



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05445
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

07/09/2015

---

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On January 13, 2015, 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 (AG) effective within the DOD on September 1, 2006.

On February 5, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 4, 2015. I convened the hearing as scheduled on June 24, 2015. The Government offered

exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified, and she offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open until July 1, 2015, to allow Applicant an opportunity to submit additional documents, which she did. One document was received, marked as AE C, and admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on July 1, 2015.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.f, 1.i through 1.l, 1.p, 1.r, and 1.u. She denied the remaining allegations. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. She completed one year of college. She married in 2003 and separated from her husband in November 2013. She has a 23-year-old son. Applicant worked for the same employer from June 2006 to February 2013. She was unemployed for one month, and then worked at a temporary agency from March 2013 until she started working for her present employer, a federal contractor, in August 2014.<sup>2</sup>

The SOR alleges 20 delinquent debts totaling approximately \$29,465. The debts are supported by credit reports from March 2013 and October 2014.<sup>3</sup>

Applicant and her husband filed Chapter 7 bankruptcy in 2008 and had approximately \$59,340 of debt discharged in 2009. She attributed their financial problems to her husband being laid off from his job after 23 years.<sup>4</sup>

Applicant acknowledged her recent financial problems, and she attributed them to her husband deciding he did not want to work any longer, so he quit his job and failed to contribute to the family expenses. Applicant became responsible for their debts. Since they separated he has not made payments toward their debts. She contacted a divorce attorney in March 2015 and is making \$150 installment payments to the attorney. She has about \$600 left to pay and then she can file for divorce. She believes her husband is going to dispute all of the marital debts because he cannot afford to pay any of them.<sup>5</sup>

---

<sup>1</sup> Hearing Exhibit I is Department Counsel's memorandum.

<sup>2</sup> Tr. 17-22, 50.

<sup>3</sup> GE 2 and 4.

<sup>4</sup> Tr. 22-23, 29-30, 52; GE 5.

<sup>5</sup> Tr. 23-24, 30-31, 39-44, 49.

Applicant filed a Chapter 13 bankruptcy case in April 2015. It was dismissed because she only completed one part of the two-part credit counseling requirement. She intended to complete the second part and file again. She provided a document, dated June 25, 2015, showing she made a payment of \$310 to her bankruptcy attorney for "Chapter 13 filing fees." There is a zero balance owed. Applicant indicated her intention is to include all of the SOR debts in the bankruptcy. She stated she estimated that the Chapter 13 payments should be \$167 biweekly.<sup>6</sup>

The debt in SOR ¶ 1.b (\$8,443) is for a loan Applicant cosigned for her son to purchase a car. Applicant stated her son was going to make \$260 monthly payments on the debt. She did not provide documents to show he is making payments. The debt is unresolved.<sup>7</sup>

Applicant admitted the debts in SOR ¶¶ 1.d (\$806) and 1.e (\$806) and indicated in her answer to the SOR that she was making \$80 and \$86 payments respectively. At her hearing, she stated she made a couple payments, but could not afford to continue the payments. No proof was provided regarding the payments she indicated she made.<sup>8</sup>

Applicant indicated that she paid and resolved the debts in SOR ¶¶ 1.i (\$234), 1.j (\$234), 1.k (\$172), and 1.l (\$111) with her 2013 income tax refund. She was given an opportunity to provide supporting documents to show the debts were paid. She did not provide documents to show she resolved these debts.

Applicant stated that the debts in SOR ¶¶ 1.m (\$66) and 1.q (\$677) are to the same creditor. She stated that she paid the debt in SOR ¶ 1.m, and her husband took over payment of the debt in SOR ¶ 1.q. She did not provide supporting documents to show the debts are paid or being paid. She disputes the debt in SOR ¶ 1.t (\$583) because she does not recognize the creditor. She did not provide information as to what action she has taken to dispute it. None of the remaining alleged debts are resolved.<sup>9</sup>

Applicant moved in with her mother after she separated from her husband, and they share the rent. She returned her 2012 model car that she had purchased in 2013 to the dealer because she could not afford the loan payments (SOR ¶ 1.a; \$11,006). She drives her mother's car. She does not have any credit cards and is working 10-15 hours a week at a part-time job in addition to her full-time job. She provides \$100 a month in financial support for her grandchild. She has no savings.<sup>10</sup>

---

<sup>6</sup> Tr. 23-24, 28-29, 44-46, 55; GE 6; AE C.

<sup>7</sup> Tr. 32-33.

<sup>8</sup> Tr. 38-39.

<sup>9</sup> Tr. 25-28, 33-35, 55-57.

<sup>10</sup> Tr. 32, 35, 52-54.

Applicant provided a character letter from her part-time employer that described her as a professional and trustworthy person who abided by the rules. Applicant also provided a partial performance evaluation that noted she did an above average job and volunteered to do extra work as needed when other employees were absent or the volume of work was high.<sup>11</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. Likewise, I have not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

---

<sup>11</sup> AE A and B.

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.” 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:

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.<sup>12</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

The SOR alleges 20 delinquent debts totaling approximately \$29,465. Sufficient evidence supports the validity of the debts. In addition, Applicant and her husband had approximately \$59,000 in delinquent debts discharged through bankruptcy in 2009. I find the evidence raises the above disqualifying conditions.

---

<sup>12</sup> See ISCR Case no. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 numerous debts remain unresolved and therefore are recent. Based on her financial history, insufficient evidence was provided to conclude the debts were incurred under unique circumstances and are unlikely to recur. AG ¶ 20(a) does not apply. Applicant attributes her financial problems to her husband failing to contribute to the marital debts. This is a condition beyond Applicant's control. In order for the complete application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant intends to file Chapter 13 bankruptcy. This may eventually resolve her delinquent debts, but at this juncture she has not completed the filing or started making payments. She has been separated from her husband since November 2013. Some of the debts in the SOR are for small amounts. Despite sharing rent with her mother and working two jobs, she has not shown that she paid any of the small debts. She has not provided supporting documentation for the debts she stated she paid. AG ¶ 20(b) partially applies.

Applicant indicated she completed one part of the required financial counseling for filing bankruptcy. She intended to complete the second part. She has paid her attorney the bankruptcy filing fee. She does not have an approved payment plan. This would be her second bankruptcy in seven years. She does not have an established track record of being financially responsible. At this juncture, there are not clear indications her financial problems are being resolved or under control. She did not

present evidence that she initiated good-faith efforts to repay her creditors or otherwise resolve her debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant has not provided documented proof to substantiate the basis of her disputes regarding certain debts or evidence of actions she has taken to resolve the issue. AG ¶ 20(e) 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 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 is 40 years old. She attributed her latest financial problems to her husband refusing to help pay their joint debts. Applicant and her husband had \$59,000 of delinquent debt discharged in bankruptcy in 2009. They now have 20 delinquent debts that remain unresolved. She intends to file for divorce. She has not provided proof that she has paid any of the delinquent debts. She does not have a track record for being fiscally responsible. She intends to resolve her financial problems again through bankruptcy. At this juncture, Applicant's financial problems remain a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

### **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.u:	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. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge