



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



In the matter of: )  
)  
) ISCR Case No. 19-01596  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

**01/22/2020**

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On July 5, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), Administrative Guidelines (AG) implemented June 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 20, 2019. The Department of Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2019, scheduling the hearing for January 10, 2020. The Government offered Exhibits (GE) 1 through 7, which were admitted into the record without objection. Applicant testified in her own behalf and submitted three documents, which were marked as (AE) A-C and admitted into the record. At Applicant's request, I kept the record open

until January 24, 2020 for additional information. Applicant submitted five exhibits, which I marked as AE D-H. There was no objection to the documents. DOHA received the transcript (Tr.) of the hearing on January 21, 2020.

### **Findings of Fact**

Applicant, age 32, is single and has two children. She obtained her high school diploma in 2005 and has attended some college classes. Applicant completed her security clearance application on March 13, 2017. She has held a security clearance for about 12 years. Applicant was unemployed for 10 months beginning in October 2017. She has been employed with her current employer for one year as a staff assistant.

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$8,752. The debts include various collection accounts. It further alleges that Applicant failed to timely file her Federal and state income tax returns for tax years 2011 through 2017. The SOR alleges a 2014 judgment in the amount of \$312, a February 2017 judgment in the amount of \$449, and a 2018 judgment in the amount of \$703. Applicant admitted the allegations. She provided explanations for each allegation.

Applicant acknowledged her debts, and that she has not filed her Federal and state income tax returns timely but stated that the father of her children left her and she had insufficient income to pay her bills. She stated that she has been on her own since about 2006. (Tr. 32) She receives no child support. She admitted that it is her fault that she did not file her income taxes. (Tr. 48) However, she stated that her finances do not define her as a person. She strongly believes that she deserves to keep her security clearance.

Applicant stated that as to SOR allegation 1.a, she is now working with tax preparers so that she can file her Federal income tax returns from 2011 through 2017. She believed that she could apply for a forgiveness program or file all of them at the same time. (Tr.18) She is in the process of doing this, because initially she did not know with which state she should file. (Tr. 23) She presented no explanation about why she did not file the Federal tax returns.

As to SOR 1.b, Applicant is also working with tax preparers so that she can file her state income tax returns from 2011 through 2017. She has called the state and was told that she could not set up a payment plan at this time.

As to 1.c, the 2014 state judgment in the amount of \$312, the amount is still owing.

As to 1.d, the 2017 state judgment in the amount of \$449, Applicant has not paid the judgment.

As to 1.e, the 2018 state judgment in the amount of \$703, Applicant still owes this amount.

As to 1.f, the collection account in the amount of \$5,452, Applicant called to make payment arrangements in three installments. She has not started the payment plan yet. This was an apartment that she vacated. (Tr. 31)

As to 1.g, the cable account in the amount of \$368, this account is paid in full and Applicant provided documentation to support this claim. (AX A)

As to 1.h, a collection account in the amount of \$1,468, Applicant stated this is the result of a car note that ended in a judgment. It has not been paid.

Applicant's 2017 investigative interview revealed that she has paid other non-SOR debts during the past year. As to Navient, she stated that her student loans are current. (AX B) These accounts do not appear on the SOR. (GX 7)

Applicant submitted a budget in her post-hearing submissions. She earns about \$80,000 a year and has a net monthly income of \$4,937. (AX D) She has a monthly net remainder of about \$613. She provided information verifying her full-time employment and the fact that she will be getting a raise soon. (AX E-F) Applicant has not had any financial counseling. (Tr. 42) She has no savings. She is doing hair as a hobby and hopes to earn some money from that endeavor to add to her income.

Applicant also submitted letters of recommendation from her employer. She is described as a dedicated and motivated person who is a delight to work with. She goes above and beyond, is a self-starter, and is administratively saavy. Her character and personal integrity are above approach. (AX G-H)

### **Policies**

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing 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 applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence

contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations") and AG ¶ 19(f) ("failure to file or fraudulently filing annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts are long-standing, and she acknowledges that she has not resolved them. She recently paid one bill. She also learned of the accounts in her 2017 OPM interview. Applicant stated that she paid a few of them, but provided no documentation. Thus, from the record, it cannot be determined if she applied any good-faith efforts until last year. She also has not filed her Federal and state income tax returns for a number of years and is just now getting a preparer to help her file. She has not received financial counseling. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved. Although she promises to address them and states that she does not owe that much in delinquent debt, the accounts are not resolved.

AG ¶ 20(b) is not established. While Applicant's unemployment of ten months in 2017 was beyond her control, she has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling; nor are there clear indications that her financial situation is under control. Her current ability to pay her delinquent debts is in doubt even though she stated that she is not to be defined by her finances. She has not filed her income tax returns for many years,

with no explanation, and is just now beginning to address the issues. Her financial problems are not under control.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.f and 1.h against Applicant. I find for Applicant regarding 1.g

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including Applicant's work career and recommendations, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness and failure to file her Federal and state income tax returns from 2011 through 2017. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch  
Administrative Judge