



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 19-00669 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2020

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**Decision**  
\_\_\_\_\_

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate security concerns arising from her delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 22, 2016. On March 19, 2019, the Department of Defense (DOD) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Ord.) 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 4, 2019 and requested a hearing. The case was assigned to me on June 14, 2019. On July 19, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing for September 10, 2019.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1-4, which were admitted without objection. Applicant and her husband testified. The documents Applicant provided with her Answer to the SOR were marked as Applicant's Exhibits (AE) A-G and admitted without objection. I held the record open until October 1, 2019, to enable Applicant the opportunity to submit additional documents. She timely submitted documents that were marked as AE H-L, and admitted without objection. (AE H is the Sept. 30, 2019 e-mail from Applicant; AE I concerns SOR debt 1.y; AE J concerns SOR ¶ 1.u (as amended); AE K is a recent paystub; AE L is a group exhibit consisting of letters of recommendation.)

Applicant also intended to submit proof of payment of an additional debt, SOR ¶ 1.n, but did not do so before the record initially closed. I reopened the record briefly in January 2020 so she could provide that documentation. She then submitted two documents from October 2019, marked as AE M and AE N and admitted without objection. The record closed on January 15, 2020. DOHA received the transcript (Tr.) on September 18, 2019.

### **Amendment to the Statement of Reasons**

During the hearing, Department Counsel moved to amend SOR ¶ 1.u (\$213) to conform to the record evidence, and reflect that the creditor is a power company, rather than a medical creditor. This is reflected on a January 25, 2019 credit bureau report. (GE 4 at 3). Applicant did not object to the motion and it was granted. Since the amendment involved a misidentified creditor in the SOR, I gave Applicant time after the hearing to pursue resolution of the debt. (Tr. 55-57, 75-76) As addressed below, the debt is now resolved. (AE J)

### **Findings of Fact**

Applicant admitted the debts alleged at SOR ¶¶ 1.b, 1.d-1.f, and 1.i-1.y. She denied the debts alleged at SOR ¶¶ 1.a, 1.c, 1.g, and 1.h. She provided a narrative explanation with her answer. Her admissions and explanation are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following findings of fact.

Applicant is 36 years old. After graduating from high school in 2001, she served on active duty in the U.S. Air Force, from 2001 to 2007, and in the Air Force Reserve, from 2007 to 2014. She was discharged honorably with the rank of tech sergeant (E-6), and she held a clearance in the Air Force. Applicant has earned an associate degree. (GE 1, GE 2; Tr. 27-28)

From 2009 to October 2013, Applicant worked for DOD as an aircraft electrician. She then went to work for a large defense contractor, in a similar role. She was assigned to work at an air base in England. She worked there for two years, until August 2015. She then returned to the United States, and has worked in her current job, with the same employer, since September 2015. She is seeking to retain her clearance. (GE 1, GE 2, Tr. 28-29, 32-40)

Applicant was married from 2004 until 2016, when she and her husband divorced. (AE A) They have three children, ages 12, 10, and 6. They share joint custody but the children live with their father. (Tr. 26-27)

Applicant testified that her financial issues began when she was working in England. Both she and her then husband, who is employed by the same company, were sent to England on unaccompanied tours. However, they brought their children with them as well as Applicant's mother. This proved to be more expensive than they had planned, because they only received food and housing stipends for unaccompanied tours. They also had to pay for visas so their family members could stay with them. (Tr. 29-30, 35-39)

Applicant testified that she and her husband separated when they returned to the United States, in early September 2015. Her husband took their children to live with his mother during this time. In June 2016, Applicant's ex-husband returned the children to her, and she raised them with little financial support from him. This, too, was a financial hardship. The children now live with their father, and she pays \$163 a week in child support. Applicant now lives with her fiancé and her mother. (Tr. 30, 40-41)

Applicant testified that while they were in England, her company was supposed to pay for local taxes. The company did so, but at a rate or amount higher than authorized. As a result, Applicant pays \$75 a week to reimburse the company. (Tr. 31-32)

Applicant also acknowledged that she and her husband managed their money poorly during their marriage. He had bad credit when they married, so many accounts were in her name. (Tr. 37)

The SOR alleges about \$56,000 in medical debts and past-due credit card accounts. They are established by Applicant's credit reports. (GE 3, GE 4) With her Answer, Applicant included a chart detailing her intended efforts to resolve these debts over the next two years (2019-2021) (AE E)

SOR ¶¶ 1.a (\$14,561) and 1.c (\$9,986) are credit card debts. Applicant denied them and documented that her former husband has been assigned responsibility for them in the divorce decree. (Tr. 41-44; AE A at 3)

SOR ¶ 1.b (\$11,517) is a debt to the same credit card company as SOR ¶ 1.a. Applicant testified that she cannot log into the account to attempt to resolve it. (Tr. 43) SOR ¶ 1.d (\$4,888) is a charged-off credit card. Applicant stopped using it in January 2015 when she "maxed out" the account. She has not attempted to resolve it. (Tr. 45) SOR ¶ 1.e (\$1,995) is a charged-off credit card account with a hardware store. She has not attempted to resolve it. (Tr. 45-46)

