



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



In the matter of: )  
)  
) ISCR Case No. 15-00327  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/02/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 25, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF acted under Executive Order (EO) 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 (AG).

Applicant answered the SOR on September 21, 2015, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 28, 2015. The evidence

included in the FORM is identified as Items 3-6 and is admitted into the record (Items 1 and 2 are pleadings). The FORM was mailed to Applicant, who received it on November 4, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted exhibits AE A1 through A19, which were admitted into evidence without objection. The case was assigned to me on January 6, 2015.

### Findings of Fact

In Applicant's answer to the SOR, she admitted the debts listed in SOR ¶¶ 1.a, 1.c, 1.d, and 1.f. She denied the debts listed in ¶¶ 1.b, 1.e, and 1.g. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.<sup>1</sup>

Applicant is 43 years old. She has worked for a federal contractor since February 2014. She is divorced and has one child from the marriage. She has a master's degree. She has no military service and has never held a security clearance.<sup>2</sup>

The SOR lists seven delinquent debts totaling approximately \$171,208. The debts included a collection account, a judgment, medical collection debts, and three tax liens. The debts are supported by credit reports from March 2014 and December 2014, answers in Applicant's security clearance application from February 2014, and by her statements to a defense investigator in March 2014.<sup>3</sup>

Applicant's financial difficulties arose as a result of the business that she and her former husband operated. The business was a service-based business. The business was owned by her ex-husband's family. She was a supervisor for the business from 2011 to 2014. She separated from her husband in 2008, but she did not get divorced until 2013. She continued to work for the business until 2014. She admitted she acquired some business-related debt when she was married. There is no evidence of a current budget or an earnings and expense statement. She sought assistance from a credit attorney in 2015, a tax attorney in 2009, and a tax service in 2015.<sup>4</sup>

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<sup>1</sup> Item 1.

<sup>2</sup> Items 3, 4.

<sup>3</sup> Items 3-6.

<sup>4</sup> Items 2, 4; AE A3-A12, A14-A19.

The status of the debts is as follows:

**SOR ¶ 1.a (collection account for \$1,124):**

Applicant stated this debt was incurred from her former employment situation. Applicant stated this account no longer appears on her credit reports, but did not provide supporting documentation. The delinquent debt appears on both the Government–provided credit reports. This debt is unresolved.<sup>5</sup>

**SOR ¶¶ 1.b – 1.d (tax liens for \$6,901; \$73,736; \$86,768):**

Applicant admitted that these tax liens are for unpaid federal and state taxes related to her and her ex-husband's former business. She further claims she is only responsible for the following federal tax liability: for 2007--\$529; for 2010--\$4,613; for 2011--\$10,027; and for 2013--\$1,438 for a total of \$16,609. These figures were prepared in December 2015 by the tax service she hired. In 2009, she hired an attorney to work with the IRS concerning her tax debt. No results from the attorney's contact with the IRS were offered as evidence. There is no documentation to support her disputed liability on the lien amounts. She did not provide evidence of her divorce settlement showing any distribution of marital assets and liabilities. She provided a copy of a proposed installment agreement to pay her federal tax debt, which would have her pay \$300 monthly beginning in December 2015. There is no proof that the IRS accepted this agreement or that any payments have been made. There was no evidence addressing the status of her state tax liability. These liens are unresolved.<sup>6</sup>

**SOR ¶ 1.e (judgment for \$1,170):**

Applicant stated this debt was incurred from her former employment situation. Documentation shows this debt was garnished from her current employment wages and was paid in full. This debt is resolved.<sup>7</sup>

**SOR ¶¶ 1.f-1.g (medical collection accounts for \$944; \$565):**

Applicant disputes these two medical debts. She claims her insurance company should have paid one (¶ 1.f) and claims the other debt was paid. She failed to produce documentation to support her disputes of these two debts. These debts are unresolved.<sup>8</sup>

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<sup>5</sup> Items 2, 5, 6.

<sup>6</sup> Item 2; AE A3, A14-A19.

<sup>7</sup> AE A3, A13.

<sup>8</sup> Items 2, 5.

## 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, 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts and tax liens that remain unpaid or unresolved. I find both the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 and liens are recent and most remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that some debts were due to circumstances beyond her control (divorce and former business). For this mitigating condition to apply, she must also show responsible action toward resolving the debts. She contacted an attorney in 2009 to deal with the IRS, but nothing was resolved. In 2015, a tax service proposed a settlement plan concerning her federal taxes, but there is no documentation showing the plan was implemented. She receives some credit for her efforts under AG ¶ 20(b). She received tax advice and credit resolution services which can be construed as financial counseling. She paid one debt through an involuntary wage garnishment, but proof of further efforts is lacking. She did not provide documented proof of the debts she claimed were already paid or otherwise disputed. AG ¶¶ 20(c) and 20(d) partially apply. 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 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 guideline 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 considered the circumstances that led to Applicant's financial problems and her personal situation. Despite the presence of some mitigation, she failed to show a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

**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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.g:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge