



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



In the matter of:

ISCR Case No. 18-00799

Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Department Counsel  
For Applicant: *Pro se*

November 19, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On February 10, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On April 26, 2018, 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 Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on May 7, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 27, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on August 28, 2018, and the hearing was convened as scheduled on September 24, 2018. The Government offered

six exhibits, referred to as Government Exhibits 1 through 6, 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 October 23, 2018, to allow Applicant the opportunity to submit additional supporting documentation. Applicant failed to submit any additional documents. DOHA received the transcript of the hearing (Tr.) on October 3, 2018.

### **Findings of Fact**

Applicant is 66 years old and is divorced a second time. She has a high school diploma. She is employed by a defense contractor is as a senior laboratory technician. She is seeking to obtain a security clearance in connection with her employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR identified nine delinquent debts totaling in excess of approximately \$90,000. Applicant admitted each of the allegations set forth in the SOR. (Applicant's Answer to SOR.) Credit reports of the Applicant dated March 7, 2018; and March 29, 2017, confirm the debts listed in the SOR. (Government Exhibits 3 and 4.) Applicant began working for her current employer in about September 2016. She has worked in the defense industry for the past 27 years.

Applicant testified that she retired from the defense industry, got married, and went into business with her second ex-husband in 2000. Over time, their marriage and business went bad, so most of her money that she invested from her retirement account is now gone. She is now divorced, and back to work.

1.a. and 1.b. She explained that when she got married to her second husband in 2000, she withdrew \$50,000 from her 401(k) to invest in his tile business. She also withdrew \$25,000 to open up a sandwich shop for herself. She ran her business for several years before she got sick and tired and closed it. It was understood between she and her husband that they would both share the tax liability. As it turns out, they did not file their income tax returns for tax years 2013, 2014 and 2015, because they did not have the money to pay their taxes. When they divorced, neither of them paid the taxes. Applicant admits that she currently owes about \$90,000 in back Federal and state taxes. (Tr. p. 37.) She has also failed to file her state income tax returns for tax years 2012, 2013, 2014, and 2015. Applicant provided a copy of her divorce decree that indicates that her husband was to keep the business and pay all debts associated with the tile company, including the tax obligations owed by the corporation. (Applicant's Exhibit D.) Applicant states that she recently made an appointment with the IRS to sit

down and go over her tax liabilities. She states that since 2016 she has been paying \$100 monthly toward the debt. (Tr. p. 41.) She states that in the past she was told that in order to hire an attorney to help her she needed \$7,000 which she does not have. She currently has a restraining order against her ex-husband for domestic violence. (Tr. p. 40.) She states that in 2015 he kept harassing her and damaged her thumb. Applicant states that she still owes the attorney for fees for representing her in the divorce.

Other delinquent debts listed in the SOR also became owing:

1.c. A delinquent credit card was charged off in the approximate amount of \$1,796. Applicant claims that she has made payment arrangements of \$100 monthly, but is not sure of the current status. (Tr. pp. 48-49 and Applicant's Exhibit B.)

1.d. A delinquent debt owed to a department store was charged off in the approximate amount of \$1,310. The debt remains outstanding. (Tr. p. 50 and Applicant's Exhibit A.)

1.e. A delinquent debt owed to a department store was charged off in the approximate amount of \$267. Applicant states that she made payment arrangements of \$86.89 twice monthly to resolve the debt. (Tr. p. 51 and Applicant's Exhibit C.)

1.f. A delinquent medical debt was charged off in the approximate amount of \$182. Applicant claims that she contacted the creditor and they were unable to find the file. (Tr. p. 52.)

1.g. A delinquent medical debt in the approximate amount of \$118 remains owing. Applicant claims that she contacted the creditor and they were unable to find the file. (Tr. p. 52.)

1.h. A delinquent Federal tax lien was entered against her in 2017 in the approximate amount of \$77,364. Applicant is not sure of the status of this debt.

1.i. A state tax lien was entered against her in 2009 in the approximate amount of \$15,609. Applicant states that since March 2017, she has been paying the state back taxes in the amount of \$100 weekly, totaling \$400 monthly. (Tr. p. 54.)

1.j. A Federal tax lien was entered against her in 2016 in the approximate amount of \$3,534.

1.k. A delinquent medical account was placed for collection in the approximate amount of \$150.

## **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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 clearance 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 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:

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. Four are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so;
- (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.

As a result of her divorce, Applicant incurred delinquent tax liability, credit card debt and medical bills that she could not afford to pay. Following her divorce, she has still been unable to pay her bills or her back taxes. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under 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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances.
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

In regard to Applicant's tax liability and delinquent debts, most of them remain owing. At this time, she has not demonstrated sound judgment, nor has she made diligent effort to resolve her debts or even to learn enough about them to be able to testify about their status. Furthermore, she does not appear to have the financial

resources available to pay them. Based upon these facts, there is no evidence that she has acted responsibly under the circumstances. There remain questions about her current reliability, trustworthiness, or good judgment.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

### **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.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.c.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 1.h.:	Against Applicant
Subparagraphs 1.i.:	Against Applicant
Subparagraphs 1.j.:	Against Applicant
Subparagraphs 1.k.:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge