



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00344
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

03/08/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On February 15, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).<sup>1</sup> In an undated response, Applicant answered the allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on September 12, 2018.

A hearing originally scheduled for December 4, 2018, was cancelled to give Applicant more time to retain counsel. A November 29, 2018, notice setting the hearing for January 16, 2019, was subsequently issued. The hearing was convened as scheduled, during which time the Government offered four exhibits (Exs.), noted as Exs. 1-4, and Applicant presented 23 exhibits, marked as Exs. A-W. With no objections, all

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<sup>1</sup> 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 (AG) effective within the DOD on or after June 8, 2017.

exhibits were accepted into the record. Applicant was granted through February 8, 2019, to submit any additional materials.

Four exhibits offered by Applicant on February 8, 2019, were admitted without objection as Exs. X-AA. A request for an additional two weeks to submit materials resulted in no further submissions. The record was closed on February 22, 2019. In the interim, the transcript (Tr.) was received on January 25, 2019. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate security concerns.

### **Findings of Fact**

Applicant is a 32-year-old divorcée with no children. She was married from 2008 until 2015. Having earned a bachelor's degree, completed some graduate study, and mastered three languages, she is presently an operations specialist. Successful at work, she was recently given a pay raise, increasing her annual salary to \$59,000. Applicant has received credit counseling.

During her marriage, both Applicant and her husband worked. She does not recall his salary, but remembers their joint income supported their household, with her salary paying for the lion's share. (Tr. 19) Applicant found herself in an unhappy marital situation. Her 2015 divorce left her with marital bills that were deemed her responsibility and which she could not pay. (Tr. 18) They subsequently became delinquent despite her efforts. Her salary as a single teacher earning a gross income of about \$32,000 could not cover both the delinquent bills and her current expenses, including rent, food, auto, and other day-to-day costs.

At issue in the SOR are the following delinquent debts:

1.a & 1.b – Student loan (\$10,112) and Student loan (\$5,993) – These two loans were combined in the debt rehabilitation process. (Tr. 31) During 2018, a payment of \$78 was processed toward these debts. Processing for future payments on the plan was delayed because the lender needed tax return information from Applicant. Ex. W reflects a payment of \$271 on the debts in January 2019. Ex. A is a statement showing a payment will be processed in the future. Ex. B is a schedule of payments to be made in the future. A second payment (pending) is reflected from February 2019 at Ex. Y.

1.c – Past due account with balance of \$427 – Paid. (Ex. C; Tr. 23, 31-32)

1.d – Charged off account (\$666) – Account satisfied and current. (Exs. D-E; Tr. 23)

1.e Debts (\$1,051 medical balance from August 2012); 1.f, 1.g, 1.h, 1.j (\$1,051, \$118, \$118, \$118, \$86 (medical balances dating from 2014-2015. (Exs. F-J, Z-AA; Tr. 23-25).

1.i – Student debt (\$3,013 in collection since August 2014) – Applicant believes this was incorporated into the student debts since consolidated from 1.a and 1.b, but failed to provide documentary evidence to that effect. (Tr. 34)

Applicant is currently able to pay her day-to-day living expenses and make needed payments to her remaining delinquent debts. (Tr. 25) She now has a savings account. Combined, her checking and savings accounts have a current balance of over \$5,500. (Tr. 26)

## **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. 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 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 any 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.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant had numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There are multiple delinquent debts at issue, some dating back to her unhappy 2008-2015 marriage, when Applicant's modest teacher's salary represented the larger share of the couple's household income. The rest appear to have arisen after the divorce left her encumbered with sole responsibility for the marital debts based only on

her unsupplemented income. To meet the challenges posed by insufficient income, she tried to manage the debts, but was unsuccessful. This is sufficient to raise AG ¶ 20(b).

Applicant has received financial counseling and made some headway in resolving her delinquent debts. Applicant provided persuasive documentation indicating the delinquent debts noted in the SOR at allegations 1.c-h and 1.j, amounting to approximately \$2,584, have been addressed. Although equal documentation was lacking with regard to the student loan noted at 1.i for \$3,013, and the student loans at 1.a and 1.b, these efforts are sufficient to raise AG ¶ 20(c) in very general terms.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 32-year-old divorcée with a bachelor's degree and who speaks three languages. She was married from 2008 until 2015, during which time she was the primary earner, generating a teacher's salary in the mid-\$30,000s. She was given responsibility of the marital debts, which were beyond her means without some form of monetary supplementation. She is now a successful operations specialist whose salary was recently raised to about \$59,000 a year.

It is unclear exactly when Applicant first found herself financially able to address her delinquent debts. The record seems to indicate her first efforts were made in 2018, with a nominal payment on her student loans before a student loan repayment plan was devised. Applicant has received financial counseling and made more notable headway in resolving her other delinquent debts. Applicant provided persuasive documentation indicating the modest delinquent debts noted in the SOR at allegations 1.c-h and 1.j, amounting to approximately \$2,584, have been addressed.

Equal documentation, however, is lacking with regard to the far more significant debts at issue – specifically, the student loan noted at 1.i for \$3,013, and the student loans at 1.a and 1.b. Together, these represent over \$19,100 in delinquent debt. Applicant was unable to submit documentation indicating that the debt at 1.i was made part of the larger student loans. Moreover, those larger student loans only reflect payments amounting to less than \$600, mostly made around the time of the hearing. A stronger record of regular and consistent payment is needed to demonstrate a meaningful record of debt repayment. In light of the above, I find that at this time, Applicant's efforts and documentation fail to mitigate 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge