



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00965
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/25/2019

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to carry that burden of proving that her financial delinquencies no longer pose a security concern. Clearance is denied.

**Statement of the Case**

On April 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility for her. The DOD CAF took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On May 2, 2018, Applicant answered the SOR allegations, denying both subparagraphs. She requested a decision based on the written record rather than a hearing. On May 24, 2018, Department Counsel prepared a file of relevant material

(FORM). Applicant received the FORM on June 11, 2018, and was notified that she could file a reply, together with attachments supplementing the information in the FORM, if desired. She did not file a reply. The FORM was assigned to me on July 30, 2018.

### **Evidentiary Ruling**

Item 4 at pages five through ten is an unauthenticated summary, prepared by an investigator, of Applicant's interview conducted on November 15, 2016. In Applicant's Answer to the SOR, she characterized it as a "totally inaccurate assessment of the facts from [their] prior meeting." (Item 2 at 3) Moreover, she questioned the agent's professionalism and objectivity. (Item 2 at 3) I am going to construe these statements as an objection to its admissibility. Because the document is both unauthenticated and disputed, I have granted Applicant's objection, and will not consider it in my decision. (Directive, Additional Procedural Guidance ¶ E3.1.20)

### **Findings of Fact**

Applicant is a 63-year-old woman, twice divorced, with two adult children. She has a high school diploma, and she served in the U.S. Air Force National Guard from 1977 to 1979. She was discharged honorably. Since 2014, she has worked for a defense contractor as a senior subcontracts administrator. (Item 3)

The SOR alleges a delinquent credit card in the amount of \$25,098 (subparagraph 1.a), and a deficiency stemming from a car repossession, totaling \$9,418 (subparagraph 1.b). Applicant admits that she incurred the debts in 2010, but denies being currently responsible for them, as they have been charged off her credit report. (Item 4 at 3) She was aware of the debts when she completed interrogatories in March 2018, but had no intention of paying them, as the seven-year statute of limitation was set to elapse within a year of answering the interrogatories. (Item 4 at 3)

The Government propounded interrogatories to Applicant in 2018. Interrogatory number two asked her to list any delinquencies and to provide documents as to what she was doing to resolve them, noting as follows:

Simply a written statement that you are making payments on a debt or that a debt was paid, disputed, repossessed, charged off or otherwise not your responsibility, is not sufficient documentation. You must also provide valid PROOF of whatever claims you are making concerning each account.

Applicant contends that she is financially stable, as she recently was approved for a home loan at a favorable interest rate, and that no problems arose when the mortgage company checked her credit.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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 national security eligibility will be resolved in favor of the 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## Analysis

### Guideline F, Financial Considerations

The security concerns about financial considerations are set forth 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. . . .

Applicant’s delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Applicant’s case relies almost exclusively on her contention that her delinquent debts pose no security concern because they are no longer legally enforceable. This

argument is inconsistent with industrial security clearance law. Specifically, debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations. (ADP Case No. 06-18900 at 5 (App. Bd. Jun 6, 2008)(citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul 20, 2005)) Moreover, Applicant's decision to rely on the running of the statute of limitations rather than pay her debts, which she expressed in her interrogatory responses in March 2018, does not constitute a good-faith effort to resolve her financial difficulties. (*Id.*)

Although reliance on the running of the statute of limitations to avoid paying one's delinquent debts has minimal probative value, it is not *per se* disqualifying. Whether the circumstances surrounding the incurrence of the debt were out of her control, whether Applicant has followed the IRS requirements for reporting canceled debt, whether she has been receiving counseling, or whether she is currently financial stable are examples of other factors that could collectively mitigate the security concern. (AG ¶¶ 20(a) - 20(d)) Applicant, however, offered minimal evidence in support of any mitigating conditions. Given the amount of the delinquencies, and the lack of information about how they were incurred, or what efforts Applicant may have attempted to resolve them before the statute of limitations on their collectability expired, there is insufficient evidence for me to conclude that she mitigated the security concern.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

I considered the whole-person concept factors in my disposition of the disqualifying and mitigating conditions. I conclude Applicant has failed to carry the burden.

### **Formal Findings**

Formal findings for 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

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge