



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 19-00593  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

03/20/2020

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about her financial problems, as well as about her past criminal conduct. Her inaccurate answers to questions about her finances were not given with any intent to mislead or deceive the government about those issues. Her request for a security clearance is granted.

**Statement of the Case**

On January 29, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security

clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 13, 2019, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on November 25, 2019, and convened the requested hearing on January 29, 2020. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 10. Applicant testified and proffered Applicant Exhibit (AX) A – D. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on February 10, 2020.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$20,336 for three delinquent or past-due debts (SOR 1.a – 1.c). Under Guideline E, the Government alleged that Applicant intentionally provided false information when she answered “no” to all questions in e-QIP Section 26 (*Financial Record*), thereby omitting that she owed the debts listed in SOR 1.a – 1.c (SOR 2.a).

Under Guideline J, it was alleged that in April 2003, Applicant was arrested and charged with robbery with a deadly weapon, attempted murder, aggravated battery, battery, and shoplifting; and that she was convicted and sentenced to two years in prison and four years of probation (SOR 3.a). Also under Guideline J, it was alleged that in January 2011, Applicant was charged with manufacture and possession of cocaine, possession of ammunition by a convicted felon, a controlled substance offense, possession of a controlled substance, possession and use of drug paraphernalia, and felony child neglect (SOR 3.b). The criminal conduct alleged in SOR 3.a and 3.b was also cross-alleged as adverse personal conduct (SOR 2.b).

In response to the SOR, Applicant admitted with explanations the allegations at SOR 1.a, 3.a, 3.b, and 2.b by inference. (Answer; Tr. 12 – 14) In addition to the facts established by Applicant’s admissions, I make the following findings of fact.

Applicant is 32 years old and employed as an assembler for a large defense contractor, where she has worked since December 2017. Applicant graduated from high school with honors in May 2000 and briefly attended a state university near where she grew up. More recently, she earned an associate’s degree at a different university and is now studying for a bachelor’s degree. She has excelled in her college-level studies and currently has a 3.75 GPA. Applicant has four children between the ages of 3 and 13.

Since June 2007, she has lived on and off with the father of her children. (GX 1; AX C; AX D)

The Government's information supported the SOR allegations under Guideline F. Applicant began to experience financial problems in 2016, when she left a job due to a change in management. Thereafter, she was unable to work full time due to complications of her most recent pregnancy. Between July 2016 and December 2017, when she was hired by her current employer, Applicant relied on her savings, personal credit, and part-time income to support herself and her children. She also moved in permanently with her boyfriend for mutual support. Despite her efforts to meet her financial obligations, she fell behind and eventually became delinquent on the debts alleged in the SOR. While unemployed, Applicant completed college-level technical training that qualified her for her current position. (Answer; GX 1 – 5; AX A; AX C; AX D; Tr. 40 – 41, 49 – 55)

When Applicant regained full-time employment in December 2017, she began negotiating with her creditors to resolve her past-due debts. Starting in January 2019, she began working overtime to save money to offer the SOR 1.b and 1.c creditors enough in lump sum to resolve those debts for less than the full amounts owed. The SOR 1.a creditor has thus far resisted agreeing to a similar resolution; however, Applicant has been paying \$50 monthly since June 2019 to show good faith and reliability in the hopes that she can negotiate either a lump sum settlement or a more aggressive monthly repayment plan. Applicant testified that she planned to apply her 2019 income tax refund (she anticipates it will be about \$4,000) to the SOR 1.a debt. The debts alleged in the SOR are not listed in the most recent available credit report. (Answer; GX 2; GX 5; AX A; AX D; Tr. 38 – 40, 55 – 61, 77 – 81, 90 – 91)

When she submitted her e-QIP, Applicant did not disclose any of the debts alleged in the SOR. She denies trying to conceal adverse information, and she established that she reasonably believed the debts at issue were not 120 days or more past due, or that at the time the accounts had been cancelled by the creditors. During her September 20, 2018 subject interview, a government investigator presented Applicant with information from a February 22, 2018 credit report. That information supports her claims that at the time she submitted her e-QIP, the debts at issue were not yet 120 days past due. Applicant testified that none of her accounts became past due at all until late 2017. In summary, all of the available information probative of the allegation at SOR 2.a shows she did not intend to deceive or mislead the government by her negative answers to questions in e-QIP Section 26 (*Financial Record*). (Answer; GX 1; GX 2; GX 4; AX D; Tr. 45 – 47, 63 – 67, 76 – 77, 81 – 83)

In addition to Applicant's efforts to resolve her past-due debts, Applicant recently engaged the services of a credit-counseling company. Using those services, she established a monthly budget and improved her ability to negotiate with her creditors to resolve her past-due debts. Based on her monthly budget, Applicant has about \$800 remaining each month after expenses. She is contributing to a retirement savings account, she files and pays her income taxes as required, and she has not incurred any

new delinquencies since the close of her background investigation. (Answer; AX B; AX D; Tr. 41, 79 – 81)

In April 2003, at age 20, Applicant went to a local Walmart and shoplifted several items with a combined value less than \$100. Among the items was a pair of scissors she used to remove price tags from other items before she attempted to leave the store with them. As she was leaving, store security stopped her and she resisted being physically detained. A fight ensued during which Applicant used the shoplifted scissors to injure three store employees. Applicant was subsequently arrested and charged as described in SOR 3.a. She pleaded guilty to all of the charges and was sentenced to two years of incarceration (minus 127 days of time already served) in the youthful offender section of a state prison. Upon early release for good behavior, she served four years of supervised probation, during which she complied with all reporting and monitoring requirements. Additionally, Applicant testified that another aspect of her sentence was a requirement to pay \$10,000 in restitution. In August 2009, she turned herself in after being charged with violating her probation after falling behind on those payments. Applicant's probation officer testified for Applicant, recommending that she not serve any additional jail time, and her probation was extended for four months. Applicant finished repaying that debt, and her probation was terminated in January 2010. She still owes about \$800 for court and other administrative costs associated with her 2003 conviction. She will be able to pay off that debt with part of her next income tax refund. (Answer; GX 1; GX 2; GX 6 – 8; Tr. 42, 67 - 72, 83 – 87, 90)

At her September 2018 subject interview, Applicant volunteered information about an arrest that she incorrectly did not disclose in her e-QIP because more than seven years had elapsed since the arrest and the charges had been *nolle prosequi*. On January 27, 2011, as Applicant and one of her children were leaving the residence where she was living part time with her boyfriend, two men with weapons ran into the house intending to rob Applicant's boyfriend. Applicant called the police who, after they responded, conducted a search of the residence and found illegal drugs, drug paraphernalia, and ammunition. Applicant was charged with the offenses listed in SOR 3.b; however, all of the charges were dismissed because it could not be established that she knew the drugs and ammunition were in the house, or that she had any control over those items. Her name was not on the lease for the house and she was not yet living full time with her boyfriend. Applicant was credible in her testimony that she did not know her boyfriend was involved with illegal drugs in 2011, and that since that event, her boyfriend has not been involved with drugs or any other illegal conduct. He is employed full time and has been a good provider for Applicant and their children. (Answer; GX 1; GX 2; GX 6; GX 9; GX 10; Tr. 45, 72 – 76, 88 – 90)

Applicant was credible and candid throughout her background investigation. In her e-QIP and during her subject interview, she provided detailed information about her financial problems, and she exhibited a firm and competent grasp of her current finances and the actions needed to avoid financial problems in the future. Applicant also provided detailed information about her two arrests, and she has accepted responsibility for the

actions and circumstances properly attributable to her. Information from her workplace shows that she is a productive, reliable, and well-regarded employee. She also has excelled in her academic efforts and is continuing her efforts to improve her professional and technical abilities. (Answer; GX 1; GX 2; AX B – D; Tr. 42 – 45)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

## Analysis

### Financial Considerations

The Government established that Applicant incurred delinquent or past-due debts totaling \$20,336. As of the close of the adjudication of the information obtained in his background investigation, much of that debt remained unresolved. That information reasonably raised the security concern articulated at 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

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

As to mitigation, Applicant established that her debts arose from a period of unemployment that was exacerbated by a difficult pregnancy. Available information shows that she did not fall behind on her debts until late 2017, despite having been out of work starting in July 2016. The debts at SOR 1.b and 1.c have been resolved through settlement negotiations using money Applicant accumulated by working overtime through much of 2019. Applicant has been making monthly payments on the debt at SOR 1.a since June 2019 to show good faith in the hopes of negotiating an outright settlement payment or a more aggressive monthly payment plan that will resolve the debt more quickly. Applicant also has used a credit-counseling service to improve her financial management posture through a structured monthly budget, and to help her more effectively negotiate with her creditors. Applicant's current finances are sound, she has a good command of the status of her debt and financial responsibilities, and she has sufficient positive cash flow each month to avoid excess use of personal credit.

All of the foregoing supports application of the following AG ¶ 20 mitigating conditions:

- (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 person has received or is receiving counseling for the problem and/or 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.

On balance, available information is sufficient to mitigate the security concerns under this guideline.

### **Criminal Conduct**

Applicant was charged with serious felony offenses related to her attempted shoplifting in 2003. As a result, she was incarcerated for two years and placed on probation for another four years. She completed all of her sentencing and probation requirements ten years ago. Although not alleged, I also have considered the fact that Applicant violated the terms of her probation when she fell behind on court-ordered restitution payments. Additionally, in 2011, Applicant was charged with multiple felonies as a result of her boyfriend's drug-related activities. This information reasonably raised the security concern expressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

More specifically, the record requires application of the following AG ¶ 31 disqualifying conditions:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

I also have considered the following AG ¶ 32 mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(c) applies only to Applicant's 2011 arrest. All of the available information about that event shows the Applicant did not know her boyfriend was involved in illegal drugs or was herself engaged in such conduct. The decision by prosecutors to dismiss the charges against her further indicates the lack of evidence that she committed the offenses for which she was arrested. SOR 3.b is resolved for the Applicant.

As to Applicant's 2003 arrest and conviction, the facts are not in dispute and Applicant has accepted responsibility for her actions. The last vestiges of her sentence and probation expired ten years ago. More important than the mere passage of time is the information about the positive changes in Applicant's personal and professional circumstances. She has earned an associate's degree and has a 3.75 GPA in her current work towards a bachelor's degree. As an employee, Applicant has established an excellent reputation in the workplace for professionalism, teamwork, and reliability. Additionally, her efforts to resolve her past-due debts and improve her financial health indicate a sense of responsibility and maturity that she lacked in 2003, when she committed the offenses to which she pleaded guilty. All of the foregoing supports application of the mitigating conditions listed above. I conclude the security concerns under this guideline are mitigated.

## **Personal Conduct**

Applicant's omission of adverse financial information from her e-QIP, as well as information about her past criminal conduct, reasonably raised the security concern stated at AG ¶ 15:



Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant denied the allegation that she falsified her answers to e-QIP Section 26. It is clear that Applicant did not disclose the debts alleged the delinquent or past-due debts alleged in SOR 1.a – 1.c; however, to be disqualifying it must be shown that her omissions were deliberate and intended to conceal the facts or to mislead the government about those facts. To that end, I have considered AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

I conclude from all of the information probative of Applicant's intent at the time that she completed her e-QIP that she reasonably believed her answers were correct. Applicant's defense that she did not believe any of the debts at issue were more than 120 days past due has support in a contemporaneous credit report to which an investigator referred in discussing her debts during Applicant's subject interview. At worst, Applicant was mistaken about when one or more of her accounts were cancelled. Under this guideline, mistake or misunderstanding in responding to the government's questions is not disqualifying. As to the broader question of Applicant's credibility, she was forthcoming and detailed in her disclosures of other adverse information in her e-QIP, at her subject interview, and during her testimony. On balance, I conclude that Applicant has refuted the allegation at SOR 2.a.

The Government's allegation that the criminal conduct alleged at SOR 3.a and 3.b constitutes disqualifying personal conduct requires consideration of the following AG ¶ 16 disqualifying conditions:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (2) any disruptive, violent, or other inappropriate behavior.

Both of Applicant's arrests were indicative of poor judgment. Her 2003 arrest also indicated an unwillingness to comply with rules and regulations, and it was an example of violent behavior. Her 2011 arrest might indicate that she should have been aware that her boyfriend was involved in illegal activities, but the record indicates otherwise – that she was not in a position to know what was going on.

In response to the Government's information, Applicant established that, in addition to the passage of nearly 17 years since she was arrested and convicted for the SOR 3.a offenses, her circumstances have changed for the better. For the same reasons I applied AG ¶¶ 32(a) and 32(d), above, I conclude the following AG ¶ 17 mitigating conditions apply:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's information is sufficient to mitigate the security concerns under this guideline. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's job performance and reputation in the workplace. I also note her candor and acceptance of responsibility for her past actions, as well as the good judgment she has exhibited in resolving her financial problems. A fair and commonsense assessment of the record evidence as a whole shows that the doubts about Applicant's suitability for a security clearance that were raised by the Government's information have been resolved.

### **Formal Findings**

Formal findings 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.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a – 3.b:	For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE  
Administrative Judge