



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



In the matter of: )  
)  
) ISCR Case No. 20-03713  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Jeffrey S. Gard, Esq.

07/18/2022

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, and the personal conduct concerns were not established. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 15, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 effective June 8, 2017 (AG).

Applicant answered (A1) the SOR on October 20, 2021, and she requested a hearing before an administrative judge. On December 7, 2021, Department Counsel Applicant prepared and served on the Applicant an amendment to the SOR (ASOR). That amendment added a new allegation under Guideline F (ASOR ¶ 1.r) and three new

allegations under Guideline E, personal conduct (ASOR ¶ 2.a-2.c). Applicant provided a written response, with attachments, to the ASOR on December 17, 2021. For some reason, the ASOR and Applicant's corresponding response were not made a part of the file before the hearing. At the hearing, Department Counsel brought the issue to my attention and Applicant confirmed that she had responded to the ASOR. Applicant's post-hearing submissions (Applicant Exhibits (AE) B1-B42) included a copy of the ASOR and Applicant's response (A2), with attachments, at B10-B42. (Transcript (Tr.) at 8-9)

I was assigned the case on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 21, 2022, and the hearing was convened as scheduled on April 11, 2022. The Government offered exhibits (GE) 1-13, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were identified as hearing exhibits (HE) I-II. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record remained open until April 15, 2022, to allow Applicant to submit additional documentary evidence. She submitted AE B1-B42, as noted above, which were admitted without objection. DOHA received the Tr. on April 19, 2022.

### **Findings of Fact**

Applicant admitted some of the SOR allegations, with explanations, and denied other allegations. Her admissions are incorporated into these findings of fact. Applicant denied all the ASOR allegations. Although she "admitted" ASOR ¶ 2.c, her narrative explanation makes it clear that she is denying any deliberate or intentional false or misleading statements. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 59-year-old employee of a federal contractor. She began working at her present job in March 2019. Aside from a one-month period of unemployment in 2013, she has worked in the information technology (IT) area since 2001, including work for other federal contractors. She is a high school graduate with some college credits. She was married for the fifth time in 2018 (previous marriages were from: 1984-1987, 1993-2001, 2007-2012, 2015-2018). She has three adult children. She has held a security clearance since 2013. (Tr. at 22-23, 41-42, GE 1)

The SOR alleged 17 delinquent debts including vehicle repossessions, medical and consumer debts totaling \$45,156. (SOR ¶¶ 1.a-1.q) The debts were listed in credit reports from May 2019, September 2020, and December 2021. (GE 9-11)

Under Guideline F, the ASOR alleged, in May 2017, Appellant's company's board of directors (BD) removed her as a BD member for withdrawing \$7,050 from the company bank account without proper authorization. (SOR ¶ 1.r) This allegation was also crossed-alleged under Guideline E. Additionally, under Guideline E, the ASOR alleged that Applicant falsified material facts in her April 2019 security clearance application (SCA), in response to Section 13A, when she failed to state that she had been removed from her company's BD. Additionally, the ASOR alleged she falsified material facts when she failed

to list in her April 2019 SCA, in response to Section 28, that she was a party in a civil lawsuit within the last seven years. (SOR ¶¶ 2.a-2.c)

In response to the allegations in the original SOR, Applicant credibly explained that her financial difficulties resulted from several factors, including unexpected medical bills from her cancer diagnosis and from severe leg and arm injuries requiring surgery due to an accident. The accident left her wheelchair bound for several months. She also admitted that she made some bad financial decisions when she helped finance vehicles for an ex-husband who let the loans go delinquent. (Tr. at 23-27; A1 and attachments (listed by Applicant as Items and Exhibits))

Applicant documented that she earns over \$160,000 per year from her current job, and she also testified that she is working a second IT job, which also pays her approximately \$160,000 per year as well. Her \$320,000 total yearly income is more than sufficient to pay her existing monthly bills and other debts as stated in her monthly budget. She contributes to a retirement account that has approximately \$14,000. She owns her own home, which was purchased in 2021, and is current on her monthly payments. She produced copies of her 2019 and 2020 federal tax returns where she received tax refunds. (Tr. at 29, 55; A1 (Exhibits 1, 5, 10-13))

The status of his delinquent debts listed in the SOR is as follows:

#### **Guideline F**

**Vehicle Repossession Deficiency-\$12,558 (SOR ¶ 1.a).** This debt was assigned for collection in November 2012. The date of activity is July 2020. Applicant admitted that she financed this vehicle for her ex-husband who agreed to make the payments. When he did not, the vehicle was repossessed, sold, and resulted in a deficiency balance as noted. When Applicant and this ex-husband divorced, she documented that the divorce settlement ordered her ex-husband to pay this debt. He failed to do so. This debt is not listed on her December 2021 credit report or her March 2022 credit report. Based upon the date of activity, the information would not have been removed based upon the Federal Trade Commission rules that restrict reporting of debts over seven-years-old on credit reports. (Tr. 23-24; GE 10, 11; A1 (Item A); AE A)

**Vehicle Repossession Deficiency-\$9,559 (SOR ¶ 1.b).** This debt was assigned for collection in April 2016. The date of last activity is August 2019. Applicant admitted that she financed this vehicle for her ex-husband who agreed to make the payments. When he did not, the vehicle was repossessed, sold, and resulted in a deficiency balance as noted. When Applicant and this ex-husband divorced, she documented that the divorce settlement ordered her ex-husband to pay this debt. He failed to do so. She filed a dispute letter with the creditor in September 2019. (Tr. 23-24; GE 11; A1 (Item B))

**Medical Debt-\$5,758 (SOR ¶ 1.c).** Applicant credibly explained that this medical debt resulted from surgery she had and that her insurance was supposed to pay the debt. She is still working with her insurance company to resolve this issue. She contacted the

creditor to work out a payment plan, but the creditor refused any terms other than full payment. This debt is being resolved. (Tr. at 25-26; A1 (Item C))

**School Debt-\$4,350 (SOR ¶ 1.d).** Applicant credibly explained that this school debt was from a cyber-security course she enrolled in and then later dropped because of her busy schedule. Although she dropped the class before the deadline to be charged for it, she was charged for the course. She disputed the charge with the school and the school agreed to remove the charge. This debt was assigned to collections in December 2019 and the date of last activity was August 2020. This debt is not listed on her December 2021 credit report or her March 2022 credit report. Based upon the date of activity, the information would not have been removed based upon the Federal Trade Commission rules that restrict reporting of debts over seven-years-old on credit reports. This debt is resolved. (Tr. at 26; GE 10, 11; A1 (item D))

**Three Medical Debts assigned to the same collection company-\$1,011; \$681; \$180 (SOR ¶¶ 1.e, 1.f, and 1.o).** Applicant documented that she paid all three medical debts in July 2019. These debts are resolved. (Tr. at 26; A1 (Items E, F, and O))

**Medical Debt assigned to a collection company-\$437 (SOR ¶ 1.g).** Applicant documented that she paid this medical debt in June 2019. This debt is resolved. (Tr. at 27; A1 (Item G))

**Consumer Debt assigned to a collection company-\$257 (SOR ¶ 1.h).** Applicant credibly testified that she paid this debt. This debt was assigned to collections in April 2020, and the date of last activity was August 2020. This debt is not listed on her December 2021 credit report or her March 2022 credit report. Based upon the date of activity, the information would not have been removed based upon the Federal Trade Commission rules that restrict reporting of debts over seven-years-old on credit reports. This debt is resolved. (Tr. at 27; A1)

**Debt assigned to a collection company-\$152 (SOR ¶ 1.i).** Applicant documented that she paid this medical debt in June 2019. This debt is resolved. (Tr. at 27; A1 (Item I))

**Vehicle Repossession Deficiency-\$8,108 (SOR ¶ 1.j).** This debt was assigned for collection in March 2017. The date of last activity is June 2020. Applicant admitted that she financed this vehicle for her ex-husband who agreed to make the payments. When he did not, the vehicle was repossessed, sold, and resulted in a deficiency balance as noted. When Applicant and this ex-husband divorced, she documented that the divorce settlement ordered her ex-husband to pay this debt. He failed to do so. She filed a dispute letter with the creditor in September 2019. (Tr. 27; A1 (Items J and A))

**Three Medical Debts assigned to the same collection company-\$1,004; \$432; \$192 (SOR ¶¶ 1.k, 1.l, and 1.n).** Applicant documented that she paid all three medical debts in June 2019. These debts are resolved. (Tr. at 27-28; A1 (Item K))

**Two Medical Debts assigned to the same collection company-\$213; \$175 (SOR ¶¶ 1.m and 1.p).** Applicant documented that she paid both medical debts in June 2019. These debts are resolved. (Tr. at 27-28; A1 (Item P))

**Debt assigned to a collection company-\$89 (SOR ¶ 1.q).** Applicant documented that she paid this debt in June 2019. This debt is resolved. (Tr. at 28; A1 (Item Q))

Regarding the ASOR allegation (SOR ¶ 1.r) that in May 2017, Applicant was removed from her BD position of her company by the other BD members, Applicant denied that she was properly removed by the BD because it had no authority to do so. Applicant was in a legal dispute with the other BD members over several things, including her being reimbursed for IT work she performed for the company, of which she was a 33 percent owner. Applicant, with the consent of the company CEO, wrote herself three checks (in January, February, and March 2017) totaling \$7,050 as payment for her IT services she rendered to the company. In May the BD issued a resolution that Applicant was to be removed as a BD member and that charges would be filed against Applicant for embezzlement. The BD made a formal complaint to the local police department and a police report was issued. No criminal charges were ever filed against Applicant. Additionally, she intervened in a pending civil lawsuit brought by another former company employee against the company and the other BD members (except Applicant) seeking summary judgment against the BD for its improper removal of her as a BD member. She sought to have the BD's removal action declared null and void. In February 2018, the judge granted the motion and declared the BD's action in removing Applicant from the BD was without proper authority and therefore "null and void." Applicant remained a member of the BD. (Tr. at 31, 34-35; AE 12-13; AE B13-35, B39-42)

## **Guideline E**

The relevant facts underlying SOR ¶ 2.a are stated above and will not be restated here. Applicant stated that in response to the Section 13A allegation that she falsified her April 2019 SCA regarding being fired or let go for cause from her employment, her answer was correct because she remained a BD member after the judge's ruling which nullified the BDs action of removing her. Therefore, her SCA response to Section 13A was not false or deliberately misleading. (Tr. at 35; AE B18-20)

Applicant admitted that she failed to document on her April 2019 SCA that she was a party to a civil lawsuit. She stated that it was an oversight and not intentional. A review of her April 2019 SCA, Section 13A, shows that when she described her relationship with the company with whom she was a named party in a civil lawsuit, she stated "I did hire a lawyer to collect my ownership interest." In her July 2017 background interview with an investigator, Applicant voluntarily disclosed her contentious relationship with her company's former CEO and stated that she was getting an attorney to file against the CEO to get her share of the company. She also voluntarily disclosed the lawsuit during her more recent background investigation in August 2019.

## 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 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(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 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG & 19 and the following potentially apply:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant incurred medical and consumer debts over a period of time. She was also accused of embezzling money from a business concern where she was part-owner and wrote checks to reimburse herself for work she performed. Her actions were vindicated by a judge's order granting her motion for summary judgment and concluding that there was no basis to remove her from the BD. I find the above disqualifying conditions are raised, except that AG ¶ 20(d) is not raised regarding SOR ¶ 1.r.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's medical issues contributed to her financial problems. Additionally, it was not the wisest action to help finance her ex-husband's vehicles. Although the divorce court ultimately put the financial responsibility for those vehicles on her ex-husband, the debts affected her financial status. As for the remaining debts, she has either paid the debts or disputed them for valid reasons. All of her payments were before the issuance of the SOR in this case, thus showing responsible action and good faith. Applicant's current financial status, based upon her two jobs where she earns a combined annual income of \$360,000, is such that it is unlikely that she will be placed in this position in the future. All the above mitigating conditions have some applicability.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. 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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

(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; and

(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.

None of the listed disqualifying conditions provide a basis for SOR ¶ 2.a, since Guideline F provides a specific guideline for the alleged embezzlement allegation making AG ¶ 16(d) not applicable. Additionally, there are no other Guidelines at play under these facts also making AG ¶ 16(c) not applicable. Nevertheless, under the general guidance of AG ¶ 15, Applicant's action can be viewed as it may relate to her judgment and honesty. However, the facts established that Applicant was successful in court in having the BD's decision to remove her from the BD declared null and void. Since the BD's removal action was based upon its claim that Applicant embezzled company funds, the court's ruling thoroughly undercuts that basis and Applicant was never charged with any criminal offense. The general concern stated in AG ¶ 15 also does not apply, it is therefore unnecessary to explore the applicability of any mitigating conditions.

The Government failed to establish that Applicant deliberately falsified or provided misleading answers on her 2019 SCA as alleged in SOR ¶¶ 2.b and 2.c. Applicant's answer to Section 13A provided detailed information about her leaving that company. Additionally, based upon the court's ruling on Applicant's motion for partial summary judgment, Applicant remained a member of the company's BD and therefore none of the conditions existed which would require Applicant to answer the question listed in SOR ¶ 2.b in an affirmative way. Likewise, while Applicant admitted not correctly answering the question in section 28 of her 2019 SCA, she credibly stated that this omission was an unintentional oversight rather than a deliberate attempt to withhold information. Evidence in the record supports Applicant's position. She disclosed in an earlier background

interview in 2017 the notion that she was going to court over the issue with the company's BD. In her 2019 SCA, in section 13A, she disclosed the contentious relationship and that she had hired an attorney to protect her interests. During her 2019 background interview, she voluntarily described the nature of the relationship that wound up in civil litigation. These are not the actions of someone trying to keep this information from the government. AG ¶ 16(a) does not apply to SOR ¶¶ 2.b and 2.c. Because no deliberate falsification was established, it is unnecessary to explore the applicability of any mitigating conditions.

### **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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's contractor service, the circumstances surrounding her indebtedness, her efforts to repay the delinquent debts, and the divorce court's allocation of some of the SOR debts to her ex-husband. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns and that personal conduct concerns were not established.

### **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.r:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs: 2.a – 1cr:	For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, 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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Robert E. Coacher  
Administrative Judge