



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-01949

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

06/30/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On December 4, 2012, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). On October 17, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) 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; 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 Department of Defense on September 1, 2006.

<sup>1</sup> Applicant signed her Answer as -----, resuming her maiden name after her latest divorce. The SOR is captioned with her married name based on the 2012 e-QIP.

On December 12, 2015, Applicant submitted a written Answer to the SOR. Applicant requested her case be decided on the written record in lieu of a hearing.

On January 25, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to the Applicant on February 1, 2016. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 8, 2016. Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on March 9, 2016.

Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on January 23, 2013. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on May 12, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant denied the allegations in Subparagraphs 1.j, 1.o, 1.r, and 1.u. and admitted all other allegations contained in the SOR under both guidelines. (Items 2-6)

Applicant is 34 years old, has one child, and has been divorced twice. Applicant takes care of her disabled mother. She attends college on the internet. She works for a defense contractor and has since 2012. Applicant claims some of the debts were incurred when she was young, a new parent, and was financially irresponsible. The credit reports show the earliest delinquency as occurring in 2008, and the others accumulating over the years until 2015. (Items 1-3, 5-7)

Applicant's SOR lists 24 delinquent debts totaling \$19,288. She admits 15 debts (Subparagraphs 1.a to 1.e, 1.k, 1.l, 1.m, 1.n, 1.q, 1.s, 1.t, 1.v, and 1.w) totaling \$17,660, and claims to have resolved four debts (Subparagraphs 1.f to 1.i) totaling \$794. She denies four allegations (Subparagraphs 1.j, 1.o, 1.r, and 1.u) totaling \$438. She stated in her Answer that she is not aware of those debts, so she denied them. Applicant claims Subparagraphs 1.f and 1.x, both for \$514, are duplicate accounts and she resolved them. She did not submit any documentary evidence to prove that any debts are resolved. (Items 1, 2)

The debts in Subparagraphs 1.c and 1.n are for cars that were repossessed or used by her second ex-husband. A September 24, 2013 divorce decree ordered those two debts to be paid by her former husband (at page 5 of the decree). That divorce

decree was entered after Applicant submitted her e-QIP in December 2012. (Items 1-3, 5-7)

Applicant's Answer states she bought a car and maintained the payments after obtaining her current position. She never missed a payment and later gave the car to her mother. Then she purchased another car for herself in November 2014 and has not missed a payment. In December 2013, Applicant paid \$4,900 for a down payment on a house she was renting as part of rent-to-own program. She made the first part of that payment with a cashier's check for \$3,000 from her bank account. Applicant did not demonstrate why she could not have used some or all of that money to resolve her delinquent debts, especially the 22 delinquent debts that are each under \$1,000. Eight of these debts are under \$100, and total \$456. (Items 1-3, 5-7; Answer)

Applicant stated her daughter injured herself during sporting events, and two alleged debts are related to medical care for her daughter. The ambulance bill for \$311 (possibly Subparagraph 1.q) and the emergency room bill for \$50 (Subparagraph 1.b) are for those services. They are not resolved and Applicant stated she would work on getting them resolved in 2016. (Items 1-3, 5-7; Answer)

Applicant was unemployed from November 2010 to March 2011, and March 2002 to May 2003. She has been employed by her current company since December 2012. (Items 1-3)

Applicant's Answer states she did not intentionally falsify her e-QIP answer in Section 26 inquiring as to whether she had any delinquent debts or was subject to collection efforts. She states she mentioned "having debt and repossessions in part of the Section 26 just not in the summary section." She claims she did not pay attention or did not fully understand the question. However, Applicant answered all parts of Section 26 with a negative response and did not disclose any debts or repossessions in that section or the rest of the e-QIP. (Items 1-3)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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. 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2008 to the present, Applicant accumulated 24 delinquent debts, totaling \$19,288 that remain unpaid or unresolved. AG ¶ 19 (a) and (c) are established. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

- (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.

AG ¶ 20 (b) would apply if the loss of employment was shown by Applicant to have had a substantial effect on her ability to repay her debts. In the past six years, Applicant has been unemployed 19 months. She also was divorced for the second time in September 2013. She did not demonstrate that she acted responsibly under the circumstances regarding her debts. In fact, she spent nearly \$5,000 on a rent-to-own house purchase and paid for two cars, one she gave to her mother and the second she purchased for herself. Applicant explains her debts in her Answer, but does not offer any plan to pay them. Even if she had a plan for the future, it is not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. Applicant failed to meet her burden of proof on that issue.

### **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 a condition that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose her financial delinquencies as alleged in SOR Paragraph 2. She disclaims any intentional action in doing so. However, her debts were known to her before she answered the e-QIP because she was preparing for her second divorce and the splitting of the property and debts. Her Answer states she answered part of Section 26 of the e-QIP with information about debts and repossessions, but there is no such information on the e-QIP. Her Answer is false on this issue also. Applicant made a deliberate falsification on her e-QIP. AG ¶ 16 (a) applies.

There are seven mitigating conditions listed in the Guideline in ¶ 17. None of them apply to Applicant.

Applicant has not made good-faith efforts to correct the falsification. Her Answer claimed she did not intentionally falsify her e-QIP, but she then states she listed debts but not in the summary section that does not exist in Section 26 of the e-QIP. Applicant's explanation is not logical or supported by the evidence. AG ¶ 17 (a) is not established.

She did not depend on inadequate advice from an attorney or authorized person in falsifying her answers to Section 26. AG ¶ 17 (b) is not established.

Falsifying answers on an e-QIP from a person seeking a security clearance is not a minor offense, and the totality of Applicant's answers cast serious doubt on her trustworthiness, reliability, and good judgment. AG ¶ 17 (c) is not established.

Applicant has not acknowledged her falsification behavior or obtained counseling to correct it. AG ¶ 17 (d) is not established.

Applicant has not reduced her vulnerability to exploitation, manipulation, or duress from her falsification of her debts on an official government form. AG ¶ 17 (e) is not established.

The information about Applicant's false answers on the e-QIP is substantiated by the credit reports and the e-QIP. There is no allegation of criminals being involved in this falsification matter. Therefore, AG ¶ 17 (f) and (g) are not 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 pertinent facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Applicant's lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on any of her delinquent debts during the past eight years.

Applicant deliberately falsified her financial information in response to the questions in Section 26 of the e-QIP. Subsequently, she gave an unpersuasive explanation of why she failed to disclose her debts in her Answer.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Financial Considerations, and Personal Conduct.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.x:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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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PHILIP S. HOWE  
Administrative Judge