



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-01557
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
 Moira Modzelewski, Esq., Department Counsel  
 For Applicant: *Pro se*

03/25/2020

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 7, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on September 9, 2019, and requested a hearing before an administrative judge. The case was assigned to me on November 20, 2019.

The hearing was convened as scheduled on December 19, 2019. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, but she did not submit any documentary evidence. The record was held open for Applicant to submit additional information. She submitted documents that I have marked Applicant's Exhibits (AE) A through E and admitted without objection.

## Findings of Fact

Applicant is a 26-year-old employee of a defense contractor. She has worked for her current employer since about May 2016. She is applying for a security clearance for the first time. She will be moved to a better-paying position with her company if she obtains a security clearance. She has an associate's degree that was awarded in 2015, and almost enough additional courses for a bachelor's degree. She has never married, and she has no children. (Transcript (Tr.) at 23-32, 44; GE 1, 2)

Applicant financed some of her education through student loans, which were managed by her mother. She played basketball for her college, and she thought medical insurance through the college paid her medical bills. She also was in a car accident and had medical expenses. She did not earn much money when she first started working for her employer. Additionally, she was living with her mother, but had to find her own apartment when her mother moved after Applicant's father passed away in about 2017. (Tr. at 21-22, 27, 30-43; GE1-4)

The SOR alleges eight defaulted federal student loans totaling about \$38,600; a defaulted \$1,830 private student loan from the college Applicant attended; and six delinquent medical debts totaling \$487. The loans and debts are established through credit reports and Applicant's admissions.

Applicant's pay is being garnished to pay her federal student loans. Her pay statement from March 19, 2020, shows that \$93 was garnished from her paycheck, and \$568 was garnished year-to-date. She retained a company that specializes in assisting people manage their student loans. She paid the company \$300 in January 2020 and another \$300 in February 2020. She entered into a \$5 per month payment plan for her Department of Education loans, which should stop the garnishment. She made the first two required payments. When she completes the payment plan in January 2021, she should be eligible for an income-based payment plan.<sup>1</sup> (AE A-E)

Applicant cosigned a car loan for her mother. Her mother is making the payments, and the loan is current. That car loan is the only non-SOR debt with a balance on Applicant's credit report. Except for what she may have received from the student loan company, Applicant has not received financial counseling. She did not provide proof of payments toward the medical debts and private student loan. She indicated that she wants to pay all of her loans and debts and reach financial stability. (Tr. at 45-46, 51-54; GE 3, 4)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2018. She did not report any adverse information under the financial questions. She credibly denied intentionally providing false information about her finances. She stated that she did not think she had to list her student loans, and she was unaware of her medical debts. (Tr. at 26-27, 43; GE 1)

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<sup>1</sup> See <https://studentaid.gov/manage-loans/repayment/plans/income-driven>.

## 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 security concern 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.

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 has a history of financial problems, including defaulted student loans and delinquent medical debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the 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, 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.

Applicant thought that her medical expenses were being paid by medical insurance through her college. Her student loans were managed by her mother. Applicant did not earn much after she left college, and her student loans were not paid. Her pay has been garnished \$568 for the federal student loans. She paid \$600 to a company that specializes in assisting people manage their student loans. She entered into a \$5 per month payment plan for her federal student loans, which should stop the garnishment. When she completes the payment plan in January 2021, she should be eligible for an income-based payment plan.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's debts are not the result of frivolous or extravagant spending, they are student loans and medical debts. Of note, the cosigned car loan for Applicant's mother is the only non-SOR debt with a balance on Applicant's credit report. She has a strong incentive to continue to pay her federal student loans, which comprise more than 90% of the SOR debts. The garnishment of her pay should stop, and with her federal loans in a repayment plan, she should not have to continue to pay the student loan company. With a security clearance, she will also receive additional pay. Applicant has a plan to resolve her financial problems. There are clear indications that they are being resolved and are under control. Applicant provided sufficient information to mitigate financial considerations security concerns.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not report any adverse information under the financial questions on her August 2018 SF 86. She credibly denied intentionally providing false information about her finances. She stated that he did not think she had to list her student loans, and she was unaware of her medical debts. I found her to be honest, but unsophisticated about her finances. After considering all the evidence, including Applicant's testimony, age, education, and experience, I find that she did not intentionally provide false information about her finances on the August 2018 SF 86. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant.

### **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 have incorporated my comments under Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and mitigated 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:	For Applicant
Subparagraphs 1.a-1.o:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge