



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-03673 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

06/29/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On October 6, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 20, 2015. A notice of hearing was issued on April 22, 2015, scheduling the case for June 12, 2015. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented one witness and presented two documents for the record (AX A-B).

At Applicant's request, I kept the record open until June 22, 2015.<sup>1</sup> Applicant presented documents for the record, which were marked as AX C-I. The transcript was received on June 22, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the majority of the SOR allegations under Guideline F, with explanations.

Applicant is 34 years old. She is a help-desk agent. Applicant obtained her undergraduate degree in 2002, and received her graduate degree in 2008. She is single and has no children. Applicant has been with her current employer since 2014. This is her first application for a security clearance. (GX 1).

The SOR alleges delinquent debts, which include a 2009 judgment, 13 collection accounts, two student loans, and a charged-off account totaling about \$31,071. (GX 2)

Applicant states that some of her smaller debts are in repayment, that some have fallen off her credit bureau reports, and she admits owing the remainder of the delinquent debts. (Answer to SOR)

Applicant acknowledges that she is aware of her past financial performance and the bad decisions that she has made. She obtained a number of credit cards when she was younger and debt accrued during the years. (Tr. 9) She knows that while she was in undergraduate and graduate school she obtained student loans, but did not realize the impact of repayment. (Tr. 13) She does not dispute her credit reports, but asks that it not be held against her. She states that she is starting to seek financial counseling. She considered filing for bankruptcy but wants to pay her bills. She believes she will consolidate her debt.

As to the 2009 judgment for \$672.33 (SOR 1.a), Applicant settled the matter for \$434. The judgment was from an overdraft on an account. (Tr. 24) She made her first monthly payment of \$50 on April 1, 2015. (AX A) She did not provide a receipt for May 2015 at the hearing but noted that she had the receipt at home. As a post-hearing submission, she submitted the same receipt from April 1, 2015 for \$50 and another receipt for \$100, dated June 22, 2015. In her answer, Applicant stated that the judgment had already been satisfied. SOR 1.d is a duplicate of the original account. (Tr. 26)

Applicant arranged to pay the debt in SOR 1.b for \$128.36 in two installments of \$64.18. She did not provide documentation to support her assertion. She stated that it

---

<sup>1</sup>Applicant submitted documents on June 23, 2015. I accepted them into the record despite the fact that she missed the deadline. The government did not object to the documents.

has been removed from her credit report. (Tr.19) She submitted documentation that the account is paid and submitted a post-hearing submission as proof. (AX D)

As to several debts, Applicant notes that they have been removed from her credit report. She admits that she owed the debts but did not pay them. According to Applicant, the following debts are now off the credit report: 1.c, (\$50); 1.f, (\$4,105); 1.h, (\$37); and 1.m. (\$3,162). She does not consider that she is responsible for them.

Applicant stated that the debt alleged in 1.e for \$185 was settled for \$92.68. As a post-hearing submission, she presented a screen from her checking account showing a payment for \$92.68. It was not clear what the payment represented. (AX D)

Applicant disputed the debt in 1.g for \$315 due to double billing. She filed a dispute with the credit bureau, but has not received any information regarding the account. (Tr. 27) She did not provide any written information concerning the dispute.

Applicant stated that the debt alleged in 1.i for \$261 is not resolved. She stated that she called the company and they had no record of the debt. It was for a self-storage company. She stated that she also called the credit reporter, but she provided no documentation for her assertions. (Tr. 28)

As to the debt in 1.j, Applicant states that she has settled the account for \$476 and has set up payment arrangements of \$39.72 twice a month for 12 months. She did not provide any documentation of the payment arrangement at the hearing. (Tr. 29) Applicant made her first payment in November 2014. As a post-hearing submission, she provided documentation that she made another payment in December 2014. The last receipt showing a payment of \$39.73 was dated January 21, 2015. ( AX H) No further payments were presented.

Applicant claims that she settled an account for \$2,160 in 1.k and set up payment arrangements of \$50 a month. (Tr. 29) She did not provide any documentation to support this claim. However, as a post-hearing submission, Applicant submitted a copy of a credit report that showed the account was past due as of October 2014, but is scheduled to be removed from her credit report on January 2015. She cites to the fact that it was removed from the credit report due to age. This contradicts what she stated at her hearing about arranging a payment plan. (Tr. 29, AX G)

Applicant denied the account in 1.l for \$110. She did not contact the collection company, but called the credit reporter and they had no record of it. (Tr. 30)

As to the two student loans, Applicant admitted that she owes \$15,195 in 1.n and \$3,133 in 1.o. She submitted a recent application for consolidation (AX B). Her monthly payments are \$155. She believes that she has made four payments. (Tr. 31) She submitted documentation that she made a payment in January 2015, February 2015 and March 2015. The account transaction history displays posted on other accounts through June 2015. Thus, the last recorded payment made by Applicant was in March 2015. (AX F)

The last account alleged in SOR 1.p for \$971 is for a phone collection account. Applicant has not yet addressed this debt. (Tr. 32)

Applicant's current position is stable. She earns \$29,000 year. She had prior jobs but was paid an hourly wage. The last job before her current one was fulltime, and she worked there for two years. She lived at home but now lives with her boyfriend. She shares household expenses. At the end of the month, she has no discretionary income. (Tr. 33) She has about \$50 in her savings account. (Tr. 33)

Applicant's aunt testified that Applicant is a great person who has done exceedingly well with her education. She has tried to mentor Applicant and stresses to Applicant that it is important to learn the importance of credit. (Tr. 37) She understands that Applicant made bad choices but is now wiser. She and others are now offering counseling to Applicant.

Applicant submitted a congratulatory email from her employer. Applicant was noted as the employee of the month in February 2015. She is described as hardworking and dependable. She shows great potential.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 Executive Order 10865 provides that 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

---

<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

Applicant accrued delinquent debt while she was in undergraduate and graduate school. She also had student loans. The total amount of delinquent debt was about \$31,000. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant incurred delinquent debt for a number of years beginning in undergraduate school and continuing through graduate school, which she completed in about 2008. She admits that she did not pay her delinquent debts and began looking into paying or making payment arrangements in 2014 after the security clearance investigation began. She has no monthly remainder and has made inconsistent payments on the plans that she arranged in 2015. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. As noted above, Applicant's financial difficulties are the result of use of credit cards and not making any payments on her bills for many years. She recently consolidated her student loans and has no record of payments after March 2015. She depended on accounts aging and being removed from her credit reports. She paid some smaller accounts recently. She realizes the impact of not paying her bills.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has limited application. Applicant states that she has settled a judgment from 2009 but did not present documentation that she is current with the payments. She has paid a few small debts and recently consolidated her student loans. FC MC AG ¶ 20(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) does not apply.

### **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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 34 years old. She is educated. She has delinquent debts stemming from at least 2008. She made very few payments on the debts and began considering her credit when she applied for a security clearance. She recognizes her mistakes. However, she has been inconsistent with the payment arrangements that she has in place. She intends to pay her bills, but a promise to pay in the future is not sufficient. She also relied on the fact that old debts would eventually be removed from her credit reports.

Applicant submitted insufficient documentation to meet her burden of proof. I have doubts about her judgment and reliability. Applicant has not mitigated the security concerns under the financial considerations guideline. Any doubts must be resolved in favor of the Government.

### **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.b.:    | For Applicant     |
| Subparagraph 1.c:          | Against Applicant |
| Subparagraph 1.d:          | For Applicant     |
| Subparagraphs 1.e-1.p:     | 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 a security clearance. Clearance is denied.

---

NOREEN A. LYNCH.  
Administrative Judge

