



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03108
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

03/17/2015

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On October 7, 2014, 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 21, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 15, 2015, scheduling the hearing for February 11, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE E and F and admitted without objection. DOHA received the hearing transcript (Tr.) on February 23, 2015.

### Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. She has worked for her current employer since 1995. She seeks to retain her security clearance, which she has held since at least 2003. She has a bachelor's degree. She is married with two adult children and two adult stepchildren.<sup>1</sup>

The SOR alleges a federal tax debt of \$1,100 (SOR ¶ 1.r); deficiencies owed on car loans after repossessions (SOR ¶ 1.e - \$5,351; SOR ¶ 1.f - \$9,278); 13 miscellaneous delinquent debts totaling about \$11,500; and a mortgage loan that was \$30,000 past due (SOR ¶ 1.s). Each debt was listed on at least one credit report. The SOR also alleges that Applicant's debts were discharged through Chapter 7 bankruptcy in 2005 (SOR ¶ 1.b), and that Applicant filed Chapter 13 bankruptcy in 2014 (SOR ¶ 1.a).

Applicant has a history of financial problems. She filed Chapter 7 bankruptcy three times, and her debts were discharged in 1997, 2005, and 2014. Applicant gave birth to her child without medical insurance, which created the financial problems leading to her 1997 bankruptcy. Applicant's sister had a drug problem. In 2003, Applicant took in her sister's children, which led to the 2005 bankruptcy. The children stayed with Applicant until 2005. Applicant contributed to the funeral expenses of her sister, niece, and brother-in-law, who passed away between 2005 and 2008. Applicant's husband was also unemployed for extended periods, and Applicant's employer cut her overtime opportunities.<sup>2</sup>

Applicant's 2005 bankruptcy petition listed \$161,104 in claims under Schedule D, Creditors Holding Secured Claims. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$500 in attorney's fees. Debts totaling \$19,953 were listed under Schedule F, Creditors Holding Unsecured Nonpriority Claims. One of the listed debts was \$8,652 for the deficiency due on an auto loan after the vehicle was repossessed.<sup>3</sup>

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<sup>1</sup> Tr. at 30, 44, 46, 53; GE 1, 4.

<sup>2</sup> Tr. at 19-20, 27-31, 43, 51-52; Applicant's response to SOR; GE 1, 4; AE A, B.

<sup>3</sup> AE B.

Applicant did not pay her federal taxes for 2010 when they were due. She completed a payment plan with the Internal Revenue Service and paid the taxes in 2013 or early 2014.<sup>4</sup>

Applicant filed Chapter 13 bankruptcy in February 2014. She converted the case or refiled it as a Chapter 7 bankruptcy. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$218,202 in claims. Applicant noted under Debtor's Statement of Intent that her home would be "Surrendered." There were no unsecured priority claims.<sup>5</sup> Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$63,086. Applicant's debts were discharged in June 2014.<sup>6</sup>

Applicant discussed her house and mortgage loan as part of the reason she filed bankruptcy in 2014:

I decided that I was going to just go ahead and just move out of the house and just, you know, surrender the house and get a fresh start, because I think that was one of the problems that led up to this time as well.<sup>7</sup>

Despite the statement of intent in the bankruptcy that she would surrender the house, Applicant is still living in the home. She testified that her family would be moving out of the house in March 2015 because she received notice that the house was scheduled to be auctioned. She has not paid any rent since the bankruptcy discharge, and she did not pay the mortgage loan for several years before the discharge. Her credit reports list the date of last activity on the mortgage loan as October 2009. She testified that she received a letter about four months before the hearing telling her that she would have to move out soon, but she indicated that she stayed because "I guess I was figuring I had a little time until they told me to get out."<sup>8</sup>

Applicant received financial counseling as a requirement of her bankruptcy. She testified that her finances have improved. Her husband was unemployed, but he was scheduled to return to work on February 16, 2015. She has health insurance and participates in a health-care fund, which should eliminate any future medical debts. She owes about \$30,000 in student loans. She stated that she is current on her payments of about \$300 a month. She bought a 2008 car after her bankruptcy discharge. She stated that she paid \$12,000 for the car, with a \$1,000 payment and an \$11,000 loan.<sup>9</sup>

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<sup>4</sup> Tr. at 42-43; Applicant's response to SOR; GE 1, 4; AE C.

<sup>5</sup> Applicant's student loans were not listed in the bankruptcy petition, most likely an inadvertent omission by her attorney. Student loans are generally not discharged in bankruptcy. See AE A.

<sup>6</sup> Tr. at 20-26; Applicant's response to SOR; GE 3; AE A, F.

<sup>7</sup> Tr. at 20.

<sup>8</sup> Tr. at 37-42.

<sup>9</sup> Tr. at 24-25, 34-35, 44-49, 52; AE D.

## 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 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 access to classified information will be resolved in favor of national security."

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. She filed multiple bankruptcy petitions. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed her initial financial problems to giving birth to her child without medical insurance. She then took in her sister's children for about two years.

She contributed to the funeral expenses for family members between 2005 and 2008. Her husband also had periods of unemployment. Those events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant paid her delinquent taxes in 2013 or 2014. Her dischargeable debts were discharged in June 2014.<sup>10</sup> She still has about \$30,000 in student loans, which she is apparently paying. She also has a car loan. She testified that she “surrendered” her house in the bankruptcy, with any deficiency discharged. While she may have “surrendered” the house through the bankruptcy court, Applicant was still living in it in February 2015, seven months after the bankruptcy discharge.

A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial “fresh start” from burdensome debts.<sup>11</sup> The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision:

[I]t gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.<sup>12</sup>

Applicant required a third bankruptcy in 2014 despite receiving a fresh start through two previous bankruptcies and not paying her mortgage loan or rent for years. I am not convinced that she will take full advantage of her latest fresh start and not slip into further financial difficulties.

I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay all her debts.<sup>13</sup> Her financial issues are recent.

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<sup>10</sup> The Government is not precluded from considering the negative security implications of an applicant’s overall history of financial difficulties merely because the applicant exercises the right to seek a discharge of debts in bankruptcy. See, e.g., ISCR Case 08-00435 at 3 (App. Bd. Jan. 22, 2009).

<sup>11</sup> See <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Process.aspx>.

<sup>12</sup> *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

<sup>13</sup> The Appeal Board has explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [AG ¶ 20(b)], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(b)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

They continue to cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶ 20(b) is partially applicable. The first part of AG ¶ 20(c) is applicable because Applicant received financial counseling as a requirement of his bankruptcy. The second part is partially applicable because the bankruptcy resolved many of her financial problems. AG ¶ 20(d) is only applicable to the paid income taxes. I find that financial concerns remain despite the presence of some mitigation.

### **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(a):

(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.

I also considered Applicant's stable work history. Applicant's efforts at helping her family are commendable. However, she has a long history of financial problems. Her current financial situation appears stable, but that stability will be tested when Applicant finally moves out of her "surrendered" home.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge