



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00509  
)  
Applicant for Security Clearance )

**Appearances**

For Government: L.M. Apostol, Esq., Department Counsel  
For Applicant: *Pro se*

08/06/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 19, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline H, drug involvement and substance misuse. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 27, 2019, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on May 31, 2019. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The evidence is admitted into the record. The case was assigned to me on July 29, 2019.

### **Procedural Matters**

In its FORM, the Government withdrew the allegation in SOR ¶ 2.a.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.h, 1.j, and 1.k. She denied the SOR allegation in ¶ 1.i. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 27 years old. She is not married and has no children. She attended college for a period, but did not earn a degree. She has been employed by a federal contractor since August 2017. (Item 2)

Applicant completed a security clearance application (SCA) in September 2017. In it she disclosed her delinquent debts. She indicated that she had been in contact with her creditors regarding payment options and intended to make the debts current as soon as possible, which would occur when she received her paycheck. (Item 2)

In Applicant's SCA, she also disclosed that her financial problems were attributed to unemployment and underemployment. She also indicated that some of the debts were incurred with her ex-boyfriend and he has not contributed to paying them. She stated that her student loans were not due for payment because they were under a grace period, and she was confident that she would be able to make the payments when due. She stated:

I intend to put more than half of my paychecks (more if I can afford it) towards paying these debts to make them current as soon as possible. I also intend to begin paying my student loans as soon as I receive a request to do so.

\* \* \*

I have not been able to make any regular payments. I am now employed in an office environment with stable income, and will fill my obligation of paying from my first check and every check until it is cleared. (Item 2)

In Applicant's answer to the SOR, she stated that she believed that the student loans alleged in SOR ¶¶ 1.a, 1.b and 1.g were the same debt. She also believed that the debt in SOR ¶¶ 1.d, 1.e and 1.h were also the same debt. Credit reports from February 2019 and May 2018 reflect the delinquent debts alleged in the SOR. They also reflect that

the accounts Applicant said were duplicates, have different account numbers. She did not provide evidence to confirm that any of the debts alleged are duplicates. (Items 1, 3, 4)

In Applicant's answer to the SOR, she stated that when her student loan payment became due she was unable to pay the amount and was denied a lower payment option from the creditor. She said she was able to obtain a deferment, and her father, a cosigner of the loans, agreed to pay the loans on her behalf. She did not hear from the creditor and assumed her father was making the payments. She later learned he was not making the payments. She contacted the creditor in April 2019 and requested it provide her documentation on the student loans. She was waiting for the documents when she completed her SOR answer. She has not made any payments, but is pursuing payment options. She indicated her future intention is to pay her student loans, but is unable at this time because she can only afford to pay her living necessities. She is confident that by working hard and receiving a promotion in the future she will be able to pay her student loans. The debts are unresolved. (Item 1).

Applicant admitted the allegations in SOR ¶¶ 1.c, 1.d, 1.e, 1.f and 1.h are credit card debts. She stated in her SOR answer that in the past these credit cards were in good standing, until she became temporarily unemployed due to immediate family issues. As her income allows, she intends to pay all of her debts. These debts are unresolved. (Item 1)

Applicant denied the medical debt alleged in SOR ¶ 1.h. This debt appears on both credit reports. She did not provide evidence that she has disputed the debt. The debt in SOR ¶ 1.j is for a gym membership that had an automatic payment plan. She acknowledged she had a membership with the club, but was unaware of the debt and stated she was never notified it was delinquent. She stated she has asked the creditor for documents to confirm the debt. The debts are unresolved. (Item 1)

Applicant disclosed in her SCA that she had filed for an extension regarding her 2016 federal income tax returns. In her SOR answer, Applicant stated she was unaware her federal tax returns were not file for tax year 2016. This contradicts her disclosure in her SCA. She stated she was unemployed in 2016, dealing with family issues, and she must have forgotten to file them. She stated she was researching ways to obtain copies of her 2016 W-2 tax forms and believes she may be entitled to a refund, which she would apply toward her delinquent debts. Applicant did not provide proof that she has filed her 2016 federal or state income tax returns. (Items 1, 2)

Applicant indicated in her SOR answer that she had family issues that related to an ongoing alcohol-related issue with her parents, which had a profound effect on her as an only child. She did not elaborate. She takes pride in past, present, and future that has been sensible and upstanding. She said she intends to take all necessary steps to resolve the alleged delinquent debts as soon as possible and in a responsible manner. (Item 1)

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an 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.

Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 failed to file her 2016 federal and state income tax returns. She has delinquent student loans, credit cards, and other debts that she is unable to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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 or is in compliance with those arrangements.

Applicant did not provided evidence that she has paid or made payment arrangements for any of her delinquent student loans or other delinquent debts. She did not provide proof that she has filed her 2016 federal and state income tax returns. The financial problems and debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to unemployment, underemployment and family issues. She did not elaborate on how her family issues impacted her finances or ability to file taxes. Her employment problems were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She failed to provide evidence that she has taken any action on her delinquent debts since her employment began in August 2017, despite her promises that she would begin to do so once she received a paycheck. I find AG ¶ 20(b) has minimal application.

There is no evidence Applicant has received financial counseling and there are not clear indications that the problems are being resolved or under control. AG ¶ 20(c) does not apply. Applicant did not provide evidence that she has made a good-faith effort to pay her delinquent student loans or creditors. AG ¶ 20(d) does not apply. Applicant disputed a medical debt, but did not provide documentary evidence of her efforts to dispute the debt or resolve it. AG ¶ 20(e) does not apply. Evidence was not provided to show Applicant has an arrangement to file her 2016 federal and state tax returns. AG ¶ 20(g) does not 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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 27 years old. She was unable to pay her debts and student loans due to unemployment and underemployment. She has been employed for two years, but did not provide evidence of any action she has taken to pay her delinquent accounts, despite promises to do so. She failed to provide evidence that she filed her 2016 federal or state income tax returns. Applicant has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

## 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.k:	Against Applicant
Paragraph 2, Guideline H:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge