



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 --- ) ISCR Case No. 19-00939  
 )  
 Applicant for Security Clearance )

**Appearances**

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

02/13/2020

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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 January 26, 2017, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On April 24, 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* (AG) (December 10, 2016), 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.

On May 15, 2019, Applicant responded to the SOR, and she elected to have her case decided on the written record in lieu of a hearing. (Item 2) 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 October 29, 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 November 5, 2019. Her response was due on December 5, 2019. Applicant timely submitted a one-page statement to the FORM with four attachments which were accepted without objection. The case was assigned to me on January 29, 2020. The record closed on January 29, 2020.

### **Findings of Fact**

In her response to the SOR, Applicant admitted, with brief comments, four of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.c., and 1.i.). Applicant's comments with respect to both her admissions and her denials are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

### **Background**

Applicant is a 51-year-old employee of a defense contractor. She has been serving as a material analyst with her current employer since January 2012, and before that she was a material production coordinator with the same employer during two separate periods essentially going back to 2003. She is a 1987 high school graduate. She has never served with the U.S. military, and she has never held a security clearance. She was married in 1990, and she has four children, born in 1991, 1999, 2002, and 2004.

### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 14, 2017); Item 5 (Equifax Credit Report, dated February 7, 2019); Item 6 (Equifax Credit Report, dated October 3, 2019); Item 3 (SF 86, dated January 26, 2017); Item 4 (Enhanced Subject Interview, dated July 10, 2018); and Item 2 (Applicant's Answers to SOR, dated May 15, 2019).

Applicant reported that she was unemployed from November 2007, when she was laid off, until August 2008. During that period she received unemployment compensation. (Item 3, at 13-14) She did not attribute her financial problems to any specific factors.

In her January 2017 SF 86, Applicant listed having only one delinquent account which she claimed had arisen as a result of a motor vehicle accident in March 2015 when the insurance company denied coverage. She denied having any additional delinquencies. (Item 3, at 32-33)

In July 2018, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant acknowledged that, in early 2015 when she obtained a credit report and learned that she had several other delinquent accounts, she started working with a credit counseling service. She added that she had engaged a particular law firm that specializes in debt relief to negotiate payments with her creditors and provide her credit assistance. She contended that she pays the firm \$200 every pay day for their services. She described her overall financial situation as "better." She stated that the majority of her delinquent accounts were in the negotiation process, some were being paid, and others had already been paid off. (Item 4)

The OPM investigator offered Applicant the opportunity to furnish documentation regarding the accounts, and she provided 15 pages of financial documents, not otherwise described, that were sent to "document control" on July 12, 2018. (Item 4, at 5) No such documents were included in the case file submitted to me. Accordingly, it is not known if those documents included the engagement agreement with the law firm; the terms of the credit counseling services or negotiation services furnished by the law firm; or cancelled checks or receipts supporting payments to the law firm or to various creditors. Because the OPM investigator acknowledged receiving those financial documents, and the government failed to produce them, I have given Applicant the benefit of the doubt and concluded that she had furnished documentation that was material and relevant to the allegations in the SOR.

The SOR alleged nine delinquent accounts totaling approximately \$24,176, as set forth as follows:

SOR ¶ 1.a. is a jointly-held automobile loan with an unpaid balance of \$19,208 that was charged off in December 2015 and sold to another company. Applicant disputed the account status with the credit reporting company. (Item 7, at 6, 10; Item 5, at 1-2; Item 6, at 1; Item 3, at 32-33; Item 2; Letter from collection agent, dated August 5 or 6, 2017, attached to Response to the FORM) Applicant acknowledged that her husband had cancelled his insurance coverage with one company to take advantage of lower prices with another company, but he failed to comply with the requirement that the vehicle be inspected, and when it was involved in an accident and totaled, both insurance companies rejected his claim. (Item 3, at 32-33) In her Answer to the SOR, Applicant admitted the allegation, and she claimed that the creditor or collection agent had refused any settlement other than a full payment on the unpaid balance. The account is not yet in the process of being resolved.

SOR ¶ 1.b. is a charge account with an unpaid balance of \$699 that was charged off and sold to another company. (Item 7, at 7; Item 5, at 2; Item 6, at 3) The unpaid balance eventually increased to \$1,133. Applicant initially claimed that she had attempted to pay the creditor but was unable to do so because the account had been charged off

due to a hurricane, so she never made another attempt. (Item 2) On November 29, 2019, eight months after the SOR was issued, Applicant made a \$50 payment to the collection agent. (Account Summary from collection agent, dated November 29, 2019, attached to Response to the FORM) Applicant failed to produce any evidence that other more recent payments have been made. The account is in the very early process of being resolved.

SOR ¶ 1.c. is a charge account with an unpaid balance of \$883 that was charged off. The last payment was made in March 2018. (Item 5, at 2; Item 6, at 4) Although Applicant admitted that the account remains delinquent, she stated, without further explanation, that it is “under negotiation.” In the absence of documentation to support Applicant’s characterization, the account is not yet in the process of being resolved.

SOR ¶ 1.d. is a utility account with an unpaid balance of \$421 that was charged off. The last payment was made in November 2017. (Item 5, at 2; Item 6, at 6) Although Applicant resided in the city where the utility was located, she claimed to have no knowledge of the account. The account is not yet in the process of being resolved.

SOR ¶ 1.e. is a medical account with an unpaid balance of \$390 that was placed for collection in 2014. (Item 7, at 10; Item 5, at 2; Item 6, at 2) A payment in the amount of \$390 was made on May 21, 2019, approximately one month after the SOR was issued. (Item 6, at 6; Payment List, undated, attached to Response to the FORM) The account has been resolved.

SOR ¶ 1.f. is a medical account with an unpaid balance of \$127 that was placed for collection in 2018. (Item 6, at 2) A payment in the amount of \$127 was made in May 1, 2019, approximately two weeks after the SOR was issued. (Item 6, at 2; Payment List, undated, attached to Response to the FORM) The account has been resolved.

SOR ¶ 1.g. is a cellular telephone account with an unpaid balance of \$1,506 that was placed for collection in 2014. (Item 7, at 10) Although Applicant admitted that the account remains delinquent, she stated, without further explanation, that it is “under negotiation for \$369.” However, her reference to the unpaid balance of \$369 indicates that she is confusing this account with another delinquent account with the same creditor with a different account number and different unpaid balance. See the information associated with SOR ¶ 1.i. The account is not yet in the process of being resolved.

SOR ¶ 1.h. is an Internet account with an unpaid balance of \$647 that was placed for collection in 2017. (Item 7, at 10) Applicant initially confused this account with a medical account, and then noted that it was no longer on her credit report. (Item 4, at 4) The account is not yet in the process of being resolved.

SOR ¶ 1.i. is a cellular telephone account with an unpaid balance of \$369 that was placed for collection in 2014. (Item 7, at 10) Although Applicant admitted that the account remains delinquent, she stated, without further explanation, that she owes the amount and it is “under negotiation.” The account is not yet in the process of being resolved.

Other than Applicant's unverified contentions regarding her efforts to resolve certain delinquent accounts, as noted above, there is very little documentary evidence, such as repayment plans, cancelled checks, bank account registers, or receipts from creditors to support that she has made any efforts to address any of her delinquent accounts before the SOR was issued in April 2019. In January 2020, Department Counsel noted in the FORM that Applicant had not provided any documentation to support her contentions in her Answer. Despite that notice, with the exception of documents related to three delinquent accounts, Applicant failed to furnish the appropriate documentation. In the absence of such documentation, I conclude that Applicant's other delinquent accounts have not yet entered the process of being resolved.

Despite Applicant's contention in February 2018 that her overall financial situation was "better," it is not known what Applicant's current financial resources may be because she did not report her current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no documentary evidence of financial counseling. 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.

### **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. Sept. 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.” (*Egan*, 484 U.S. at 531)

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 alleged nine delinquent accounts totaling approximately \$24,176. Several of those debts became delinquent as early as 2014, and until after the SOR was issued, none of them were addressed by Applicant. Although she initially claimed that she was unaware of any debts other than the delinquent automobile loan, she subsequently acknowledged that she became aware of her other delinquent debts when she reviewed a credit report in 2015. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence that Applicant has been unwilling to satisfy her debts regardless of an ability to do so, and AG ¶ 19(b) has not 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(c) and 20(d) minimally apply, but none of the other conditions apply. Throughout the security clearance review process, Applicant merely inferred, without specifically stating, that she had financial difficulties that motivated her to seek financial counseling. She clearly identified a problem arising from the vehicle that was not covered by insurance, but generally claimed that she was unaware that other accounts were delinquent. As noted above, several of those debts became delinquent as early as 2014, and until after the SOR was issued, none of them were addressed by Applicant. 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, and her failure to voluntarily and timely resolve her delinquent accounts 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 several years. Applicant completed her SF 86 in January 2017; underwent her OPM interview in July 2018; and the SOR was issued in April 2019. Each step of the security clearance review process placed her on notice of the significance of the financial issues confronting her. She has produced evidence that two of the medical accounts (with balances of \$390 and \$127) had been resolved in May 2019; that she had recently made a \$50 payment on another account in November 2019; and some of the accounts were “in negotiation.” However, the remaining delinquent debts are not yet in the process of being addressed other than through unspecified “negotiations.”

Based on the evidence, it appears that Applicant intentionally chose to ignore her delinquent accounts even after she was interviewed by OPM. An applicant who begins to resolve financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018)).

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, without further confirmed action, are insufficient.



With respect to financial counseling or a budget, Applicant provided 15 pages of financial documents, not otherwise described, to the OPM investigator, but those documents were not included in the case file submitted to me. While it is not known if those documents included the engagement agreement with the law firm; the terms of the credit counseling services or negotiation services furnished by the law firm; or some other materials associated with her financial problems, because the OPM investigator acknowledged receiving those financial documents, and the government failed to produce them, I have given Applicant the benefit of the doubt and concluded that she had furnished documentation that was material and relevant to the allegations in the SOR. Although 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 financial concerns. Applicant is a 51-year-old employee of a defense contractor. She has been serving as a material analyst with her current employer since January 2012, and before that she was a material production coordinator with the same employer during two separate periods essentially going back to 2003. She is a 1987 high school graduate. She produced evidence that two medical accounts had been resolved in May 2019, and that she had recently made a \$50 payment on another account in November 2019.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has nine delinquent accounts totaling

approximately \$24,176. Several of those debts became delinquent as early as 2014, and until after the SOR was issued, none of them were addressed by Applicant. Although she initially claimed that she was unaware of any debts other than the delinquent automobile loan, she subsequently acknowledged that she became aware of her other delinquent debts when she reviewed a credit report in 2015. Of the nine accounts alleged in the SOR, she made relatively modest payments of \$390 and \$127 to resolve two delinquent medical accounts in May 2019, and she made a \$50 payment on another account in November 2019. She claimed that other delinquent accounts were “in negotiation,” but that negotiation process was never explained and has apparently produced no results.

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.

Applicant’s current track record is poor at best, seemingly delaying any meaningful resolution efforts until after the SOR was issued. 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.d.:	Against Applicant

Subparagraphs 1.e. and 1.f.:	For Applicant
Subparagraphs 1.g. through 1.i.:	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