



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



In the matter of:	)	
	)	
---	)	ISCR Case No. 19-00212
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

07/23/2019

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**Decision**

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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

**Statement of the Case**

On December 4, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On March 13, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated March 28, 2019, as well as April 22, 2019, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on May 17, 2019, and she was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to her case. Applicant received the FORM on May 24, 2019. Applicant responded to the FORM by timely submitting a statement and associated documents, all of which were accepted without objection. The case was assigned to me on July 10, 2019.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted, with brief comments, all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.l.). Attached to her Answer, Applicant included a number of documents. Applicant's admissions and comments, as well as the contents of the attached documents, are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 63-year-old employee of a defense contractor. She has been serving as a fraud-prevention specialist with her current employer since April 2012. While Applicant completed three years of high school, she did not complete her education, and she did not receive a diploma. She has never served with the U.S. military. She has never held a security clearance. Applicant was married in 2001 and divorced in 2008. She has three sons, born in 1975, 1978, and 1984.

### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (e-QIP, dated December 4, 2017); Item 7 (Combined Experian and TransUnion Credit Report, dated January 12, 2018); Item 6 (Equifax Credit Report, dated January 15, 2019); Item 8 (Enhanced Subject Interview, dated June 25, 2018); Item 4 (Applicant's Answer to SOR, dated March 28, 2019, and April 22, 2019); and Applicant's Response to the FORM, dated May 26, 2019.

Applicant was unemployed from November 2009 until April 2012, during which she received disability benefits from Medicaid. (Item 8, at 3) She eventually returned to work, and contends that she did not have any continuing financial problems by the commencement of 2016. (Item 5, at 32) In 2016, when Applicant was in the process of

purchasing a home, her adult son – a single father with three daughters – became ill with constant blackouts, and as a result, he lost his job as a truck driver. Applicant obtained loans to assist him, but her efforts plunged her own finances into trouble. She paid his \$1,050 monthly rent for four months; his \$348 monthly automobile loan for one year; and about \$700 in expenses for her granddaughters over an unspecified period. (Item 8, at 4)

In August 2017, Applicant sought the assistance of a credit-counseling service, but she claims that after paying them an initial contract fee, she became unhappy with their approach to resolving her debts. (Item 8, at 4; Item 5, at 32; Response to the FORM) Applicant failed to submit any documents to support her claim that she entered into a professional relationship with the counseling service; that she made any payment(s) to them; or what exactly the terms of the program were. In November 2017, Applicant retained the services of a law firm whose specialty is credit repair, and she sought to have her fees and interest charges removed, reduced or dismissed. It was her intention to start making payments to her creditors only after she received the final negotiated amount for each debt. (Item 8, at 4) In August 2018, Appellant sent some of her creditors a letter to motivate them to restructure her debts. Applicant submitted one generic e-mail from the law firm, dated December 22, 2017, in which she was asked to e-sign the engagement agreement. Applicant failed to submit documents to support her claim that she actually signed the engagement agreement; and that the law firm took any actions on her behalf with respect to the creditors.

In her Answer to the SOR, Applicant stated:

I have been trying to deal with larger bills to see what I can afford to pay monthly, as well as settle the smaller ones. Also, I have been working with [the law firm] since 2017 to attempt to get all of the fees deleted from the bills. All of the creditors were sent letters back in August 2018 to make arrangements of what I am able to pay.

In June 2018, during her interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant claimed to have a net monthly income of \$3,082; monthly expenses of \$2,481; and \$601 in total disposable income. She claimed to be meeting all of her current financial obligations. (Item 8, at 6-7)

While Applicant attributed \$9,076 to payments made on behalf of her son and granddaughters, the SOR alleges 12 delinquent accounts totaling \$40,712, 8 of which were charged off. Several of those accounts were discussed with the OPM investigator, and Applicant was requested to furnish documentation associated with her financial delinquencies. She failed to do so during or subsequent to the interview. (Item 8, at 7) Although Applicant contends that she and several of her creditors entered into settlement agreements or repayment agreements; or that she has been making agreed payments to some creditors; or that she has actually paid off several of the accounts, with one exception referring to a \$50 payment in February 2019, Applicant failed to submit any documents, including receipts, cancelled checks, or bank account transactions, to support her contentions that any accounts have been settled, paid off, or otherwise resolved; that any agreed settlements have actually proceeded to resolution; that any payments have

actually been made to any creditors; or that the law firm has taken any action to resolve any of the accounts. In light of her repeated failures or refusals to furnish such documentation, there is little evidence that Applicant made any efforts, much less good-faith efforts, to address her delinquent accounts, despite having \$601 in total disposable income each month. There is no evidence of financial counseling or a budget. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than she had been.

