



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



In the matter of: )  
)  
) ISCR Case No. 20-01416  
)  
Applicant for Security Clearance )

**Appearances**

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

10/21/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 28, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant's answer to the SOR was undated, and in it she elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on June 2, 2021. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant did not submit a timely response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on September 1, 2021.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.b and denied the allegations in ¶¶ 1.c through 1.k. (Applicant indicated she neither admitted or denied certain allegations. I have treated those statements as denials.) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. She married in 2005 and divorced in 2017. She has one grown child. She earned a bachelor's degree in 2012. She has been employed by a federal contractor since 2018. Prior to then she was consistently employed since 2007.

The SOR alleges 11 delinquent debts totaling approximately \$39,533. In her answer to the SOR, she indicated her financial problems began in 2015 when she experienced medical issues that resulted in surgery, followed by a separation and divorce. She was then in an unpaid leave status from work for nine months. (Item 2)

In Applicant's August 2018 security clearance application (SCA), she disclosed that she had four credit card debts that were suspended, charged off, or cancelled for failing to pay as agreed. She explained in her SCA that due to medical issues she was unable to pay all of her bills and used credit cards to supplement her income and pay for essentials. She made minimum payments on the credit cards until she was unable to do so. She said she had initiated payments to the creditor in SOR ¶ 1.a and will pay each debt one at a time. In her answer to the SOR, Applicant admitted the two debts in SOR ¶¶ 1.a (\$8,061) and 1.b (\$6,764).

In October 2018 Applicant was interviewed by a government investigator as part of her background investigation. She confirmed that she owed the accounts in SOR ¶¶ 1.a, 1.b and 1.d. (SOR ¶ 1.d is the collector for the original credit card debt, which she disclosed in her SCA.) She told the investigator that she was repaying these debts through a debt rehabilitation program (DRP), whereby she pays \$447 per month, and the DRP negotiates the amounts to be paid to each creditor. Along with the debts in SOR ¶¶ 1.a, 1.b, and 1.d, she stated that the debts in SOR ¶¶ 1.f and 1.h were included in the DRP repayment plan. She said she was unaware of how much is paid to each creditor until a final settlement is reached. Applicant did not provide evidence of her agreement or payments made to the DRP.

In Applicant's answer to SOR, Applicant admitted she owed the debts in SOR ¶¶ 1.a and 1.b, and she explained that in mid-2017 she contacted these creditors when she could not make payments on the accounts and requested the accounts be closed. Two years later she contacted them again and she said she was told the debts were charged

off. She said she was told she no longer owed the debts. This contradicts her statement to a government investigator that the debts were included in a repayment plan with the DRP and she was making payments. The debts are not resolved.

Applicant told the investigator that she was unaware of some of her delinquent debts until she was notified by the DRP after she completed her SCA. She acknowledged to the investigator the collection accounts in SOR ¶¶ 1.f (\$1,979) and 1.h (\$1,277), which were included in her DRP repayment plan. She stated that the debts alleged in SOR ¶¶ 1.b (\$6,764) and 1.e (\$2,956) with the same creditor are the same account. They have two different account numbers and two different balances owed. Applicant separately acknowledged both debts during her interview with the government investigator. She provided no evidence that they are the same account. Regarding the debts in SOR ¶¶ 1.e and 1.c, she stated in her SOR answer that she had no recollection of these accounts, but there is a possibility they were opened by her alone or as a joint account when she was married. Her February 2020 credit report notes that the account in SOR ¶ 1.c was “closed at consumer’s request: charged off account.” Applicant did not provide evidence that she has resolved any of these accounts. (Items 5. 6)

In Applicant’s answer to the SOR she denied the collection accounts in SOR ¶¶ 1.d, 1.f, 1.g, 1.h, 1.i, 1.j and 1.k. The original creditor in SOR ¶ 1.d is the account Applicant disclosed in her SCA. She disclosed the creditors in SOR ¶¶ 1.f and 1.h during her background interview. Applicant told the government investigator the debts in SOR ¶¶ 1.d, 1.f and 1.h were included in her repayment plan with the DRP.

Applicant provided a court document in her SOR answer, showing that a case with the creditor in SOR ¶¶ 1.i and 1.k was dismissed without prejudice. She did not provide specific information as to which account this may apply or information about the other account. These debts were reported in her 2019 credit report, but not her 2020 credit report. They are resolved in her favor.

Applicant denied the debt in SOR ¶ 1.i stating she had paid the account. Her 2019 and 2020 credit reports indicate it is in a delinquent status. She failed to provide evidence that the account has been paid.

In Applicant’s answer to the SOR she provided copies of dispute letters from December 2019 that she sent to the collection creditors. She also provided copies of dispute letters from February 2019 to the credit bureaus requesting validation of the debts. (In her February 2019 letters to the credit bureaus she references her December 2019 letters. It appears she may have the wrong date on the credit bureau letters.) She indicated they did not respond. However, the accounts in SOR ¶¶ 1.j and 1.k were removed from the 2020 credit report. Notations in that credit report for the debts in SOR ¶¶ 1.d and 1.g state: “consumer disputes after resolution.” The notations for the debts in SOR ¶¶ 1.f and 1.h state: “consumer disputes this account information.” These are accounts Applicant disclosed she owed in her statement to the government investigator. There is sufficient evidence to conclude the debts in SOR ¶¶ 1.d, 1.f, 1.g, 1.h and 1.i belong to Applicant and are valid.

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has numerous delinquent debts totaling approximately \$31,103 that began accumulating in about 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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

(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 attributes her financial problems to her 2015 divorce and subsequent medical issues that caused her to be in an unpaid work status for nine months. She used credit cards to pay for her necessities during this time. She paid them until she was unable, and they became delinquent. These were conditions beyond Applicant=s control. For the application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. She disclosed some of her delinquent debts in her SCA and said she was paying one at a time. She acknowledged her delinquent debts to the government investigator, including ones brought to her attention by the DRP and she said they were in a repayment plan. Later she disputed some of these debts. She has not provided any documentary proof to show she has acted responsibly and that she has paid or resolved her delinquent debts. AG ¶ 20(b) marginally applies.

Applicant=s debts have been delinquent for many years. She did not take action to dispute the debts or resolve them until after she was put on notice in 2018 that her finances raised security concerns. She then began disputing debts that she had previously acknowledged belonged to her or that she had indicated were part of a payment plan with the DRP. She failed to provide evidence of this plan or any payments made to it. I cannot find that she has participated in financial counseling. There are not clear indications that her financial problems are being resolved or under control. There is no evidence of a good-faith effort to repay overdue creditors or resolve her delinquent debts. Her conduct casts doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c) and 20(d) do not apply.

Applicant successfully disputed the debts in SOR ¶¶ 1.j and 1.k, and they were removed from her 2020 credit report. AG ¶ 20(e) applies to these debts. I find that despite her denials, there is sufficient evidence to conclude the remaining debts belong to

Applicant and she has failed to resolve them. AG ¶ 20(e) does not apply to the remaining debts.

### **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 the 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 Guideline, F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has numerous delinquent debts that she has failed to resolve. She failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge