



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



In the matter of: )  
)  
) ISCR Case No. 19-01423  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Dave Hayes, Esq., Department Counsel  
For Applicant: *Pro se*  
**02/24/2020**

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial security and criminal conduct security concerns. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on September 11, 2018. On June 20, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F (Financial Considerations) and J (Criminal Conduct). Applicant answered the SOR on July 12, 2019, and requested a hearing before an administrative judge (Answer). The case was assigned to me on October 1, 2019. On October 22, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 20, 2019. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 and Applicant Exhibit (AE) A through C were admitted without objection, and Applicant testified. I received the complete transcript (Tr.) on December 4, 2019. The record was held open until January 8, 2020, to allow Applicant to submit additional documentation. She was given a continuance until January 30, 2020, but she did not submit additional documentation, and the record closed.

## Findings of Fact

Applicant, 40, is single and has three daughters aged 21, 19, and 14. She graduated from high school in 1998 and attended a technical school, but did not receive a certificate or degree. She previously worked for defense contractors from 2011 to 2014 and held a secret security clearance. Since April 2018, she has worked for a defense contractor as an air craft painter. (GE 1; GE 2; Tr. 10-13, 21-23, 28-32)

Applicant has fifteen alleged debts totaling \$24,818. In her most recent credit bureau report from August 2019, there are three new unalleged delinquent debts. Applicant fell behind on her financial obligations due to working at jobs where she was underemployed, and she was caring for her children as a single parent. Several of her debts are delinquent medical bills. Applicant's oldest two daughters are in college; however, she received irregular child support from their fathers when they were young. She receives child support for her youngest daughter. (GE 3; GE 4; Tr. 21-23, 29, 84-86)

In approximately 2015, a former co-worker and now ex-friend agreed to help Applicant move furniture. She paid for the rental truck, and the rental agreement was in her name. Applicant's ex-friend asked a friend of his to help with the move, and they drove the rental truck together. While they were driving the truck, they rear-ended Applicant, who was in her personal vehicle with her middle daughter. Immediately after the accident, Applicant called the police, and they came to the scene of the accident. The driver of the truck was given two tickets. Additionally, she reported the accident to her insurance company and the rental company. Ultimately, she paid \$500 out of her own pocket to pay for the repairs for her vehicle and received no money from her insurance company. Applicant was arrested in October 2016, and charged with felony forgery and four counts of felony insurance fraud related to the 2015 incident. She plead not guilty. In September 2017, the charges were dismissed, but other related charges were filed against her. In 2018, the case was continued, and since then she has not heard from the court. The hearing record was left open, in part, to allow Applicant to submit documentation and clarification as to the status of the pending charges. (Answer at 4-8; GE 1; GE 2 at 2; Tr. 34-52)

Applicant hired a credit-counseling company in July 2019, after receiving the SOR. The record evidence indicates the total debt being addressed by the credit-counseling company is \$8,615, which includes SOR ¶¶ 1.d and 1.k-1.o. She made an initial payment of \$147 in July 2019. She set up biweekly payments of \$132 to be deducted from her checking account. She did not provide proof of these payments at or after the hearing. According to Applicant, SOR ¶¶ 1.b, 1.c, 1.e, 1.g, and 1.p are also being addressed through this service, but the documentation she provided does not substantiate her claims. (Answer at 1-3, 10-30; GE 3 at 4; Tr. 52-56, 63-65, 67-73, 89-90)

In 2017, Applicant was in an accident and her vehicle was totaled. In her response to the SOR she asserted that the \$14,364 debt, alleged as SOR ¶1.f, that stemmed from her accident was resolved. She testified that her insurance covered the majority of the outstanding balance; however, she did not have gap insurance, and the remaining balance is \$2,442. The collection agency contacted her approximately one month before

the hearing, and she set up a settlement agreement to make automatic-biweekly payments of \$47 and pay a total of \$1,000. The first payment was scheduled for the week after the hearing; however, she provided no substantiating documentation at or after the hearing to demonstrate that she has made payments toward this debt. (Answer at 2; GE 3 at 2-3; GE 4 at 2-3; Tr. 57-63)

SOR ¶¶ 1.h through 1.m are medical debts totaling \$706. Many of these debts were for her children. She had health insurance but could not afford the co-pays or emergency room bills. SOR ¶¶ 1.k-1.m are included in the credit-counseling agreement, but she provided no proof of payments other than a July 2019 payment of \$147. In her response to the SOR, she claimed that she was working to settle and resolve SOR ¶¶ 1.h-1.j; however, she failed to provide proof of payment or settlement agreements. (Answer; GE 3; GE 4; Tr. 72-75)

The credit-counseling company helped Applicant create a written budget last summer. She testified that she is up-to-date on her rent, utilities, car payment, and state and federal income taxes. However, Applicant's August 2019 credit bureau report reflects 3 new unalleged delinquent debts totaling \$2,737. (Tr. 26-28, 33, 92)

In October 2019, Applicant made a \$400 payment toward an unalleged and unreported medical debt. Additionally, she has been voluntarily working 16 to 24 hours of overtime each week to better her financial situation. (Answer at 21; AE C; Tr. 18-19, 76-80) Applicant provided three letters of recommendations. Her supervisor described her as dependable, proficient, hardworking, and positive. Her other character letters describe her as a valuable member of the community, reliable, and a consistent performer. Additionally, Applicant is involved in her daughter's school and hosts events to support various programs. (Answer at 9; AE A; AE C; Tr. 17-18)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, 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 Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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.

Section 7 of EO 10865 provides that adverse 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 concern under Guideline F (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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts establishes two disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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; 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 struggled financially due to underemployment and a lack of child support for two of her children. She recently initiated repayment of her delinquent debts through a credit-counseling program and by directly working with several of her creditors. However, she failed to provide documentation to support her claims of payment; therefore, there is no clear indication that her delinquent debts are being resolved, nor is there evidence of a good-faith effort to repay or resolve her debts. Finally, Applicant's most recent credit report reflects new unalleged delinquent debts. Based upon the totality of the record evidence, Applicant has not established mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e).

## **Guideline J: Criminal Conduct**

AG ¶ 30 expresses the security concerns pertaining to criminal conduct:

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.

The record evidence of Applicant's pending criminal charges establishes one disqualifying condition under AG ¶ 31:

(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.

AG ¶ 32 provides conditions that could mitigate security concerns raised in this case. The following two are potentially applicable:

(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; 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.

Applicant testified that she did not commit insurance fraud or forgery in 2015. However, given the seriousness of the charges and because they are still pending, mitigation under AG ¶¶ 32(a) and 32(d) is not established.

## **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 Guidelines F and J in my whole-person analysis. I also considered Applicant's favorable character evidence.

I conclude Applicant has not met her burden of proof and persuasion. She did not mitigate the financial considerations and criminal conduct security concerns or establish her eligibility for a security clearance.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.y:	Against Applicant
Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge