



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



In the matter of: )  
)  
) ISCR Case No. 21-00005  
)  
Applicant for Security Clearance )

**Appearances**

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

05/09/2023

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 25, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On March 7, 2022, Applicant answered the SOR, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 1, 2022. The hearing commenced on December 19, 2022, but it was postponed for good cause (See hearing transcript (Tr.1) pp. 1-6). A second

Notice of Hearing was issued on December 19, 2022, rescheduling the hearing for January 10, 2023. The hearing commenced on January 10, 2023, but it was postponed for good cause (See hearing transcript (Tr.2) pp. 7-15) A third Notice of Hearing was issued on January 11, 2023, rescheduling the hearing for January 25, 2023. This hearing was held as scheduled. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter to Applicant was marked as HE II. Applicant testified but she did not offer any exhibits at the hearing. The record remained open after the hearing, and Applicant timely submitted exhibits (AE) A-C, which were admitted without objection. DOHA received the hearing transcript (Tr.3) on February 3, 2023.

### **Findings of Fact**

In her SOR answer, Applicant denied all the allegations. I make the following additional findings of fact.

Applicant is a 37-year-old employee of a federal contractor. She has worked for federal contractors since 2017. She served in the U.S. Air Force from 2004-2008. She was medically discharged (honorably) from the Air Force a few months shy of completing her enlistment. She received a disability rating from the Department of Veterans Affairs (VA) and receives a monthly pension of approximately \$825. She holds a bachelor's degree. She has been married and divorced twice. She has two children from her first marriage, ages 14 and 13. She has custody of both children, and one has special needs. She is currently engaged, and her fiancée has two special needs children. They all live in the same household. (Tr.3 7, 18-19, 23, 27, 34-35; GE 1)

The SOR alleged six delinquent accounts (medical debts and consumer debts) totaling approximately \$75,900. (SOR ¶¶ 1.a – 1.f) The debts are established by credit reports from January 2019, July 2020, January 2021, May 2022, and December 2022. (GE 4-8)

Applicant attributed her financial problems to several contributing factors. Her first husband only made sporadic child support payments, often paying less than the court ordered him to pay. She estimated that he was approximately \$10,000 in arrears. She expended about \$50,000 in attorney's fees to contest her first husband's custody litigation. Some of her SOR consumer debts are directly related to these fees. In her hearing testimony, she admitted all six underlying SOR debts, although she disputed some of the fees and costs of the debts. She also has had medical procedures over the last two years, which required her to miss work and take short-term disability, reducing her normal yearly gross income of \$150,000 by about 40 percent (\$60,000). (Tr.3 19-20, 24-25, 28, 36; GE 2)

Applicant and her fiancée recently purchased a home valued at approximately \$1.3 million. Their monthly payments are approximately \$6,700. They both contribute to the payments. Applicant explained that they bought a large home with outside acreage because their special needs children each needed their own room, and they needed the

large outdoor area so the children would have enough room to have their own space. (Tr.3 22-23, 38)

Applicant explained that she thought several of these debts were taken care of when she hired a debt-relief law firm to negotiate settlements with her creditors. She indicated that she had correspondence from the law firm establishing their relationship and payment plan. I asked her if she could provide it post-hearing and she said yes. She did not provide any payment plan documentation. Post-hearing, she provided information that she learned about the law firm she hired. She indicated the firm was no longer operating and had been sued for misconduct and malpractice. She stated she filed a complaint with the Better Business Bureau, but she did not supply any supporting documentation. (AE A)

The status of the SOR debts is as follows:

**SOR ¶ 1.a-\$1,045.** This is a medical debt. Applicant believes this was her second spouse's medical debt. Applicant paid this debt in 2020 or 2021. It does not appear on her three most recent credit reports. This debt is resolved. (Tr.3 29-30; GE 6-8)

**SOR ¶ 1.b-\$182.** This is a medical debt. Applicant believes this was her second spouse's medical debt. Applicant paid this debt in 2020 or 2021. It does not appear on her three most recent credit reports. This debt is resolved. (Tr.3 29-30; GE 6-8)

**SOR ¶ 1.c-\$13,990.** This is a delinquent credit card. Applicant documented making payments toward this debt from May 2021 to October 2021 in the amount of \$292 monthly. She used the proceeds from her home sale in November 2021 to pay the remainder of the debt. This debt is resolved. (Tr.3 30-31; AE B-C)

**SOR ¶¶ 1.d, 1.f-\$31,738; \$21,486.** These are two delinquent credit cards. The first major delinquency for these accounts were in October and December 2018. Applicant asserted that these were two of the accounts she hired the law firm to resolve. She believed the law firm disputed the debts. When asked to supply supporting documentation, she failed to do so. Both debts appear on her latest credit report. These debts are not resolved. (Tr.3 31-32, 34, 40-41; GE 8)

**SOR ¶ 1.e-\$7,544.** This is a delinquent credit card. The first major delinquency for this account was in May 2019. Applicant asserted that this was an account she hired the law firm to resolve by setting up a payment plan. When asked to supply supporting documentation, she failed to do so. This debt appears on her latest credit report. This debt is not resolved. (Tr.3 33, 34, 40-41; GE 8)

### **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:

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

Applicant has a history of financial difficulties. She incurred six delinquent debts totaling approximately \$75,900. Three of the four largest debts remain unpaid. Applicant's hearing admissions and credit reports establish the debts. I find both disqualifying conditions are raised.

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:

- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent because they are ongoing and, although she paid three of the debts, she failed to address the remaining debts, which comprise the greatest portion of the overall debt amount. AG ¶ 20(a) is not applicable.

Although Applicant's custody battle, her former spouse's refusal to honor his child support allegation, her medical conditions, which caused a reduction in pay, and the possible misfeasance by the law firm she hired were circumstances beyond her control, she did not act responsibly concerning the debts when she failed to follow up by contacting her creditors. She claimed that the law firm was taking care of the debts, but she failed to produce documentation that she actually contracted with any law firm. AG ¶ 20(b) is not applicable.

Applicant presented no evidence of financial counseling, other than her claim that she hired a law firm. Her track record to date does not support a good financial picture. She has had financial difficulties for a number of years. Based upon her past history, there is no reason to believe that she will right her financial ship in the near future. While she did resolve three debts, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.a-1.c.

### **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 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.

I considered Applicant's military service, her VA disability, her family circumstances, including parenting three special needs children, and her possible

victimization by the law firm she hired to address her debts. However, I also considered that she has not adequately addressed her delinquent debt and has not brought forward any plans to address the debt in light of her knowledge of the law firm's inaction on her behalf. She has not established a meaningful track record of debt management, which causes me to question her ability to resolve her debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

### **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:	For Applicant
Subparagraphs: 1.d-1.f:	Against Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge