



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



In the matter of: )  
)  
) ISCR Case No. 18-02090  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: Bradley P. Moss, Esq.

11/01/2019

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on November 27, 2018, and requested a hearing before an administrative judge. The case was assigned to me on March 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on March 25, 2019, scheduling the hearing for April 25, 2019. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant Exhibits (AE) A through S, which I admitted in evidence without objection. At Applicant's request, I kept the record open until June 6, 2019, for additional evidence. By that date, Applicant submitted additional documentation, which I marked collectively as AE T and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on May 6, 2019.

### **Findings of Fact**

Applicant admitted all of the allegations but SOR ¶ 1.c, which she denied. She is 32 years old. She is single and she has one child, a minor. (Tr. at 48, 72, 115; GE 1).

Applicant obtained her high school equivalency certificate in 2004 and attended some college since 2010, but has not yet earned a degree. She has worked for her current employer, a DOD contractor, since April 2017. She was a program manager as of the date of the hearing. She has never held a security clearance. (Tr. at 6, 20-21, 71-75, 98; GE 1, 7).

The SOR alleges three judgments totaling \$18,959 entered against Applicant in 2008, 2015, and 2016 (SOR ¶¶ 1.a - 1.c); a \$415 delinquent student loan (SOR ¶ 1.h); and seven delinquent consumer accounts totaling \$14,248 (SOR ¶¶ 1.d - 1.g, 1.i - 1.k). The debts are established by court records and credit reports from 2017 and 2018. Applicant also disclosed and discussed her debts in her 2017 security clearance application (SCA) and during her 2018 background interviews. (GE 1-7).

Applicant attributed her delinquent debts to earning a minimal income with various employers from approximately 2007 to December 2015. From 2007 to 2010, she worked for a county health department at \$15 hourly in an exempt, non-full-time position, and she was required to "work up to a certain amount of cap hours for that year," take a month of unemployment, then be rehired. In 2009, she became a single parent. Her child's father earns minimum wage as a construction worker and owes approximately \$25,000 in delinquent child support for 2010 to 2016. He only began contributing \$240 monthly towards their child's tutoring expenses in 2016. (Tr. at 71-125; GE 1, 7).

In August 2014, Applicant was laid off by her employer due to a reorganization. She was unemployed until May 2015, when she obtained part-time employment at \$18 hourly for 20 hours per week. She relied on her employer's representation that her position was slated to become a full-time one. In around September 2015, she was notified by a county housing program, which had an income cap of \$35,000 to \$40,000 annually, that an apartment for which she had been waitlisted for six years was available for her and her child. She then moved with her child out of her parents' home and into her own apartment. Her expenses increased from a monthly contribution of \$400 to \$800 monthly in rent plus other household expenses. When she obtained full-time employment in December 2015, her income increased to \$40,000 annually. As required, she notified the county housing authority and her monthly rent was increased

to \$1,200 monthly. Though she was prepared for her rent increase, she was unprepared for the amount in which it did. She also cited to out-of-pocket medical expenses for her and her child, and the compromise of her bank account in July 2018, as additional factors that contributed to her financial delinquencies. (Tr. at 71-125, 135; GE 1, 7).

SOR ¶¶ 1.a, 1.b, and 1.c consist of three judgments entered against Applicant in 2008 for \$1,158; 2015 for \$15,449; and 2016 for \$2,352. The 2008 judgment for \$1,158 (SOR ¶ 1.c) was for a credit card Applicant obtained in approximately 2014, with a \$500 credit limit. She paid \$2,348 to resolve this debt in April 2019, and the judgment was resolved as of October 2019. (Tr. at 83-87, 93, 99-103, 113, 128-130, 146-148; AE P, T).

The 2015 judgment for \$15,449 (SOR ¶ 1.b) was for a \$29,000 car loan Applicant obtained in approximately 2011 for a used car. She testified that she became delinquent when she missed four monthly payments after her 2014 layoff, and when her monthly rent increased in late 2015. She testified that she unsuccessfully attempted to reach a payment plan with the creditor in the summer of 2014, but the creditor demanded payment in full of \$20,000. Her car was repossessed in October 2014. She testified that she reached a payment plan with the creditor's collection agency to repay half of the outstanding balance at \$434 monthly for 36 months, after which time she would enroll the remaining balance in her debt-consolidation plan. She made a \$150 payment to the collection agency in November 2018. She testified that she was unable to try to resolve this judgment sooner because she prioritized other expenses. (Tr. at 83-87, 93, 99-103, 108, 113, 125-128, 146-148; AE C, D, S, T).

The 2016 judgment for \$2,352 (SOR ¶ 1.a) was for Applicant's delinquent rent for her apartment with the county housing program. She was already \$1,600 delinquent when her rent was increased in late 2015. She ended her lease in November 2016 after she unsuccessfully attempted to obtain rental assistance and could no longer afford her rent. She paid this judgment in September and October 2018. She testified that she was also unable to pay it sooner because she prioritized other expenses. (Tr. at 83-87, 93, 99-103, 118-125; AE A, B).

SOR ¶ 1.d is for an \$11,028 charged-off auto loan that Applicant obtained in November 2014. After her credit was negatively affected by her car repossession, her only available option for another means of transportation for her and her child was through a high-interest-rate loan. She testified that she enrolled this debt in her debt-consolidation plan, and payment plan negotiations were underway. (Tr. at 103-107, 113, 130-134; AE D, S, T).

SOR ¶ 1.e is for a credit card in collection for \$818. Applicant testified that she obtained this credit card in an attempt to rebuild her credit, but it came with a high interest rate and additional fees. The card became delinquent in June 2015. She testified that she paid this debt from June 2015 until May 2018, when her bank account was compromised, and she then forgot to provide the creditor with her updated bank information. She believed this debt was going to be imminently resolved with the funds she paid into her debt-consolidation plan. (Tr. at 107, 113-114, 134-136; AE D, S, T).

SOR ¶ 1.f is for a credit card past due for \$120 with a total balance of \$555. Applicant testified that she also obtained this credit card in an attempt to rebuild her credit. She also believed it would be imminently resolved with the funds she paid into her debt-consolidation plan. (Tr. at 106-107, 113-114, 136-137; AE D, S, T).

SOR ¶ 1.g is for a credit card past due for \$111 with a total balance of \$433. Applicant testified that she obtained this credit card in November 2015, also in an attempt to rebuild her credit. The card became delinquent in 2017. She settled this debt for \$228 and paid it in October 2018. As of November 2018, the creditor considered this debt resolved. (Tr. at 107, 113, 137I; AE E, F).

SOR ¶ 1.h is for a federal student loan placed for collection for \$415. Applicant obtained a \$1,000 student loan in around 2010 or 2012 for her college tuition. She could not recall when it became delinquent. She made minimal payments of \$5 monthly from June 2015 to May 2016, and five payments of \$204 from January through March 2018 towards this student loan. She settled this loan for \$380 and the creditor stated it was resolved as of April 2019. (Tr. at 72, 98-99, 107, 113, 137-139, 146-148; AE G, H, Q, T).

SOR ¶ 1.i is for a prepaid credit card past due for \$157 with a total balance of \$395. Applicant testified that this credit card became delinquent in around 2017. In her Answer, she stated that she established a five-month payment plan to resolve this debt. She made three payments of \$78 in October and November 2018. She made a final payment of \$172 in April 2019 to resolve this debt. (Tr. at 107, 113, 139-141, 146-147; AE I, J, R, T).

SOR ¶¶ 1.j and 1.k are for two cable accounts placed for collection for \$732 and \$287. Applicant testified that she had this cable service when she rented an apartment. She returned the equipment in November 2017 and she testified that the fee in SOR ¶ 1.j was waived as a result. She also testified that she paid the final bill in SOR ¶ 1.k, and she provided documentation reflecting that she made a \$186 payment in October 2018. (Tr. at 108, 141-143; AE K, L).

Applicant enrolled the debts in SOR ¶¶ 1.d, 1.e, 1.f in her debt-consolidation plan in October 2018. She testified that she also included a \$700 telephone debt and a \$100 to \$300 cash advance in her plan. Her plan provides that she pay \$238 monthly “for the purposes of accumulating funds for settlements and the payment of our fees . . . .” She testified that she paid \$16,000 into her plan as of the date of the hearing, and a representative informed her that it would take approximately five years to resolve her outstanding debts enrolled in the plan. She testified that she received financial counseling from the debt-consolidation company; she developed a budget and had separate bank accounts from which she paid her bills and set aside her spending money; she checked her credit reports and was working on increasing her credit score; and she intended to live within her means. She earns approximately \$40,000 to \$50,000 annually and estimated a \$1,500 monthly net remainder after expenses, which she sets aside for emergency expenses, savings, or to resolve some of her smaller debts in her debt-consolidation plan. She testified that she had approximately \$700 in savings. (Tr. at 64-65, 72, 104-105, 108-114, 124-125, 136, 143-146, 148-151; AE D, S, T).

The chief executive officer (CEO) of Applicant's employer, since its founding in 2010, testified. He has worked in the classified arena for approximately 20 years. He hired Applicant as a program manager in April 2017, at an initial annual salary of \$40,000. In May 2018, she was promoted to supervise a team of two, and her annual salary as of the date of the hearing was \$50,000. He interacts with her daily. He testified that he first learned about the extent of Applicant's financial problems when their facility security officer (FSO) notified him of such after she completed her 2017 SCA. He further learned about her indebtedness when he reviewed the SOR after it was issued in August 2018. He attributed her delinquent finances to her youth and lack of steady employment. He testified that he worked "extensively" with Applicant to ensure that she was resolving her debts, and he had no concerns about her ability or willingness to continue do so. He testified that she had proven herself "responsible" over the two-year period of her employment. He described her as a "model employee" with exceptional performance. Character references, to include her FSO and two coworkers, also attested to her trustworthiness and reliability. (Tr. at 16-41; AE M, N, O).

Applicant's boyfriend testified. As of the date of the hearing, he was an active duty member of the U.S. military earning approximately \$60,000 annually. He and Applicant began dating in around January 2018, and Applicant moved in with him that December. He has since paid their larger household expenses, and she has paid their smaller ones, so that she can focus on repaying her delinquent debts through her debt-consolidation plan. He was aware of the SOR allegations. He also attributed her delinquent debts to her immaturity and was confident that she learned from her mistakes and would responsibly handle her finances going forward. (Tr.at 41-71).

### **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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the national security."

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 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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:

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 personnel 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. The following are potentially applicable in this case:

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

Applicant was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; and

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

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. With her limited income, she prioritized her expenses and attempted to resolve her delinquent debts before the August 2018 SOR. When her rent was increased in late 2015, she unsuccessfully tried to obtain rental assistance to resolve her delinquent rent underlying the SOR ¶ 1.a judgment. She tried to reach a payment plan for the auto loan underlying the SOR ¶ 1.b judgment, but she could not afford the \$20,000 payment in full demanded by the creditor. She made payments toward her credit card in SOR ¶ 1.e, after it became delinquent in June 2015 and through May 2018, when she mistakenly forgot to provide the creditor with her updated bank account information after her account was compromised. She made payments toward her student loan in SOR ¶ 1.h from June 2015 to March 2018. She returned the cable equipment for the debt underlying SOR ¶ 1.j in November 2017.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant enrolled the remainder of her outstanding debt in a debt-consolidation plan, for which she was paying \$238 monthly, in October 2018. She paid \$16,000 into that plan as of the date of the hearing. She received financial counseling from the debt-

consolidation company. With her monthly net remainder of approximately \$1,500 after expenses, she intended to continue to resolve her remaining debts. I find that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

### **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.

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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a – 1.k:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge