



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



In the matter of: )  
)  
) ISCR Case No. 20-01375  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

01/19/2023

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**Decision**

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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 June 6, 2022, the Department of Defense (DOD) 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 answered the SOR on June 15, 2022, and 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 August 18, 2022. 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 provide a response to the FORM, did not object to the Government's evidence, and did not submit documents. The Government evidence is admitted. The case was assigned to me on October 20, 2022.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.c and denied 1.d through 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. She has lived with a cohabitant since 2016. She has no children. From October 2004 to June 2006, she attended college full time and earned an associate's degree. She then attended a university full time from 2007 to 2008. She attended online college classes from August 2009 to May 2013. She was also attending a community college taking online classes at the same time from January 2013 to May 2013. Her college was funded through student loans. (Items 2, 3)

Applicant has been employed by her present employer, a federal contractor, since March 2019. She was unemployed from January 2015 to July 2015 when the store where she was working closed. She did not disclose any other periods of unemployment from 2008 to the present. She said she was also underemployed and provided a pay stub to show how much she was earning for a period in 2015. (Items 1, 2, 3)

Applicant disclosed in her May 2019 security clearance application (SCA) that she had approximately \$116,000 in delinquent student loans that were in collection. (Item 2) She stated:

I had financial hardship that prevented me from paying the student loans or pay other bills. Once behind, the interest became very high and I could not handle the suggested payments of \$1,000 per month. I tried to pay what I [could] but was unable to keep them current. I am currently working on making payments on the existing student loans and working to make a plan with the creditor to pay the charged off ones. (Item 2)

She estimated her financial difficulty began in 2015. She further stated: "I have been making payments to keep my federal student loans current. I am working with the creditor to make a payment plan for the student loans that were defaulted and charged off." (Item 2)

Applicant was interviewed by a government investigator in August 2019. She explained that she stopped attending college classes when her father became ill in 2013 and she went home to help her mother. She told the investigator that all of her student loans were deferred. Her father was helping her with her student loans and then he passed away. She said she was paying \$380 a month on her student loans and the creditor wanted to increase her monthly payment to \$1,400, which she could not afford.

She said they were all current until July 2015, when she was laid off from work and could not afford to make payments. When she resumed working in October 2015, she said she resumed making payments on all of her loans. She told the investigator that she received a \$33,686 settlement offer from the creditor on her private student loans that totaled \$119,419. She was going to accept the offer, and was working out a payment plan because she could not pay the entire amount in a lump sum. She was going to begin payments in September 2019. The loans alleged in the SOR are for her federal student loans. It is unclear if she confused the loans as there are no others reflected in her credit reports unless they were removed.

Applicant then told the investigator that she had consolidated her federal student loans and the estimated amount owed was \$126,000. She said she was on a payment plan and was making \$154 monthly payments. She said her father had been helping her with her federal and private student loan payments and when he passed away she could not afford to pay as much. She said she made payments, but they were not likely the amount the creditors wanted. She did not provide documentary evidence of payments. (Item 3)

In Applicant's answer to the SOR, she admitted she owed the delinquent student loans in ¶ 1.a (\$60,209), ¶ 1.b (\$53,410) and ¶ 1.c (\$3,527). She said she was unable to make payments when she lost her job in 2015 and after missing several monthly payments the debts were charged off. She said she was out of work for almost a year. In 2016, she found employment, but the monthly payment the creditor wanted was \$1,500 and she could not afford the amount as her salary was between \$15,000 and \$25,000. She said she contacted the creditor to make a reasonable payment plan, and it refused. The loans have been sold to different creditors and she is still working on handling these debts. She did not provide specific evidence of what actions she was taking. These student loans are unresolved. (Item 1)

Applicant denied she owed the student loan alleged in SOR ¶ 1.d (\$1,951). She provided proof that this debt was part of a class action lawsuit for unfair lending practices and mismanagement and was forgiven. She provided documents that support the debt was forgiven. The debt is resolved. (Item 1)

Applicant was questioned by the investigator about the debt alleged in SOR ¶ 1.e (\$416). She explained that this was due to an overdraft on a bank account. She was notified that she had 30 days to resolve it, but had to do it in person and she no longer lived in the area. She eventually went to the bank, but the account was closed and the bank would not let her pay it unless she opened a new account. She told the investigator she was expecting a letter from the bank, but never received one and then forgot about the debt. She told the investigator that she would attempt to contact the creditor again. In June 2022, Applicant satisfied the debt and provided supporting documentation. (Items 1, 3)

Applicant told the investigator that she was unaware of the medical debt alleged in SOR ¶ 1.f (\$279). She explained that she was called by the medical provider advising her

that her medical services were not covered by insurance. She said she paid the balance of \$236 that was owed at the time. Applicant provided proof that the debt was satisfied in July 2019. (Items 1, 3)

Applicant did not provide additional information as to the current state of her finances, how much she earns in annual income, and if she has made any progress on establishing a payment plan to resolve her student loans. She disclosed in her SCA that she has taken trips to Mexico and the Bahamas (2013); Dominican Republic (2016); Turks and Caicos Islands (2017); France and the United Kingdom (2017); and a cruise to the Bahamas in July 2019. No other financial information was provided. (Items 2, 3)

## **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 had delinquent student loans and two other delinquent debts that were owed that she was unable to pay due to unemployment and underemployment. 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 resolved the debts in SOR ¶¶ 1.e and 1.f. AG ¶ 20(d) applies to these debts. The debt in SOR ¶ 1.d was forgiven due to a class action lawsuit. AG ¶ 20(e) applies to this debt.

Applicant has approximately \$117,000 of delinquent student loans. These accounts have been charged off. These debts are ongoing and unpaid. AG ¶ 20(a) does not apply. Her father helped make payments for her prior to 2013 before he passed away. She was unemployed and underemployed throughout the years, which were conditions beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She has been steadily employed since March 2019. She did not provide evidence of any payments she may have made towards these student loans, any recent efforts to establish a payment plan with the creditor, or any other responsible actions she may have taken. She did not provide evidence that she has participated in financial counseling or that there are clear indications that the problem is being resolved or under control. She did not provide evidence regarding her current

finances or ability to resolve her delinquent debts. AG ¶ 20(b) has minimal application. AG ¶ 20(c) does not apply.

### **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.

Applicant 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.c:	Against Applicant
Subparagraphs 1.d-1.f:	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