



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04455
	)	
Applicant for Security Clearance	)	

**Appearances**

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

10/07/2015

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 21, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on January 21, 2015, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and she submitted a notarized, written response to the SOR allegations dated February 28, 2015. She requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 24, 2015. Applicant received the FORM on July 20, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated August 5, 2015. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on September 10, 2015. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked as Item 1, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1b, 1.d - 1.h, 2.a, and 2.b of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶ 1.c of the SOR.<sup>1</sup> She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 73 years old, works as an administrative assistant for a DOD contractor. She began her current employment in March 2002. She previously worked for her current employer from March 1962 until January 2001, when she retired from her position as an administrative assistant. She has not previously held a security clearance.<sup>2</sup>

Applicant graduated from high school, and she received a bachelor's degree in computer information in January 1999. Applicant married in August 1965 and her husband died in July 2002. She has two daughters, ages 46 and 44.<sup>3</sup>

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Item 2 (e-QIP).

<sup>3</sup>Item 2.

Applicant acknowledged that in 2012, she used her company credit card to purchase airline tickets for herself, which was against company policy, when her finances were tight. Her supervisor gave her a written warning. She paid the money owed on this credit card, and the account is closed.<sup>4</sup>

Applicant earns \$5,100 a month in gross income, and she receives \$1,393 a month in net income after deductions for taxes, insurance, retirement, and disability. In addition to these deductions, she pays \$1,032 a month in a garnishment. Applicant also receives \$2,000 a month in Social Security benefits. Her monthly net income totals \$3,393. Her monthly expenses include \$1,000 for rent, \$30 for utilities, \$250 for cell phone, cable and internet, \$206 for car, \$150 for gasoline, \$100 for insurance, \$100 for groceries, \$200 for miscellaneous, \$50 on credit card bills, \$137 on tax debt, and \$120 for storage and post office box for total monthly expenses of \$2,343. Applicant's estimate of \$100 a month on food appears low based on food costs. It is estimated that she spends at least \$150 a month more on food, increasing her total monthly expenses to \$2,493, leaving approximately \$900 a month to pay debts.<sup>5</sup>

Applicant advised that she encountered financial problems several years ago when she tried to help a friend. She was unable to pay many of her bills in 2008 and 2009. She lost her house to foreclosure because she was unable to meet the monthly payment. She fell behind in her payments on other items. The January 2014 credit report shows that Applicant was past due on five credit accounts between 30 and 120 days, sometime more than once. These accounts are current. The same report indicates that she paid a \$6,000 judgment in May 2012 and paid the balance on an automobile repossession. She also paid three collection accounts.<sup>6</sup>

SOR paragraph 1.a alleges that Applicant failed to file her 2012 federal income tax return, and SOR paragraph alleges that she has not paid delinquent federal taxes in the amount of \$6,000. When she completed Section 26 (Financial Record) of her e-QIP, Applicant advised that she did not pay her federal taxes for the tax year 2012 in the amount of \$6,000. Her statement indicated that she did file her tax return for 2012 (due April 15, 2013), but that she lacked funds to pay the money owed. She further indicated that she owed federal taxes and that she was paying her debt through a monthly electronic transfer. She also listed the account number for her tax debt. In her response to the FORM, Applicant attached an installment agreement with her state tax board, showing her agreement to pay \$137 a month electronically to the state, not the federal government, beginning October 28, 2013. The account number on the state agreement is the same as the account number listed on her e-QIP. The agreement does not reflect that the state is collecting tax money for a federal tax debt. After reviewing her e-QIP and agreement, I conclude that the tax debt is actually owed to the state, not the federal

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<sup>4</sup>GE 3.

<sup>5</sup>GE 2; AE A p. 7, 9.

<sup>6</sup>GE 4.

government. Applicant did not provide evidence showing that she has been paying this amount as agreed.<sup>7</sup>

SOR paragraph 1.c concerns a \$5,595 judgment obtained against Applicant in 2009. Applicant paid this judgment and an order of satisfaction was filed with the court in May 2013 by the law firm pursuing collection of the debt.<sup>8</sup>

Applicant borrowed approximately \$50,000 from her brother. He filed a lawsuit and obtained a judgment against her in the amount of \$55,338 (SOR ¶ 1.d). He filed a garnishment order with her employer in July 2013. Applicant began paying this debt through the garnishment of her wages on August 16, 2013 and continues to pay the judgment through garnishment at the rate of \$516 a pay period. As of her July 17, 2015 pay statement, she had paid \$24,969 on this debt. Given the consistency of this payment over two years, she has made five more payments totaling \$2,580. She has paid 50% of this debt.<sup>9</sup>

SOR paragraphs 1.e (\$3,990) and 1.f (\$4,103) relate to two credit cards from the same bank. The January 2014 credit report reflects that Applicant held four credit cards from this bank, which were charged off after becoming delinquent in 2008. The bank transferred one card to a collection company. She paid this debt and one other of the bank credit cards as shown on the January 2014 and December 2014 credit reports. Applicant told the security clearance investigator that all four debts had been paid, disagreeing with the information on the credit reports. She did not provide supporting documentation.<sup>10</sup> Both debts are no longer collectible under state law.<sup>11</sup>

SOR paragraphs 1.g (\$3,964) and 1.h (\$4,355) concern unpaid monies owed on her time-share maintenance accounts. She defaulted on these accounts in July 2008.

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<sup>7</sup>GE 2; AE A p. 3.

<sup>8</sup>AE A p. 2.

<sup>9</sup>GE 3; AE A p. 5-8.

<sup>10</sup>GE 3 - GE 5.

<sup>11</sup>The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008); and ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007) (stating, "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems. See, e.g., ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)."). This opinion does not assert that the statute of limitations provides any mitigation under Guideline F. The Appeal Board has not defined how long after the statute of limitations expires an Applicant must wait before receiving a fresh start similar to that received under Chapter 7 of the Bankruptcy Code.

These debts are not listed on the December 2014 credit report and may be legally barred from collection under the state statute of limitations. Applicant advised the security clearance investigator that she did not owe any money to this creditor, but she did not explain how the debts have been resolved or provide supporting documentation.<sup>12</sup>

## **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 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 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, 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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

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<sup>12</sup>GE 3 - GE 5.

permissible extrapolation as to 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.” 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 relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems around 2008 and 2009 when she tried to help a friend and overextended herself in doing so. She also owed state taxes for the tax year 2012. At the time of the issuance of the SOR, most of the listed debts had not been resolved. SOR paragraph 1.a alleges that Applicant failed to file her federal income tax return for the tax year 2012. The record lacks any evidence showing that Applicant failed to file her tax return for this tax year. Thus, SOR paragraph 1.a is found in favor of Applicant. The disqualifying conditions AG ¶¶ 19(a) and 19(c) are raised as to the remaining allegations .

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant overspent her income for a period of time in 2008 and 2009, leading to severe financial stress. She fell behind in her bills, creating more financial difficulty for herself. Although she allowed her house debt to be resolved through foreclosure, she took control of many of her debts and began paying her past-due accounts. She has paid two smaller judgments, including the \$5,595 judgment alleged in SOR ¶ 1.c, and she had paid 50% of her large judgment by means of a garnishment. She paid the remaining balance on a car repossession and she brought five past-due accounts current. While she has not provided documentation that she is paying the tax debt, her assertion that she is paying this debt is credible given her history of paying her past-due debts. She arranged a plan within months of filing her tax return as shown by the date on her agreement.

AG ¶ 20(b) is not applicable because, while kind, Applicant's efforts to help a friend is not a circumstance beyond her control. The record lacks evidence of financial counseling; however, on her own, Applicant has taken the steps necessary to manage her finances and to pay her past-due accounts. Her largest debt is being resolved through a garnishment of her wages. Her current bills are paid timely. AG ¶ 20(c) is applicable as the record contains clear indications that her debts are being resolved. AG ¶ 20(d) has some applicability as Applicant made good-faith efforts to resolve past-due accounts not listed on the SOR and to develop a payment plan for her 2012 state tax debt.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, . . . .

SOR allegation 2.a relates to the allegation in SOR 1.a, which states that Applicant failed to file her 2012 federal income tax return. Since Applicant advised on her e-QIP that she did file her 2012 tax return and the record lacks any evidence showing that she did not file the return, this allegation is not established and is found in favor of Applicant.

The remaining personal conduct allegation is established under AG ¶¶ 16(d)(3) and 16(e)(1). Applicant acknowledged that she used her company credit card on one occasion to purchase personal plane tickets, a violation of company policy and rules. This one incident does not show a pattern of rules violation; however, it shows a conscious decision by Applicant not to follow company rules and could create a vulnerability to exploitation, manipulation, or duress.

The personal conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Three years ago, on one occasion, Applicant used her company credit card to purchase plane tickets for herself. The company gave her a written warning, but no further discipline was taken. She had worked for the company for nearly 50 years when she made this decision, which appears to have been uncharacteristic of her past conduct at work as there is no other evidence of similar conduct. She has acknowledged her conduct and taken responsibility for what she did. She paid the debt, and the credit card account is now closed. She has learned to manage her finances and understands that she must maintain control over her income and expenses. She has taken steps to reduce or eliminate her vulnerability to exploitation, manipulation, and duress. It is unlikely that she will make a similar decision in the future. She has mitigated the security concerns about this one-time incident under AG ¶¶ 17(d) and 17e).

### **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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant mismanaged her money for a period of time in 2008 and 2009, which resulted in serious financial problems. She lost her house and time share to foreclosure, but she worked to resolve many of her other debts. She paid two judgments, a car repossession, and brought five past-due debts current. She pays her large judgment through a garnishment, and she pays her tax debt. She has shown a track record for debt payment over the last several years. Her efforts reflect a significant behavioral change and an attitude change about her finances. Most significantly in this case, she has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) She believes the remaining four alleged unpaid debts are resolved, although there is no evidence that she has resolved these debts, which are now barred from collection under state law as the debts have never been reduced to judgment. Two of these debts are no longer listed on her December 2014 for unknown reasons, although age and lack of collectability may be the reason. Given her belief that these debts are paid, the debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a position of trust and security

clearance. In reviewing the evidence of record as a whole, I find that her remaining debts, which are not proven to be resolved, are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances and personal conduct under Guidelines F and E.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.a:	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 a security clearance is granted.

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MARY E. HENRY  
Administrative Judge