



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00691  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

04/26/2022

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from her delinquent debts. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 16, 2020. On April 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR under Executive Order 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 25, 2021, and elected to have her case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, instead of a hearing. On July 28, 2021, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6.

The file indicates that DOHA mailed the FORM to Applicant on July 30, 2021 but it was not received. It was mailed again on October 8, 2021, and Applicant signed the receipt on November 2, 2021. She was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not respond to the FORM, nor did she note any objections to the Government's proposed evidence. On January 11, 2022, the case was forwarded to the DOHA hearing office for assignment to an administrative judge for a decision on the written record.

The case was assigned to me on February 8, 2022. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 6 are admitted into evidence without objection. Applicant submitted various documents with her answer to the SOR, which I have admitted into evidence without objection as Applicant's Exhibits (AE). These include letters to various creditors in which she disputes the validity of items on her credit report (AE A) and a May 2021 credit report (AE B).

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all four allegations (SOR ¶¶ 1.a-1.d) with brief explanations. Her admissions and explanations are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. She graduated from high school in 2010 and has taken some college courses. She enlisted in the Navy after high school and served just under six years on active duty, until 2016, when she received a general discharge from the Navy. (Item 2; DD-214, in Item 4) She was then unemployed from July 2016 until May 2017. She then worked as a service representative for a credit union for about two years, until August 2019. She then entered the defense industry, first briefly with one employer, then for her current employer, who is her clearance sponsor, since January 2020. Applicant was married from 2012 to July 2016, but is now divorced, and she has no children. (Item 2)

According to her background interview, Applicant was charged with abusive sexual contact (UCMJ Article 120) and assault (UCMJ Article 128) after she allegedly licked a fellow sailor in the face and smacked the sailor on the rear, without consent. She went to captain's mast and was reduced in rank to E-4. Her DD-214 reflects that she received a general discharge, and the reason for the separation was given as "Misconduct (serious offense). (Item 4). Applicant's conduct in the Navy is not alleged in the SOR, but it is nonetheless relevant because it led to her involuntary departure from the Navy, and, thus, to several months of unemployment (a relevant factor in financial cases).

Applicant's background investigation included a credit report, which revealed some delinquent debts. (Item 5) She did not disclose any delinquencies on her SCA but discussed them in her background interview, and indicated that she was not aware that they were delinquent. (Item 3, interview summary)

The SOR concerns four delinquent debts, totaling about \$22,000. They are listed on either Applicant's credit reports from April 2020 or February 2021, or both. Applicant also admitted them, with explanations, though she indicated in both her interrogatory responses (in December 2020 and April 2021) and in her answer to the SOR (May 2021) that she was disputing the status of several of the accounts. (Items 1, 3, 4) The debts are detailed as follows:

SOR ¶ 1.a (\$2,055) is an account placed in collection by a phone company. Item 5, 6) Applicant acknowledged in her interrogatory response that the account had not been paid. (Item 3) With her answer to the SOR, she provided letters to credit bureaus disputing the account. (AE A) This account remains listed on her May 2021 credit report as open, in collection status, and owed in full. (AE B) This debt is unresolved.

SOR ¶ 1.b (\$859) is an account placed for collection by another phone company. (Item 5, 6) In her interrogatory response, Applicant said the debt had been paid. (Item 3) With her answer to the SOR, she provided letters to credit bureaus disputing the account. (AE A) Applicant did not document that the debt has been paid, otherwise resolved, or that her dispute is valid.

SOR ¶ 1.c (\$18,175) is a delinquent account relating to an automobile loan. (Items 5, 6) Applicant acknowledged in her interrogatory response that the account had not been paid. (Item 3) With her answer to the SOR, she provided letters to credit bureaus disputing the account. (AE A) She also acknowledged that she co-signed the loan for her then boyfriend's car when she was 23 years old, "not knowing the financial responsibility that came with it." (Item 1) This account remains listed on her May 2021 credit report as closed, charged off, and owed in full. (AE B) This debt is unresolved.

SOR ¶ 1.d (\$1,118) is an account placed for collection by a cell phone company. (Item 5) In her interrogatory response, Applicant said the debt had been paid. (Item 3) With her answer to the SOR, she provided letters to credit bureaus disputing the account. (AE A) Applicant did not document that the debt has been paid, otherwise resolved, or that her dispute is valid.

In her interview summary, Applicant indicated that she fell behind on her accounts when she was unemployed after her discharge from the Navy. In her answer to the SOR, she said she accrued most of her financial obligations during her time in the military when she was not financially responsible. Since leaving the military, she said, she has learned the importance of managing her finances and credit. Applicant plans to "clean up" her credit so she can buy a house. A December 2020 personal financial statement reflects \$3,600 in monthly income, \$1,220 in monthly expenses, and a net remainder of \$2,380. (Items 1, 4)

In April 2021, Applicant retained a credit monitoring service to remove incorrect information from her credit report. The letters she provided are boilerplate letters challenging her debts without articulating a specific basis for the challenges. (AE A)

Applicant did not respond to the FORM, so she provided no more recent information about her efforts to dispute, pay, or resolve her debts, or about her current financial situation, beyond what she submitted in her answer and in response to interrogatories.

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred several financial obligations during her time in the Navy, debts that subsequently became delinquent, including an auto loan account and four phone accounts. The debts are all established by the record evidence, and AG ¶¶ 19(a) and 19(c) apply.

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, or 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's debts are ongoing and continue to cast doubt on her judgment, trustworthiness, and reliability. Her personal financial statement suggests that she has funds available to address her debts but she has not done so. AG ¶ 20(a) does not apply.

Applicant was unemployed for a period of time after she left the Navy and fell behind on her finances during that period. However, she was discharged from the Navy following her own misconduct, which undercuts a finding that her resulting unemployment was due to circumstances beyond her control. She also acknowledged that she was financially irresponsible while in the Navy, including co-signing on an auto loan without understanding the responsibility it entailed. She also did not establish that she has acted responsibly under the circumstances to address her debts, particularly after she became gainfully employed. AG ¶ 20(b) does not apply. Similarly, she has not provided sufficient evidence to establish that she has made any payments towards any of her SOR debts, or that she has made a good-faith effort to pay or resolve her debts. AG ¶ 20(d) does not apply.

Applicant did not show that she has retained any legitimate and reputable credit counselor to help repay her debts and learn how to manage her finances. The credit monitoring service she retained does not meet that definition. She also did not establish that her debts are being resolved or are under control. AG ¶ 20(c) does not apply.

Similarly, although Applicant disputed her accounts with letters to credit bureau agencies, she did not establish with appropriate documentation that any of her disputes are valid and that she is not responsible for the debts. AG ¶ 20(e) is not established.

### **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

