



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-03376  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

February 24, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 43-year-old employee of a defense contractor. She is alleged to be indebted to 18 creditors in the approximate amount of \$109,258. Her debts were incurred as a result of circumstances beyond her control, but she failed to establish that she acted responsibly under the circumstances. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 11, 2014, the Department of Defense 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 September 1, 2006.

Applicant answered the SOR on August 26, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on October 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 30, 2014, scheduling the hearing for December 15, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A and B, which were admitted without objection. Applicant testified on her own behalf. The record was left open for Applicant to submit additional exhibits. On December 17, 2014, and February 5, 2015, Applicant presented two additional exhibits marked AE C and AE D. Department Counsel had no objection to AE C or AE D, and they were admitted. DOHA received the transcript of the hearing (Tr.) on January 5, 2015.

### **Findings of Fact**

Applicant is a 43-year-old employee of a defense contractor. She has worked for her employer or its predecessors for the past 20 years. She has held a security clearance for 20 years and has never had a violation. Her highest level of education completed was 9<sup>th</sup> grade. Applicant is divorced. She has two children and two grandchildren. She also supports her sister and brother, who are disabled. (GE 1; Tr. 37, 42-46.)

As stated in the SOR, Applicant was alleged to be in debt to 18 creditors in the approximate amount of \$109,258.<sup>1</sup> Applicant admitted all of the debts listed in the SOR subparagraphs. Her SOR-listed debts consist of a defaulted mortgage debt, a telecommunication debt, a debt owed to an apartment management company, and delinquent credit card accounts. All of her debts are found in the credit reports entered into evidence. None of her delinquencies have been resolved. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6.)

Applicant attributes her debts to her separation and divorce; costly medical conditions of herself and several of her family members; and the death of her mother. Applicant was married in September 1997. Applicant originally filed for divorce in 2009, but then attempted reconciliation until July 2013, when her ex-husband filed for divorce. Her mother, who helped Applicant financially, passed away on an unspecified date during this time frame. Applicant's divorce was finalized in February 2014, after six years of failed reconciliation attempts and financial turmoil. Her ex-husband has not taken responsibility for any of their marital debt. Recently her ex-husband began to pay her \$90 per week in child support, as a result of a November 2014 court order, but he has provided no other support. Additionally, Applicant's son and brother inherited a debilitating medical condition that requires dialysis three times per week. Applicant has the same condition, but does not yet require dialysis. Her sister is disabled. Her minor daughter suffers psychological issues as a result of the divorce, and has required hospitalization. (Tr. 24-30, 34-35, 38-43, 48-57.)

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<sup>1</sup> SOR allegations 1.f and 1.n may be the same debt reported by different collection agencies on different dates. Similarly, SOR allegations 1.e and 1.m appear to be for the same debt. However, Applicant admitted each allegation and did not dispute them as inaccurate.

At the time of the hearing, Applicant testified that she had been unable to address any of her SOR-listed debts. She made a payment toward hiring a bankruptcy attorney in 2009, but never filed a bankruptcy petition. She testified that her attorney advised her that she should not file for bankruptcy until her divorce was final. After her divorce was finalized in 2014, her focus shifted to recovering from a May 2014 surgery, and to fighting for child support in court. She planned to file bankruptcy once she had saved the required additional fees. (Tr. 31, 62.)

In her post-hearing exhibits, she presented a letter from her bankruptcy attorney indicating that a bankruptcy petition had been filed on her behalf and that a bankruptcy hearing was scheduled in March 2015. The attorney neglected to mention the date of the filing or under what chapter of code the bankruptcy petition was filed. The letter also informed Applicant that she was required to complete financial counseling within 60 days of the hearing. She failed to provide a copy of the filed bankruptcy petition or proof that she completed the financial counseling. It is impossible to discern whether all of the SOR-listed debts are included in her bankruptcy petition. (AE D.)

Applicant testified that she no longer uses credit cards. She has never been late on her rent. Her expenses match that of her income and she has no savings. Her personal financial statement indicated she had \$5.82 left after paying her monthly expenses, without making any payments on her delinquent accounts. (GE 2; Tr. 68-70.)

Applicant's supervisor wrote a letter of support on Applicant's behalf. He indicated that Applicant is a trustworthy and honest employee. She is rated as "one of the top amongst her peers in performance." (AE C.)

### **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. 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." 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 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 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 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's delinquent debts began accumulating in approximately 2009. She has a history of debt that she was unable to resolve for this six-year period. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (d) the individual initiated 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 substantial delinquent debts are recent and ongoing. She has no savings. She only has \$5 left at the end of the month after paying her monthly obligations. Even if she receives a discharge of all of her debt through bankruptcy, future financial problems are likely given her debt to income ratio, and her lack of savings. She therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). Her financial problems were caused by circumstances beyond her control, including: her separation and subsequent divorce; costly medical conditions of herself and several of her family members; and the death of her mother. However, she has been fully employed during the period she incurred these delinquent debts, and has not taken reasonable steps to resolve even the smallest of her debts. She waited until February 2015 to file a bankruptcy petition, and it is not known what SOR-listed debts are included in that bankruptcy petition or whether those debts will be fully discharged through bankruptcy. Applicant has not demonstrated responsible action under the circumstances.

Applicant did not undergo financial counseling. She neither documented any substantially effective effort to resolve the SOR-listed delinquent debts, nor asserted any legitimate basis to dispute their validity. These facts preclude mitigation under MC 20(c), (d), or (e).

### **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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has held a security clearance for 20 years, without incident. She served as a government contractor for 20 years and is considered trustworthy by her supervisor. Her financial difficulties are attributable to her separation and subsequent divorce; costly medical conditions of herself and several of her family members; and the death of her mother. She is beginning to address her delinquencies by hiring an attorney who has filed bankruptcy. The evidence did not include when the petition was filed or which SOR-listed debts were included. Applicant failed to establish sufficient evidence to show that the likelihood of continuation or recurrence is low. At this time, she is not eligible for a security clearance.

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 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	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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Jennifer I. Goldstein  
Administrative Judge