



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



In the matter of:	)	
	)	
	)	ISCR Case: 14-03987
	)	
Applicant for Security Clearance	)	

**Appearances**

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

September 25, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated seven delinquent debts totaling \$34,088. She also failed to file her 2013 Federal tax return in a timely manner. The debts were incurred due to a contentious divorce and several periods of unemployment. Applicant has acted responsibly, given the circumstances. She documented she resolved \$32,520 in debt. She has filed her 2013 Federal income tax return. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

**Statement of Case**

On January 20, 2014, Applicant submitted a security clearance application (e-QIP). On November 17, 2014, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), 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 for Determining Eligibility for Access to Classified Information (AG)*, effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on December 11, 2014. (Item 2.) She requested that her case be decided by an administrative judge on the written record without a hearing. Department Counsel submitted the Government's written case on May 6, 2015. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by Applicant on May 8, 2015. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. She provided additional information in response to the FORM within the 30-day period, marked as Applicant's Exhibit (AE) A. Department Counsel had no objections to AE A, and it was admitted into the record. DOHA assigned the case to me on August 5, 2015.

### **Findings of Fact**

Applicant is 52 years old. She earned a master's degree in 2009. She has been employed with a Government contractor since January 2014. She was married to her first husband from 1982 until their divorce in 1989. She married her second husband in 1991. They divorced in 2006. She has two children, ages 17 and 20. (Item 3.)

Applicant attributed her delinquent accounts to her 2006 divorce which left her a single mother supporting her children with little financial assistance, and her unemployment. She experienced several periods of unemployment including: October 2013 to January 2014; April 2009 to August 2009; September 2007 to June 2008; September 2005 to March 2006; and November 2004 to January 2005. (Item 3.) Her most recent periods of unemployment are attributable to lay-offs between contracts and were beyond her control.

The SOR alleges Applicant owes approximately \$34,088 in delinquent debt on seven delinquent financial obligations. It also alleged that Applicant failed to file her 2013 Federal income tax return. In her Answer, Applicant denied all of the allegations. Her debts are documented in the record credit reports dated October 7, 2014; and February 26, 2014. (Items 4 and 5.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant was alleged to be delinquent on six accounts (SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g) in the total amount of \$5,741. In her Answer, she provided proof that she resolved the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e, totaling \$2,597. She also provided documentation that she is current on her mortgage debt, which was alleged in SOR ¶ 1.f to be delinquent in the amount of \$1,576. She claimed to have paid the \$695 debt alleged in SOR ¶ 1.d, and provided a confirmation number. She denied the final consumer debt of \$873, identified in SOR ¶ 1.g, stating, "I do not have an account that is in collection and I have no balance due with this company." That debt, allegedly

delinquent since July 2013, is not listed on her October 7, 2014 credit report. (Answer; Item 4; Item 5.)

Applicant was also alleged in SOR ¶ 1.a to have a Federal tax lien entered against her in February 2009 in the approximate amount of \$28,347. The tax debt was for the 2000 tax year. She attributed the delinquency to her second husband's undisclosed gambling winnings. She provided documentation that shows the lien was released on October 1, 2014. She solely repaid this joint tax obligation, without the help of her former spouse. (Answer; AE A; Item 6.)

Applicant filed her 2013 Federal and state income tax returns late, in December 2014. She did not state why she failed to file her 2013 Federal and state taxes in a timely manner. She set up an installment agreement with the Internal Revenue Service (IRS) to pay her tax obligation for 2013 through automatic withdrawals from her bank account. She owed \$2,629 for 2013. She pays the IRS \$500 monthly and has made at least two payments under the installment agreement. She also presented evidence that shows her 2014 Federal income tax return was filed and that it was paid in full. (AE A.) Applicant's October 7, 2014 credit report reflects no new delinquencies. Further, there don't appear to be any new revolving credit accounts. (Item 4.)

### **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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated seven delinquent debts totaling \$34,088. Her oldest debt, a \$28,347 Federal tax obligation, had been delinquent since 2001. These debts establish both a history of delinquencies and an inability or unwillingness to satisfy her

obligations. Further, she failed to file her 2013 Federal tax return in a timely manner. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following provide some mitigation:

(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 debts were caused by her ex-husband's undisclosed gambling winnings and her recent periods of unemployment. She has acted responsibly under the circumstances. She documented that she resolved \$32,520 of those debts, and provided a confirmation number along with a claim to have resolved an additional \$695. While she failed to provide documentation showing the basis for her dispute of her remaining \$873 debt, it no longer appears on her credit report. She filed her 2013 and 2014 Federal tax returns. Her diligent efforts to resolve her debts show that her financial problems are under control and are unlikely to recur. Applicant's former indebtedness does not cast doubt on her current reliability, trustworthiness, or good judgment. The security concerns with respect to her financial delinquencies are mitigated. The above conditions 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 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant experienced financial difficulties from 2000 to present, due to situations beyond her control. She has acted responsibly by resolving her Federal tax obligation that resulted from her ex-husband's receiving, and hiding, his gambling winnings. She has also resolved the majority of her other delinquent debts. The most recent credit report in evidence reflects no new debts or delinquencies. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. She met her burden to mitigate the security concerns arising under the guideline for financial considerations.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.h: 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.

Jennifer I. Goldstein  
Administrative Judge