



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



In the matter of:	)	
	)	
	)	ISCR Case: 18-01342
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany Muetzel, Esquire, Department Counsel  
For Applicant: *Pro se*

12/18/2018

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to have 17 delinquent debts totaling \$27,247. Her debts were due to circumstances beyond her control. She is addressing them in a responsible manner and there is little likelihood that her financial problems will recur. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

**Statement of Case**

On August 21, 2017, Applicant submitted a security clearance application (SCA). On May 21, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines*, effective June 8, 2017.

Applicant answered the SOR on June 22, 2018, and requested a decision on the record without a hearing. (Item 1.) Department Counsel submitted the Government's

written case on August 29, 2018. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 6. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on September 12, 2018. She responded to the FORM in an undated submission within the 30 days allotted, and included 16 pages of materials, marked Applicant Exhibit (AE) A. Applicant expressed no objections in AE A to Items 1 through 6, which are admitted into evidence as Government Exhibits (GE) 1 through 6. Department Counsel had no objections to AE A and it is admitted. The case was assigned to me on December 12, 2018.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a through 1.g, 1.i, and 1.l through 1.q. She denied SOR ¶¶ 1.h, 1.j, and 1.k. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old single mother of an eight-year old child. She has worked as a security professional for her employer since March 2017. She resides with her brother to save money. From 2004 to 2013, she was employed as a secretary. The firm she worked for downsized and she was laid off in December 2013. She was unemployed until February 2014. She worked for two different firms between 2014 and March 2017, but did not get sufficient hours. She was laid off again in March 2017, prior to finding her current employment. She did not have health insurance and only sought medical assistance when her child required emergency care. Applicant attributes her debts to her unemployment, under employment, and lack of health insurance. (GE 3; Answer; AE A.)

Applicant was alleged to be delinquent on a collection account in the amount of \$9,098, as stated in SOR ¶ 1.a. This debt became delinquent in October 2017. (GE 6.) She indicated that she established a payment plan with this creditor to resolve this debt. She provided an account statement showing four consecutive months of payments. Her balance has been reduced to \$8,416. (AE A at attachment 1.) This debt is being resolved.

Applicant was alleged to be delinquent on a charged-off automotive loan in the amount of \$6,762, as stated in SOR ¶ 1.b. This debt became delinquent in November 2011. (GE 6.) She credibly averred that she contacted this creditor and set up a payment plan to resolve this debt. (AE A.) Applicant is resolving this debt.

Applicant was alleged to be delinquent on a collection account in the amount of \$3,911, as stated in SOR ¶ 1.c. This debt became delinquent in 2017. (GE 6.) Applicant explained that she planned to begin making payments on this debt in October 2018, after she fully resolved another account. (AE A.) This debt is not yet resolved.

Applicant was alleged to be delinquent on a medical account in the amount of \$1,246, as stated in SOR ¶ 1.d. This debt became delinquent in 2017. (GE 6.) Applicant established a payment plan to resolve this debt. As of September 2018, the balance due had decreased to \$784. (AE A, attachment 2.) Applicant is resolving this debt.

Applicant was alleged to be delinquent on a collection account in the amount of \$1,000, as stated in SOR ¶ 1.e. This debt became delinquent in 2017. (GE 6.) By October 1, 2018, Applicant had resolved this debt through monthly payments. (AE A.) This debt is resolved.

Applicant was alleged to be delinquent on a collection account in the amount of \$803, as stated in SOR ¶ 1.f. Applicant established a payment plan to resolve this debt. As of September 2018, the balance due had decreased to \$505. (AE A, attachment 2.)

Applicant was alleged to be delinquent on a collection account in the amount of \$480, as stated in SOR ¶ 1.g. She resolved this debt in full in September 2018. (AE A, attachment 3.)

Applicant was alleged to be delinquent on a medical account in the amount of \$192, as stated in SOR ¶ 1.h. Applicant denied this debt because she has “no recollection or record of this debt and it does not show up on [her] current credit report of September 20, 2018.”

Applicant was alleged to be delinquent on a collection account in the amount of \$177, as stated in SOR ¶ 1.i. This debt became delinquent in 2017. (GE 6.) Applicant explained that she established a payment plan in July 2018 to resolve this debt and attached proof of payment. As of September 2018, she decreased the balance of this debt to \$111. Applicant is resolving this debt. (AE A attachment 2.)

Applicant was alleged to be delinquent on a medical account in the amount of \$47, as stated in SOR ¶ 1.j. This debt became delinquent in 2017. (GE 6.) She resolved this debt in full in June 2018. (AE A, attachment 4.)

Applicant was alleged to be delinquent on a medical account in the amount of \$47, as stated in SOR ¶ 1.k. This debt was a duplicate of the debt listed above in SOR ¶ 1.j. It is resolved.

Applicant was alleged to be delinquent on a collection account in the amount of \$630, as stated in SOR ¶ 1.l. She made payment arrangements with this creditor for 13 payments of \$53.54, beginning September 2018. (AE A, attachment 5.) This debt is being resolved.

Applicant was alleged to be delinquent on a collection account in the amount of \$544, as stated in SOR ¶ 1.m. Applicant made payment arrangements with this creditor. (AE A, attachment 6.) She intends to resolve this debt.

Applicant was alleged to be delinquent on a medical account in the amount of \$180, as stated in SOR ¶ 1.n. Applicant indicated, “I am currently on a payment plan for this.” (AE A.)

Applicant was alleged to be delinquent on a medical account in the amount of \$70, as stated in SOR ¶ 1.o. Applicant provided a reference number and claimed this debt was paid. (AE A.)

Applicant was alleged to be delinquent on a medical account in the amount of \$60, as stated in SOR ¶ 1.p. Applicant paid this debt in full in September 2017. (AE A, attachment 7.)

Applicant was alleged to be delinquent on her state income taxes for 2016 tax year in the amount of \$2,000, as stated in SOR ¶ 1.q. Her employer failed to deduct state payroll taxes from her paycheck. She timely filed her state tax returns, but did not have the funds to satisfy the state taxes due in a lump sum payment. She made a repayment agreement with her state and documented four payments under that agreement. She reduced this debt to \$1,703. She is resolving this debt. She owes no Federal taxes. (AE A, attachment 8.)

### **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was delinquent on 17 debts totaling \$27,247. Her oldest debt, a vehicle loan, became delinquent in 2011. More recently, she incurred a number of delinquent debts in 2017. She also had an unresolved state tax debt. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The 17 SOR-alleged debts were incurred due to circumstances beyond Applicant's control, and those same circumstances are unlikely to recur. During the time she incurred delinquent debt, she was a single mother supporting her child. She experienced several periods of unemployment and underemployment. She did not have healthcare insurance, but her child required costly emergency medical services. As a result of these circumstances beyond her control, she incurred delinquencies. She recently obtained a full-time position with medical benefits. The record shows that she is acting reasonably and responsibly by addressing her debts as her funds allow. She is in contact with her creditors and has established a track record of systematically addressing her delinquencies. The evidence establishes mitigation under AG §§ 20(a) and 20(b), as the circumstances that contributed to her financial delinquencies are unlikely to recur; she is addressing her debts in a reasonable and timely manner as funds allow; and her delinquencies not cast doubt on her current trustworthiness.

Applicant has demonstrated a good-faith effort to repay her creditors, as funds allow. She has fully resolved three debts, documented payments on seven other accounts, and credibly claimed to be repaying four other accounts. One debt was a duplicate, and is being resolved. Only two debts §§ 1.c and 1. h remain unaddressed, and she has plans to resolve 1.c, when the funds are available. She disputes 1.h, because she does not recognize the creditor and cannot track down the debt to identify the creditor. AG § 20(d) applies to SOR §§ 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.j, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 1.p, and 1.q. AG § 20(e) does not apply to the debt she contests because there is no documentation of the dispute. Nevertheless, it is mitigated under AG §§ 20(a) and 20(b), above.

Additionally, Applicant has made arrangements with the state tax authority to pay her tax debt. She is in compliance with those arrangements. AG § 20(g) applies to SOR § 1.q.

### **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(d):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of ‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ‘. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>1</sup>

Applicant provided sufficient evidence to demonstrate a plan to resolve her outstanding delinquent debts within the standard defined in the above case. The likelihood that financial problems will recur, or Applicant will stop making payments on the plans she has initiated, is minimal based on her efforts to date and her knowledge that similar problems could jeopardize her employment. The potential for pressure, coercion, or duress is eliminated by Applicant’s efforts to resolve her debt. Overall, the record evidence leaves me without doubt as to Applicant’s judgment, eligibility, and suitability for a security clearance. She met her burden to mitigate the security concerns arising under the guideline for financial considerations.

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<sup>1</sup>ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).



### **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: FOR APPLICANT

Subparagraphs 1.a through 1.q: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein  
Administrative Judge