



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



In the matter of: )  
)  
) ISCR Case No: 21-02208  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esquire, Department Counsel  
For Applicant: *Pro se*

04/24/2023

**Decision**

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Financial Considerations guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

Applicant submitted her most recent Electronic Questionnaires for Investigations Processing (e-QIP) on January 18, 2018. On January 18, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). Applicant responded in a July 13, 2022 Answer to the SOR, and requested that her case be decided by an administrative judge on the written record without a hearing.

On September 27, 2022, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Government Exhibits (GE), was mailed to Applicant on September 29, 2022, and received by her on November 4, 2022. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant did not respond to the FORM within the 30-day response period, did not object to its contents, and did not request additional time to accomplish either act. However, on January 17, 2023, a Personnel Security Specialist, who is employed by the Department of Defense (DoD) agency where Applicant performs contract work, submitted a Response on her behalf, comprising a copy of the SOR with handwritten annotations concerning each alleged debt, and copies of pages 4, 5, and 7 from Applicant's 16-page December 21, 2022 Transunion credit bureau report (CBR). Department Counsel reviewed these documents and had no objection to their admission into evidence.

On January 26, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. I marked the documents that Applicant submitted on January 17, 2023, as Applicant Exhibits (AE) A (Annotated SOR) and B (CBR pages). GE 1 through 8, AE A, and AE B are admitted into evidence.

### **Findings of Fact**

In her Answer, Applicant admitted all the SOR allegations, but correctly pointed out that SOR ¶¶ 1.a and 1.h were duplicate listings of the same debt, and claimed that the former \$99 debt alleged in SOR ¶ 1.i had been repaid on some unspecified date. Her admissions are incorporated into these findings of fact. (GE 1; AE B.)

Applicant is 48 years old. She served in the U.S. Navy from October 2005 to May 2015, when she received an honorable discharge. The Navy CAF had denied her initial security clearance request in 2006 due to unmitigated financial considerations, including 15 delinquent student loan debts totaling \$49,656. Her appeal of that decision was unsuccessful. She earned an associate degree in 2011, and a bachelor's degree in 2016. She was most recently granted a Secret security clearance in May 2013. She was voluntarily unemployed from August 2015 to May 2016, while attending school full time to complete her bachelor's degree. She worked full time for a state government agency from June 2016 until June 2017, when she accepted her current DoD-contractor position as an administrative assistant at a Marine Corps Support Facility. She is married, for the second time, and has no children. (GE 2, GE 3; GE 8.)

After consolidating the debts alleged in SOR ¶¶ 1.a and 1.h, and using the more recent information from SOR ¶ 1.a, Applicant admitted \$120,211 of currently or recently delinquent indebtedness, including six consumer accounts totaling \$27,836 and two consolidated student loan accounts totaling \$92,375. The status of each of the SOR-alleged debts is described in the following paragraphs.

SOR ¶¶ 1.a and 1.h: This was a credit card account that Applicant opened in October 2017. Her last timely payment was made in June 2018 (SOR ¶ 1.h). In March 2020, the \$1,620 delinquent balance due was placed for collection. Applicant made one \$540 payment to the collection agency in November 2020, which reduced the delinquent balance to \$1,080 (SOR ¶ 1.a). Applicant said in her Answer that this debt would be paid in full on July 8, 2022. In her Response to the FORM, she said that she planned to begin making biweekly \$154 payments toward this debt in February 2023, but the balance remained at \$1,080 in the absence of any actual payments. This debt originated during her current employment and remains unresolved. (GE 2; GE 5; GE 7; AE A; AE B.)

SOR ¶¶ 1.b and 1.c: These paragraphs allege Applicant's two current student loan accounts, under which all her formerly delinquent student loans were consolidated in June 2017 (the same month she began her current employment). The last reported activity on the consolidated accounts was in December 2018. They were placed for collection by the U.S. Department of Education in March 2020, with delinquent outstanding balances of \$59,550 and \$32,825. Applicant admitted owing the outstanding total of \$92,375, toward which she has made no payments. Her December 2022 Transunion CBR confirmed that no payments had been received, but changed the status of these debts to, "Current; Paid or Paying as Agreed." Since no explanation was provided, this could be due to the temporary COVID-19 forbearance policy concerning collection of valid delinquent student loans. Applicant offered no evidence of responsible efforts to resolve or repay any of her voluntarily incurred student loan debts, including the 15 delinquencies of concern when her clearance was denied in 2006.

SOR ¶¶ 1.d through 1.g: Applicant admitted that she owes \$26,657 toward four delinquent debts that a credit union has charged off. Two of these involved \$12,698 and \$3,868 credit card accounts, which she opened in December 2011 and January 2012, and stopped paying in July and December 2015. The other two were unsecured loan accounts in the amounts of \$2,116 and \$7,975 that she opened in November and December 2013. She stopped repaying these loans in June and July 2015. She did not provide evidence of any effort to resolve these accounts, which she opened while on active duty and stopped paying shortly after her discharge. (GE 3; GE 5; GE 7; AE B.)

SOR ¶ 1.i: Applicant admitted the \$99 delinquent debt to a franchise fitness center that was placed for collection in February 2018. In December 2018, she told an OPM investigator that she broke her membership contract with the gym in June 2016 when she moved after completing her bachelor's degree; and that she would pay it later that month. In her Answer and her Response, she said that she had paid this debt. Although she provided no documentation to support this claim, the debt does not appear on any of the record credit reports dated after April 2019. On balance I will accept her assertion that it is resolved. (GE3; GE 4; AE B.)

The record contains no evidence establishing Applicant's current income, budget situation, or participation in financial counseling. It is also silent with respect to her job performance, trustworthiness in a professional setting, observation of security

procedures, and track record in handling sensitive information. I was unable to evaluate her credibility, demeanor, or character in person, since she elected to have her case decided without a hearing.

## **Policies**

This national security eligibility action was taken 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 the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified or sensitive 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national

security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as stated in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant still owes seven of the SOR-alleged debts, totaling more than \$120,000. These debts became delinquent during the eight years since she left active duty in the Navy. Through her financial inability, unwillingness, or both, they remain unresolved. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial delinquencies:

- (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 failed to establish mitigation under any of these conditions. All but one of the eight delinquent debts of concern remain unresolved, demonstrating current unreliability and the likelihood of recurrent problems. Her initial security clearance application was denied in 2006 due to her pre-service financial irresponsibility, which shows that her financial situation is not a recent development. She provided no evidence that she obtained or is following professional counseling to establish financial responsibility. There are no documented indications that the problem is being resolved or is under control. I accept her claim to have repaid her \$99 fitness center debt, even though its absence from recent credit reports provides no evidence of actual resolution after all this time. More than \$120,000 of delinquent debt remains outstanding, creating ongoing potential for financial coercion and risk of having to engage in illegal or otherwise questionable acts to generate funds

### **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 relevant 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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and accountable ten-year Navy veteran who defaulted on more than \$120,000 in voluntarily incurred debt. She repaid one \$99 fitness center debt, but documented no attempt, workable plan, or available resources to resolve her remaining delinquent debts since she began her current employment in June 2017. There remains significant potential for pressure, coercion, exploitation, or duress, which is likely to continue. Applicant failed to meet her burden to mitigate the security concerns arising under the Financial Considerations guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	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 interest to grant or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

DAVID M. WHITE  
Administrative Judge