



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06947
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

February 26, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 48-year-old employee of a defense contractor. She is alleged to be delinquent on two debts in the total amount of \$34,482. She resolved one debt, but the other remains unresolved. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 13, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On May 30, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

On September 17, 2015, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on November

16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 2, 2015, scheduling the hearing for December 18, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on her own behalf, called three witnesses, and presented two exhibits, marked Applicant Exhibit (AE) A and AE B. Department Counsel had no objection to AE A or AE B, and they were admitted. The record was left open for receipt of additional documents until December 21, 2015. On December 21, 2015, Applicant presented an additional 13-page exhibit. It was marked AE C. Department Counsel had no objections to AE C, and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on December 29, 2015.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. She is unmarried and has no children. She earned a master's degree in 2005. She has worked for her current employer since 1990. (GE 1.)

As listed in the SOR, Applicant was alleged to be delinquent on two debts in the total amount of \$34,482. Applicant denied the delinquent debts alleged in SOR ¶¶ 1.a and 1.b. Her debts are identified in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4; GE 5.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant testified that both of her SOR-listed debts relate to two properties purchased in the fall of 2006, during the real estate "bubble." Applicant's sister had financial difficulties and Applicant helped her by granting her sister power of attorney to purchase two properties, which her sister was responsible for managing as rental units. Applicant and her sister, who testified on Applicant's behalf, were unable to recall the specific purchase prices of the two properties. They appear to have financed each purchase with both a first and second mortgage. Applicant's sister testified that one of the properties was rented to tenants, but the rental payments were less than the amount of the mortgage payments due to the first and second mortgage holders. The other property was rented for a short time, but the renters left unexpectedly, leaving the property vacant for an extended period. Both properties were foreclosed upon in approximately 2011. Applicant only was made aware of the delinquencies after foreclosure proceedings had started. (GE 1; GE 2; Tr. 27-65.)

Applicant is indebted to a bank on a second mortgage on one of the two rental properties in the approximate amount of \$23,917, as stated in SOR ¶ 1.a. Applicant has not contacted this creditor or otherwise resolved this account. (AE 43-44, 45.) When asked why she had not addressed this debt, Applicant testified:

To me, financial status and how my status is, is not as important as getting my responsibility of work and of family and of church to be done correctly and timely. And, so, in some way, I would say - - well, my personal status,

I do not put it as a higher priority than the other peoples - - doing things for other people. And that's why I haven't really taken care of it. (Tr. 46.)

Applicant was indebted to a bank on a second mortgage on one of the two rental properties in the approximate amount of \$10,565, as stated in SOR ¶ 1.b. She received a summons to appear in court related to this debt, after the bank filed suit against her. As a result, she reached a settlement agreement with this creditor in February 2014. Applicant remitted \$9,760 to this creditor and resolved this debt under the documented settlement agreement. (GE 1; GE 2; AE A; Tr. 44-45, 47.)

Applicant testified that she has approximately \$600,000 in her 401K savings plan; \$80,000 in one savings account; and \$70,000 in another savings account. (Tr. 74.) She presented a copy of her bank statement to show that her "spending habits are consistently modest." (AE C.)

In addition to Applicant's sister, a friend, and another former employee also testified and wrote character reference letters on Applicant's behalf. She also presented character reference letters from co-workers that were unable to testify at the hearing. They each reflected that Applicant is a trustworthy person and has respect for rules and regulations. Applicant testified that she is active in her church community and is trusted as the church's treasurer. (AE B; Tr. 52-73.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. 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, administrative judges apply the guidelines 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(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, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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.

Section 7 of EO 10865 provides that adverse 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, as follows:

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

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

Applicant has a history of financial indebtedness documented by the credit reports in evidence that substantiated both of the allegations. She addressed one debt, after the creditor filed suit against her. She has not had recent contact with her remaining creditor and she has been unwilling to address her remaining delinquency, despite her significant savings. The evidence raises security concerns under both of

these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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 financial problems are ongoing. She has one unresolved delinquent account, as identified on the SOR, and has not taken any action to address it. Given her inaction on this debt, she has not demonstrated that future financial problems are unlikely, despite significant savings. AG ¶ 20(a) has not been established.

Applicant blamed her financial problems on her sister's failure to manage the properties effectively; difficulties renting the properties; and the real estate "bubble." While these are conditions beyond Applicant's control, her financial problems are also due, in part, to her poor judgment and failure to monitor her financial situation. Further, she failed to act responsibly under the circumstances, and did not address her debt in a timely manner. AG ¶ 20(b) has not been fully established.

Applicant presented no evidence of financial counseling and failed to show clear indications that her financial problems are being resolved or are under control. Only one debt has been addressed and she did so only after that creditor filed suit against her. SOR ¶ 1.a remains unaddressed. Neither AG ¶¶ 20(c) nor 20(d) have been fully established.

Applicant provided no documented proof of any disputes with her SOR-listed creditors. AG ¶ 20(e) has not been fully established.

### **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 active in her church and serves in a trusted position as the church's treasurer. Her friends and co-workers find her trustworthy. She is a good sister and has tried to help her sibling in a time of need. However, she is a mature adult and responsible for her choices and financial obligations. She has not acted responsibly with respect to her finances. She has chosen to ignore her delinquencies caused by trusting blindly in her sister's investment scheme. 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 Financial Considerations security concerns.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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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Jennifer I. Goldstein  
Administrative Judge