



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03596
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

02/26/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems began in 2010 when her marriage and business began deteriorating. Since then, Applicant has organized her finances, developed a debt repayment plan, and satisfied approximately \$6,200 of delinquent debt listed in the Statement of Reasons (SOR), together with approximately \$15,000 to \$20,000 of non-SOR debt. Applicant has mitigated the security concern. Clearance is granted.

**Statement of the Case**

On August 1, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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) implemented by the DOD on September 1, 2006.

On August 18, 2014, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.f. She requested a hearing whereupon the case was assigned to me on December 1, 2014. DOHA issued a notice of hearing on December 12, 2014, scheduling the hearing for January 15, 2015. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1-GE 5) and considered Applicant's testimony.

At the close of the hearing, I left the record open, at Applicant's request, to allow her to submit exhibits. Within the time allotted, she submitted four exhibits that I incorporated into the record as Applicant Exhibits (AE) A through AE D. DOHA received the transcript (Tr.) on January 26, 2015.

### **Findings of Fact**

Applicant is a 49-year-old single woman with one child, age 14. She was married from 1991 to 2012. It ended in divorce. (Tr. 13) Applicant is a high school graduate who is currently working toward an associate's degree in business administration. (Tr. 12) Since mid-2013, she has worked as a project manager for a government contractor. (Tr. 13) Her duties include recruiting and business process improvement.

Applicant had no financial problems when she was married. (Tr. 15) Her ex-husband, a wealthy partner at a law firm, earned between \$800,000 and \$1 million dollars per year. Consequently, she was not dependent on her nominal part-time income as a lifestyle coach, a motivational speaker, and seller of high-end luxury health products to make ends meet. (Tr. 21, Tr. 53)

In approximately January 2010, Applicant merged her business with a friend's business. Previously, Applicant's business had been home based. Once she merged it with her friend, she leased office space, causing her to incur significantly higher overhead costs. (Tr. 23) Over the next year and a half, Applicant spent approximately \$45,000 on business expenses, including \$10,000 she charged on a credit card in her husband's name. (Tr. 38)

Applicant's business struggled. At or about the time she was having problems with her business, her marriage began deteriorating. In January 2011, Applicant and her husband separated, and by October 2011, her business had failed. (Tr. 13)

Applicant and her husband negotiated a separation agreement. Under the agreement, Applicant agreed to receive an annual lump-sum payment totalling 12% of her husband's net income from his business earnings, together with \$3,000 per month in alimony, and \$778 of monthly child support. The monthly alimony was low relative to her husband's earnings. However, Applicant accepted this deal anticipating that her husband's annual salary would remain in the \$800,000 to \$1 million range, providing her with annual alimony of between \$95,000 and \$100,000. (Tr. 17, 36)

Applicant's estranged husband's earnings never approached the amount he made when they were together, as his "whole life kind of down spiraled" after their separation. (Tr. 16) Consequently, the highest yearly alimony that she received from him was \$60,000 in 2013. By 2014, Applicant's ex-husband was unemployed. She has not received any alimony payments since May 2014, and she has not received any child support payments since December 2014. (Tr. 28-29, 44)

Saddled with the expenses from her failed business and the reduced income after her marital separation, Applicant fell behind on her debts. By 2014, she had incurred approximately \$55,000 of delinquent debt, including five credit cards (subparagraphs 1.a through 1.e), a time share (subparagraph 1.f), and \$10,000 owed to her ex-husband for charges she made on his credit card for her business. (Tr. 38)

Subparagraphs 1.a and 1.b, totalling approximately \$27,000 are owed to the same bank. Applicant is negotiating a payment plan with the creditor, and will begin payments after she satisfies the debts owed to the other creditors.

Subparagraph 1.c totals \$6,685. Applicant has been satisfying it in monthly payments of \$185. (AE C) She provided supporting documentation of payments covering the period from June 2014 through January 2015. (AE C) It is unclear from the record how long she has been making the payments. She anticipates that this debt will be satisfied by the end of the year. (Tr. 18)

Subparagraph 1.d totals \$5,744. Applicant has been making \$350 monthly payments since April 2014. (AE A)

Applicant had satisfied the debt listed in subparagraph 1.e, totaling approximately \$1,500, through monthly payments ranging between \$120 and \$190. (AE B).

Subparagraph 1.f is a delinquency owed for a time share property that Applicant purchased in 2011. She purchased it during the period when she anticipated that she would be receiving \$100,000 of annual alimony. (Tr. 36) The SOR alleges that the debt totals \$3,400. Applicant disputes this amount. She provided no basis for the legitimacy of her dispute.

Subparagraph 1.g is the \$10,000 debt Applicant owes her ex-husband for the credit card expenses that she charged on his card for business purchases she made when they were married. She was paying him \$200 per month. When Applicant's ex-husband stopped paying alimony, he agreed to forgive this debt. (Tr. 38)

When Applicant and her then-husband structured their separation agreement, they did not account properly for income tax withholdings. (Tr. 39) Consequently, she has had trouble paying her income taxes timely. She is current on her income tax payments through 2012. However, she just recently filed her income tax return for tax year 2013. She owes \$9,000. (Tr. 40) In January 2015, Applicant contacted the Internal Revenue Service and agreed to satisfy it in increments of \$200 per month, deducted

automatically from her pay. She made her first payment in January 2015. (AE A at 1) Applicant satisfied approximately \$15,000 to \$20,000 of debts that were not alleged in the SOR. (Tr. 53; GE 3 at 2-4)<sup>1</sup>

Applicant currently lives with her fiance. He pays all of the household expenses except the groceries. (Tr. 30) Applicant maintains a budget. She earns \$47,000 annually, and has approximately \$50 of discretionary monthly income. (AE D)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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.” (AG ¶ 18) Between 2010 and 2014, Applicant incurred approximately \$55,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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<sup>1</sup>GE 3 is a credit bureau report dated June 27, 2014. The debts in the report are numbered. Applicant satisfied debts 10-13, debt 20, and debt 26.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 financial problems were caused primarily by a marital separation and a business failure that both occurred in 2010. Applicant's income decreased drastically nearly at the same time the expenses for the failing business began to increase. Since 2011, Applicant has satisfied approximately \$6,500 of debt listed in the SOR and \$15,000 to \$20,000 of unlisted debt. She satisfied subparagraph 1.e in its entirety and has been diligently making payments toward the satisfaction of the debts listed in subparagraphs 1.c and 1.d.

The debts that Applicant has not addressed, as listed in subparagraphs 1.a, 1.b, and 1.g, total nearly \$40,000. Given Applicant's progress with debt reduction, I am confident that she will begin paying subparagraphs 1.a and 1.b, as promised. As for the \$10,000 she owes her ex-husband, as listed in subparagraph 1.g, her explanation that he has forgiven this debt is credible in light of the fact that he has not recently paid either her alimony or child support. I conclude AG ¶¶ 20(b) through 20(d) apply.

When asked about the delinquent time share payment, as listed in subparagraph 1.f, Applicant criticized the time share arrangement and expressed her desire to sell it, but did not provide any evidence setting forth the nature of any dispute. Under these circumstances, AG ¶ 20(e) is not applicable. Any negative inference generated by the inapplicability of AG ¶ 20(e) is outweighed by the positive security ramifications of the meticulous steps Applicant has taken to reduce her indebtedness. I conclude Applicant has mitigated the financial considerations security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant's financial problems were not caused by profligate spending. Instead they stemmed from a divorce and a failed business. Applicant has been steadily satisfying her delinquencies, in a meticulous, well-organized manner. Considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge