedy this problem, in 2009, Applicant set up a payment plan with the IRS and made regular monthly payments, anywhere between \$800 and \$1,300 monthly to resolve the debts. Although there were short periods of time when she would ask for a short relief period, when she did not make the payments, overall, she continued to make the

payments as time passed. Applicant contends that she has paid the debt in full and has provided a copy of the Release of Lien. (Applicant's Exhibit A.) Applicant states that the final payoff to the IRS was issued to the United States Treasury in the amount of \$7,385.13 with a date of June 7, 2017, reflecting payment in full. (Tr. p. 45.)

In regard to her delinquent student loans accounts, in November 2017, Applicant requested to consolidate the loans, and since then has set up a regular monthly payment of \$536 which is automatically deducted out of her bank account. She has provided a copy of the payment history. The student loans are now in good standing.

The following delinquent debts were listed in the SOR and have been resolved.

1.a. Applicant was indebted to the IRS for a tax lien entered against her in September 2012 in the approximate amount of \$56,622. As of June 1, 2017, Applicant has paid off the account and provided a copy of the IRS Release of Federal tax lien. (Applicant's Exhibit A and Applicant's Post-Hearing Exhibit 1.)

1.b. Applicant was indebted to the IRS for a tax lien entered against her in August 2012 in the approximate amount of \$53,316. Applicant has paid off the account and provided a copy of the IRS Release of Federal tax lien. (Applicant's Exhibit A and Applicant's Post-Hearing Exhibit 1.)

1.c. Applicant was indebted to a creditor for a charged off account in the approximate amount of \$215. Although her most recent credit report still shows the debt as owing, (Government Exhibit 6) Applicant provided documentation from the creditor that shows that the debt has been paid in full. (Applicant Exhibit C, and Tr. p. 27.)

1.d. Applicant was indebted to a creditor for a delinquent student loan account that was placed for collection in the approximate amount of \$24,041. Applicant has consolidated the loan and is following the agreed upon repayment plan. (Applicant's Exhibit B.)

1.e. Applicant was indebted to a creditor for a delinquent student loan account that was placed for collection in the approximate amount of \$23,541. Applicant has consolidated the loan and is following the agreed upon repayment plan. (Applicant's Exhibit B.)

1.f. Applicant was indebted to a creditor for a delinquent student loan account that has been placed for collection in the approximate amount of \$1,248. Applicant has consolidated the loan and is following the agreed upon repayment plan. (Applicant's Exhibit B and D.)

1.g. Applicant was indebted to a creditor for an account that has been placed for collection in the approximate amount of \$70. Applicant explained that this was a cable box return in 2011. She has not been able to find the receipt and has no proof that she returned them. Applicant's Post-Hearing Exhibit 3 shows that the debt has been paid in full.

1.h. Applicant was indebted to a creditor for an account that that has been placed for collection in the approximate amount of \$50. Applicant explained that this was for an old medical bill that she paid on June 15, 2018, in the amount of \$186.26. Applicant's Post-Hearing Exhibit 4 shows that the debt has been paid in full.

1.i. Applicant filed for Chapter 7 bankruptcy in March 2002. Her debts were discharged in July 2002. (Applicant's Exhibit D.)

Applicant has provided a copy of her monthly budget for 2018, which shows her monthly expenses. She currently earns about \$103,000 annually. Her husband earns about \$800 monthly. She has no savings account, but does have a 401K with her employer that has about \$118,000. (Tr. p. 58.) After paying all of the household bills, and regular monthly expenses, at the end of the month she has about \$604.55 left in discretionary funds.

A letter from the Applicant's current manager dated June 24, 2018, reflects that Applicant is considered to be a valuable asset to the company and has played a critical role in their department. Her manager has known the Applicant for the past ten years. Applicant is considered to be responsible, trustworthy, an individual with high work ethics and personal integrity. She is recommended for a security clearance. (Applicant's Post-Hearing Exhibit 6.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 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 the applicant or proven by Department Counsel.” The applicant 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 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 adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;

(c) a history of not meeting financial obligations; and

(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.

Applicant has always been the main financial provider of her family household, as her husband's work is unstable. He lost his job in 2008 and lived on credit cards, and in 2009, they ran into tax problems that caused them serious financial hardship. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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, or 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

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

Since 2008, Applicant has been working diligently to resolve her delinquent debt. At this point, she has paid off and resolved her delinquent tax matters, and the Federal tax lien has been released. She has consolidated her student loans and is making regular monthly payments that are automatically deducted from her bank account to pay them. She has paid off her other delinquent debts and/or is in the process of doing so immediately. She understands the importance of living within her means and paying her bills on time. She also understands the responsibilities that come along with possessing a security clearance and has demonstrated financial responsibility. She is now on the correct financial path. She has acted reasonably and responsibly under the

circumstances, and has demonstrated good judgment, reliability, and trustworthiness. The Financial Considerations concern has been mitigated.

### **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 relevant 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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the 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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge