



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



In the matter of: )  
)  
) ISCR Case No. 19-02362  
)  
Applicant for Security Clearance )

**Appearances**

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

**03/06/2020**

---

**Decision**

---

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 August 23, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), and Administrative Guidelines (AG) implemented on June 8, 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. The case was assigned to me on January 6, 2020. The Defense Office of Administrative Hearings (DOHA) issued a notice of hearing on January 15, 2020, scheduling the hearing for February 7, 2020. The Government offered Exhibits (GE) 1 through 7, which were admitted into the record without objection. Applicant testified in her own behalf, presented one witness and submitted Exhibits (AE) A through C, which were marked and admitted into the record without objection. At Applicant's request, I held the

record open until January 28, 2020, for additional information. The transcript was received on January 23, 2020. The record closed on February 28, 2020. Applicant submitted additional documentation, AE D and E, which was admitted into the record without objection.

### **Findings of Fact**

Applicant, age 45, is divorced, remarried in 2011 and has six children. She graduated from high school in 1992 and has taken college courses for several years but has not yet obtained her undergraduate degree. Applicant completed her security clearance application on February 9, 2018. She has held a security clearance since 2007. She has been employed as a contractor since 2003. She has been employed with her current employer since 2015 as a program analyst. (GE 1)

The SOR alleges that Applicant has nine delinquents totaling approximately \$38,000. Applicant admitted the SOR allegations with the exception of 1.a, and 1.c. and provided explanations. She did not believe the amount of the debt was accurate for 1.a and 1.c.

Applicant acknowledged her financial problems and her delinquent debts although she disagreed with the amounts. She attributed them to raising her three children as a single mother for many years. She also stated that she was a victim of identity theft and that higher prices in health insurance in 2015, have contributed to her financial instability. However, she was adamant that given her stellar government career and various promotions, she should not be judged by how her finances appear. (Tr.18) She presented evidence that she just received a promotion. (AE B) She is adamant that this is a financial lapse of judgment in her obligations but does not undermine her 20 years of excellent service to the Government. (Tr.81) She stated that she has never had a security violation and would never sell U.S. secrets. She claims that she is very reliable.

Applicant also stated that at one point she moved to another state to live with her sister so that she could save money. She lived there for about six months, but returned and had difficulty finding a place for her and her three children to live due to expensive rent. She kept delaying financial counseling because she “wanted to get her credit straight.” She has recently set up a meeting to obtain financial counseling. (Tr. 39, AE A)

Applicant denied the debt in SOR allegation 1.a, a charged-off account in the amount of \$17,008, because it was the result of a van that burned and was a total loss. Applicant purchased the vehicle in 2014 and in 2018 the insurance company evaluated it as a total loss and settled. Applicant avers that a payment of \$8,360 was sent to this account and she believes the charge-off amount is not \$17,008. (Tr. 21) However, she did not produce any evidence to confirm her assertion. Her credit report confirms that she owes \$17,008. (GE 2, 3)

As to SOR allegation 1.b, a charged-off account in the amount of \$12,699, Applicant stopped making payment in March 2017 because she could no longer afford

them. This was a car loan and Applicant had been making payments of \$20 a month. The car was repossessed. (Tr. 25)

SOR allegation 1.c, a collection account in the amount of \$613, Applicant denied the allegation, but stated that she has never made any payments on the account, which was opened in 2016. She believes this is a duplicate of 1.e.

SOR allegation 1.d, a collection account in the amount of \$600 was related to items in an apartment in 2014. Applicant has not taken any steps to resolve this account. (Tr.28)

As to SOR allegation 1.e, a charged-off account in the amount of \$553, a last payment was made in 2015. It is not resolved. (Tr. 28)

As to SOR allegation 1.f, a collection account in the amount of \$471, this credit card became delinquent in 2014 and is not resolved. (Tr. 28)

SOR allegation 1.g, is a credit card in collection for \$435 that went to collection in 2019, but the last payment was in 2017. This is not resolved.

SOR allegation 1.h, is a charged-off account in the amount of \$5,629. The account was for furniture that was bought and not paid for. (Tr. 48) Applicant has not attempted to resolve this account but stated that she is going to set up credit counseling so that she could set up a payment plan. (Tr. 29) The account is unresolved.

SOR allegation 1.i is a charged-off credit account in the amount of \$129. The card was charged off in 2012. Applicant has not made any efforts to address this account. (Tr. 30)

At the hearing, the SOR was amended to include an SOR allegation 1.j, to reflect that Applicant has not timely filed her 2018 income tax returns for both Federal and state. (Tr. 43) She has not requested an extension and admitted that she had no good reason for not filing. She stated that she just hasn't made time to file. (Tr.42)

Applicant's husband who she married in 2011, earns about \$25 an hour. (Tr. 67) He worked as an Uber driver and related how he had an accident in 2009 involving the issue alleged in SOR 1.a. The vehicle was totaled. In 2011 and 2012 two other vehicles were purchased. Applicant's husband lost the Uber job in 2016, and they could not keep up with the payments. He blames himself for these issues. (Tr.47) However, he believes the correct amount should be \$7,000 or \$8,000. Neither Applicant nor her husband has any documentation to confirm the assertions. (Tr. 56)

Applicant's husband also invested in a food truck for his wife. He took out a loan for \$10,000 in his name and was making monthly payments of \$246. However, the food truck has not passed all the regulatory inspections or licensing requirements and the truck is just sitting. Applicant is not able to make the payments on the loan. Thus, Applicant can't use it to generate extra income. Her husband stated that he did not understand the

severity of the matter regarding his wife's security clearance. Her husband pointed out that Applicant is paying college tuition for one child.

In Applicant's 2018 subject interview, she explained that she and her husband took a five day cruise to the Bahamas (Tr. 38). She had other debts that were resolved by garnishment or she has paid as required. (GE 7) She affirmed, however, that none of the debts listed on the SOR have been paid or are in a payment plan. (Tr.75) Her husband took out a \$10,000 loan for the food truck in 2018 when they already had delinquent debts.

Applicant currently earns about \$75,000 a year and she has been consistently employed. She has not had any financial counseling, but has made an appointment. She has a budget. It is not clear what the monthly net remainder is in her budget.

Applicant submitted as post-hearing documentation letters from an insurance company concerning the amount owed in SOR allegation 1.a , but does not state that there is no balance owing. (AE D, E) She stated in her post-hearing statement that she has started financial counseling.

### **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 his 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 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 admitted that she had no good reason for not filing her Federal and state income tax returns. There does not appear to be any circumstance that occurred beyond her control with the exception of the car accident and her husband losing the Uber job. She has been consistently employed. She has not paid or resolved any of the SOR delinquent debts. She just recently obtained financial counseling. She is now seeking a payment arrangement. She and her husband took a cruise when they should have been addressing the delinquent debts and the college tuition for one child.

Applicant's husband stated that he did not take this financial issue seriously and did not understand that it would impact his wife's security clearance. Applicant believes due to her exemplary 20 years of Government service, her financial obligations should not be undermining her trustworthiness or reliability to continue with her security clearance. Without documentary evidence of more efforts, she has not demonstrated a track record and there is no indication that her financial situation is under control. AG ¶ 20(a)-20(d) and 20(g) are not established. Applicant's delinquent debts remain unresolved. Although she promises to address them in the future, promises to pay are not given weight in the security clearance process. She has not expressed her intent concerning her 2018 tax filings. She has not met her burden of proof in this case. For these reasons, I find SOR ¶¶ 1.a through 1.j. against Applicant.

### **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 excellent work career and recent promotion; her failure to file as required her 2018 Federal and state income tax returns or have any track record of payments, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness. I conclude that it is not in the national interest to continue Applicant's 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-1.j:

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