



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02196  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

09/08/2020

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On October 17, 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 November 18, 2019, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 21, 2020, and reassigned to me on July 28, 2020.

The hearing was convened as scheduled on August 20, 2020. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through Q, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE R through Z and admitted without objection

## Findings of Fact

Applicant is 33 years old. She worked for a defense contractor from December 2017 until the end of May 2020. Her former employer plans to rehire her if she obtains a security clearance. She is the single mother of a 16-year-old daughter. She dropped out of high school to care for her daughter and her gravely ill mother. She earned her high school diploma in June 2017, and she is taking college classes. ((Tr.) at 15-18, 25-26; GE 1; AE D, E, G, J, O)

Applicant was arrested in July 2008 and charged with simple assault, attempted threats to do bodily harm, and attempted possession of a prohibited weapon. In September 2008, the charges were dismissed for want of prosecution, which is defined as an “involuntary dismissal accomplished on the Court’s own motion for lack of prosecution or on motion from the defendant for lack of prosecution or failure to introduce evidence of facts on which relief may be granted.” (Tr. at 27; Applicant’s response to SOR; GE 2; AE I)

Applicant stated that she had an altercation at a night club with her friend, who was her neighbor and was also sleeping with the father of Applicant’s daughter. The friend and others went to Applicant’s home where the altercation escalated. Applicant stated that she picked up a knife in self-defense, but did not use it. She has not been arrested or charged with any offense since those charges were dismissed. (Tr. at 27, 41-42, 68-70; Applicant’s response to SOR)

Applicant usually worked 80 hours per pay period in 2010. Her employer cut her hours to three days per week. This caused her to have difficulty paying her rent. The rental assistance office told her that she needed a letter from her supervisor explaining why her hours were cut. Her supervisor provided a letter but it did not state why the hours were cut. Rather than go back to her supervisor, Applicant changed the letter herself. Applicant told her supervisor, who stopped scheduling her for work, which was the functional equivalent of a termination. (Tr.at 40; Applicant’s response to SOR)

Applicant lied on a job application in 2011 when she falsely reported that she had a high school diploma. She received the job, but was terminated in November 2013 when her employer discovered the lie. (Tr. at 17; Applicant’s response to SOR; GE 1)

Applicant has a history of financial problems, which she attributed to unemployment and the costs of raising her daughter without the benefit of child support. There has not been any significant unemployment since 2014. The SOR alleges unpaid federal (\$1,025) and state (\$1,300) income taxes and 11 delinquent debts totaling about \$17,400. Applicant admitted that she owed all the taxes and debts at one time. (Applicant’s response to SOR; GE 1; AE J)

Applicant contracted a credit repair law firm in 2013, 2014, May 2019, and July 2020. It is unclear if the law firm provided anything of value to Applicant. She also engaged the services of a debt-relief company in March 2019. She enrolled seven debts totaling approximately \$12,686 in the company’s debt-relief program. She agreed to pay

\$200 per month into the program, and the company would use the accumulated funds, minus their fees, to settle her debts. She withdrew from the program after she did not see any results. (Tr. at 19-20, 49-50; Applicant's response to SOR; AE A, W-Z)

Applicant filed a Chapter 7 bankruptcy case in October 2019. Under Schedule D, Creditors Holding Secured Claims, the petition listed a vehicle loan. Under Schedule E/F, Creditors Who Have Unsecured Claims, the petition did not list any priority claims. The petition listed 25 nonpriority claims totaling \$24,693. Applicant's debts were discharged in March 2020. She completed credit counseling and financial management courses as a requirement of her bankruptcy. (Tr. at 20-24; GE 3; AE A, C, Q, R)

Applicant did not pay all of her federal and state income taxes when they were due for tax years 2017 and 2018. In September 2019, she requested a \$100 per month installment agreement from the IRS to pay \$1,754 in back taxes. IRS records indicate that she made \$50 payments in August and September 2018, which were applied to her 2017 taxes, and a \$107 payment in November 2019, which was applied to her 2019 taxes. She submitted proof from the IRS that she is current on all her taxes through tax year 2019. (Tr. at 24-25, 37; Applicant's response to SOR; AE B, S, T)

Applicant entered into a payment plan with her state in July 2020 to pay \$56 per month for 36 months for \$1,794 in back taxes. She made a \$50 payment on August 10, 2020. (Tr. at 28-30; AE N, P)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in December 2017. She reported adverse information such as delinquent debts, that she was denied a security clearance in 2012, and that she was fired in 2013 for lying about having a high school diploma. She reported that she had been attending an online university since September 2017. She was accepted to that university in July 2017, but she had never attended classes. She enrolled in a community college in the fall of 2017. She credibly denied intentionally providing false information about her education. I find that any misstatement on the SF 86 about Applicant's education was not due to an attempt on her part to mislead the DOD. (Tr. at 26, 39, 64-65; GE 1; AE E, F)

Applicant submitted documents and letters attesting to her community involvement, moral character, and positive job performance. She is praised for her positivity, dedication, dependability, compassion, trustworthiness, selflessness, kindness, responsibility, honesty, work ethic, and integrity. (AE K-M)

## **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;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant has a history of financial problems, including delinquent debts and unpaid federal and state income taxes. 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed her financial problems to unemployment and the costs of raising her daughter as a single parent without the benefit of child support. Her daughter is 16 years old and the costs associated with caring for a teenager can be considerable, but there has not been any significant unemployment since 2014.

Applicant contracted with a debt-relief company in March 2019. She withdrew from the program after she did not see any results. She made \$50 payments to the IRS in August and September 2018, which were applied to her 2017 taxes, and a \$107 payment in November 2019, which was applied to her 2019 taxes. That indicates, and the IRS verified, that she is current on her federal taxes. She entered into a \$56 per month payment plan with her state in July 2020 to pay \$1,794 in back taxes. She made a \$50 payment on August 10, 2020. Her dischargeable debts were discharged by the bankruptcy court in March 2020.

Applicant's failure to pay her taxes when required raises questions about her judgment and willingness to abide by rules and regulations. I found Applicant to be honest and truthful, but unsophisticated when it comes to finances. With a security clearance, she will return to a good job. I am convinced that she has learned from the experience and that her finances are sufficiently in order that security concerns about her finances are mitigated.

### **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 conditions are 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a

foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant did not intentionally provide false information about her education on a December 2017 SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.b is concluded for Applicant.

The SOR cross-alleges Applicant's financial issues as personal conduct. It also alleges her criminal charges from 2008, and her dishonesty on a letter from her supervisor in 2010 and on a job application in 2011. Her conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(b) through 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The financial aspects of Applicant's personal conduct are mitigated under the same rationale addressed above under financial considerations. The remaining conduct, particularly the dishonesty, would be particularly concerning if it was more recent. The latest conduct occurred in September 2011, essentially nine years ago when Applicant was 24 years old. She is now a 33-year-old single mother with all of the responsibilities that entails. There is no evidence that the behavior has been repeated; she has not been arrested or charged with anything since 2008; and she has good character references. I find that the conduct is unlikely to recur; it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) are applicable.



## **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. I also considered Applicant's favorable character evidence.

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