## **Character References**

Two friends (including one former colleague) who have known Applicant for over 23 years are very effusive in their praise for her, describing her as highly professional, competent, trustworthy, honest, dependable, hardworking, loyal, respected, and considerate of others. One noted that when Applicant was diagnosed with multiple sclerosis many years ago, her sons were constantly at her side while she recovered. (Character References attached to Applicant's Response to the FORM)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might

accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).)

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).)

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*id.*)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The SOR alleges 12 delinquent accounts totaling \$40,712, 8 of which were charged off. Although Applicant claims to have addressed several of the accounts, as noted above, she failed to submit documentation that reflects that any of the delinquent accounts have actually been resolved, or that they are in the process of being resolved. Despite having \$601 in total disposable income each month as of June 2018, she submitted only one document reflecting that a single \$50 payment had been made to a creditor in February 2019. AG ¶¶ 19(a), 19(b), and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under 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;
- (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.

AG ¶¶ 20(a) and 20(b) minimally apply. A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016).) The nature, frequency, and recency of Applicant’s continuing financial difficulties, her failure to resolve her delinquent accounts, although she has had the financial ability to start addressing them for several years, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for the past three years. Applicant has attempted to attribute those debts to her assistance of her son and her three grandchildren without any apparent awareness that she was causing financial ruin to herself. However, in fact, only \$9,076 was spent on behalf of her son and granddaughters, and the record is silent as to the reasons why the remaining debts were generated by her. Inaction or refusal to take timely and appropriate action with respect to the accounts she opened and used indicates irresponsibility toward financial and social obligations in general. When an individual with otherwise good credit, such as Applicant claimed she was, fails to make timely account payments, her actions can be interpreted as a lack of respect for financial obligations.

Clearance decisions are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, once negotiated reduced balances are established, without further confirmed action, are insufficient.

In this instance, to date, there is substantial evidence that no good-faith corrective actions have been taken by Applicant, either after she was interviewed by the OPM investigator in June 2018; after she received the SOR in March 2019; or after she received the FORM in May 2019. There are only her unverified comments claiming that she had taken certain actions. The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally

available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001))

There is no evidence of financial counseling or a budget. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than she had been. Applicant’s actions, or inaction, under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. (See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).)

There is some evidence in favor of mitigating Applicant’s finances. She is a 63-year-old employee of a defense contractor. She has been serving as a fraud prevention specialist with her current employer since April 2012. Some of Applicant’s financial difficulties arose when she was attempting to assist her son through his medical and financial hardships, as well as her three grandchildren, without any apparent awareness that she was causing financial ruin to herself. She explored obtaining assistance to resolve her financial difficulties, and she eventually wrote letters to at least some of her creditors. She submitted documentation that she made one \$50 payment to a creditor in February 2019.



The disqualifying evidence under the whole-person concept is simply more substantial. Because of her failure or refusal to submit documentation associated with her delinquent accounts, such as receipts, cancelled checks, or bank account transactions, to support her contentions that any accounts have been settled, paid off, or otherwise resolved; that any agreed settlements have actually proceeded to resolution; that any payments have actually been made to any creditors; or that the law firm has taken any action to resolve any of the accounts, it is difficult to assess the true situation, for we have only her unverified comments claiming that she had taken certain actions. The SOR alleges 12 delinquent accounts totaling \$40,712, 8 of which were charged off. However, in fact, only \$9,076 of that total was spent on behalf of her son and granddaughters, and the record is silent as to the reasons why the remaining debts were generated by her. The only confirmed evidence of positive action is on \$50 payment to a creditor in February 2019.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board 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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] 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 [or her] 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.

While Applicant contended that she took certain actions with respect to her delinquent debts, the only verified action that she has taken is one \$50 payment made in February 2019. Despite efforts to have her furnish documentation to support her contentions, she has repeatedly ignored such guidance. Her current track record is poor. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

## **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. through 1.l:              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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ROBERT ROBINSON GALES  
Administrative Judge