SOR ¶¶ 1.g (\$1,675) and 1.h (\$1,672) are delinquent debts to consumer accounts for military personnel. Applicant denied the debts on the grounds that they were resolved when the government applied her federal tax refund to them. (Tr. 49, 69-70) AE C includes IRS account transcripts from tax years 2014-2018. AE C shows that

the IRS applied Applicant's tax refunds to several federal debts. She testified that after she withdrew from school, she also had to repay certain funds she received under the GI Bill. (Tr. 49-51) Both SOR ¶¶ 1.g and 1.h are listed on Applicant's January 2019 credit report. (GE 4) Applicant believes the garnishments that resolved them have ended, but it is not clear which debts were resolved by recapturing of Applicant's tax returns. (Tr. 69-70; AE C)

SOR ¶ 1.n (\$606) is a past-due account to an online retailer. Applicant provided documentation with her Answer that she has set up a plan to repay the debt during 2019 with six automatic monthly payments of about \$75. (AE F) At her hearing, she was unsure if the debt had been resolved. (Tr. 70-72) She settled the debt in October 2019. (AE M, AE N)

SOR ¶ 1.u (\$213), as amended, is a past-due debt to a power company. Applicant resolved the debt after the hearing. (AE J) SOR ¶ 1.x (\$126) is a debt to an apartment complex where she lived from April 2016 to June 2017 before moving in with her fiancé. She is unsure what the debt concerns. She looked into it initially but the debt remains unresolved. (Tr. 57-58)

SOR ¶ 1.y (\$1,055) is a debt placed for collection by a phone company. Applicant stated in her Answer that she has set up an automatic payment plan. She documented her efforts after the hearing. (Tr. 59-61; AE G, AE H, AE I)

Applicant incurred numerous delinquent medical debts since returning from England. These include SOR ¶¶ 1.f (\$1,701), 1.i (\$982), 1.j (\$903), 1.k (\$851), 1.l (\$724), 1.m (671), 1.o (\$445), 1.p (\$438), 1.q (\$407), 1.r (\$315), 1.s (\$242), 1.t (\$216), 1.v (\$172), and 1.w (\$148). She testified that this is due to having a high deductible (\$3,500) on her insurance plan. Many of the medical debts are for emergency room visits for her children. She has not established a repayment plan for any of them. (Tr. 46-48, 51-54, 57)

Applicant earns about \$500 to \$550 a week, or about \$2,000 a month. She has \$75 taken out per week to reimburse her company, and \$163 weekly for child support, as noted above. Her other garnishments have ceased. She lives paycheck to paycheck, though she has about \$30,000 in her company's 401(k) plan. She lives with her fiancé. She does not pay rent and does not have a car payment. She no longer has any credit cards. She has not pursued credit counseling. (Tr. 61-70; AE D, K)

Applicant provided three character letters from references at work. They attest to her excellent performance and leadership skills, as well as to her character and dedication. She has a good moral character and a sense of integrity. (AE L)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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(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." Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

## **Analysis**

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

The security concern for financial considerations is set out, in pertinent part, 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. . . .

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 incurred significant delinquent debt in recent years, as established by her admissions and credit reports. Her debts are attributable to a variety of circumstances: a history of poor financial management during her marriage; a decision to move her family to England without authorization during a work assignment, leading to unmanageable expenses; medical expenses for her family after returning from England; a divorce; and related child care and child support expenses. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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, or 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, 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; and

(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.

Applicant documented that two SOR debts, SOR ¶¶ 1.a and 1.c, are assigned to her former husband in their divorce decree. AG ¶ 20(e) applies to them.

Applicant's debts are otherwise ongoing. They are attributable to a variety of circumstances, as noted above. She did not establish that the behavior leading to most of her debts was infrequent, unlikely to recur, or no longer casts doubt on her current judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant acknowledged that she and her husband managed their money poorly during their marriage. More recently, they were both assigned to work in England for their employer, on unaccompanied tours. Perhaps because they had no other choice, they brought their children and her mother with them. This led to increased financial expenditures that they did not plan for and could not afford. Many of those debts are unresolved. She has incurred significant medical expenses for her children due to high

deductibles. Those debts are unresolved. She also pays child support now that her children live with their father. These debts were incurred, at least in part, due to conditions beyond her control. However, Applicant did not establish that she undertook responsible steps, either at the time, or subsequently, to address them. AG ¶ 20(b) therefore only partially applies.

Applicant has not pursued credit counseling. She has not established that her debts are being resolved and are under control. AG ¶ 20(c) does not apply.

SOR ¶ 1.u was not properly identified until the hearing, and it is now resolved. SOR ¶¶ 1.n and 1.y are also resolved. AG ¶ 20(d) applies to those debts because Applicant showed a good-faith effort to resolve them. The debts resolved by garnishment, however (which likely includes SOR ¶¶ 1.g and 1.h) are not found in Applicant's favor under AG ¶ 20(d). "On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009). Many other debts in the SOR remain unresolved, including medical debts and other past-due accounts. Applicant has laid out a plan to resolve her debts in the future, but has yet to take real, concrete steps towards putting the plan into place. Without that, AG ¶ 20(d) does not fully 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. Applicant did not provide sufficient evidence to mitigate security concerns arising from her delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Applicant did not mitigate 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:           AGAINST APPLICANT

Subparagraphs 1.a, 1.c, 1.n, 1.u, 1.y:           For Applicant

Subparagraphs 1.b, 1.d-1.m, 1.o-1.t, 1.v, 1.x:   Against Applicant

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge