



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01053
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

April 25, 2023

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**Decision**  
\_\_\_\_\_

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline E (personal conduct) but failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On July 7, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On August 19, 2022, the Department of Defense Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On September 19, 2022, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated October 18, 2022, was provided to her by letter dated October 19, 2022, on November 4, 2022. Department Counsel attached as evidence to

the FORM Items 1 through 5. Applicant was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She timely submitted additional evidence that I marked as Items 6 through 25. I received Items 1 through 25 into evidence. On January 19, 2023, the case was assigned to me.

## **Findings of Fact**

### **Background Information**

Applicant is a 52-year-old radiation technician employed by a defense contractor since October 2019. She seeks a clearance in conjunction with her current employment. (Item 2) [Note – In her response to the FORM, Applicant submitted a draft copy of a letter of resignation to her employer. She stated that she had not submitted that letter pending a meeting with her contract manager. (Items 6, 21)]

Applicant graduated from high school in June 1988. She was awarded an associate degree and a certificate in radiation technology in May 1995. Applicant was married from July 1992 to July 1996. That marriage ended by divorce. She remarried in August 2011. She has a minor daughter from her second marriage. (Item 2)

### **Financial Considerations**

Applicant's 16 delinquent SOR debts, totaling approximately \$14,904, are established by her July 7, 2021 SF-86; her August 25, 2021 and September 8, 2021 Office of Personnel Management Personal Subject Interviews (OPM PSIs); her July 9, 2021 and April 4, 2022 credit reports; and her September 19, 2022 SOR Answer. (SOR ¶¶ 1.a through 1.p; Items 1-5) Applicant admitted each allegation except SOR ¶ 1.f, which she claimed is not hers. However, in her post-FORM response, she accepted responsibility for this debt. Broken down, her largest debt was for a charged-off credit union account for \$10,720, a department store collection account for \$569, a cell phone collection account for \$92, and 13 medical copay collection accounts in various smaller amounts.

Applicant attributed her financial problems to: (1) providing 13 months of support to her stepfather, who appeared on her doorstep homeless just before the COVID-19 pandemic; (2) her husband's unemployment or underemployment as a kitchen installer during the COVID-19 pandemic lockdown; and (3) uncovered medical costs associated with her daughter's eye surgery. (Items 1, 10, 14, 20) Applicant described herself as being a "hot mess" on paper. She accepted responsibility for her financial situation stating, "I'm not going to make excuses. I accepted full responsibility. I think I could have handled this better by talking with creditors about options, this is all my fault." (Item 10)

During Applicant's OPM PSIs, she discussed her financial situation with the investigator and acknowledged her indebtedness. During those interviews, the investigator made her aware that her financial situation was a concern as it pertained to her security clearance eligibility. (Item 3)

In the record here, Applicant submitted evidence of several small payments on some of her debts, including a small number of pre-SOR payments. She also submitted evidence that she entered into a post-SOR payment plan on her largest debt on September 16, 2022, which would have her pay \$25 per month until it is resolved. She began making \$30 monthly payments on January 20, 2022, to the medical-account creditor. (Items 1, 11-16) She set up a payment plan in an amount not listed on September 30, 2022, for the debt alleged in SOR ¶ 1.f that she initially disputed in her SOR Answer. (Item 17) She paid \$284.95 on September 17, 2022 to settle her \$569 department store collection account. (Items 18, 19) She paid \$32.26 on September 17, 2022 to settle her \$92 cell phone collection account. (Items 9, 19) Applicant claims her household income has since improved, and that she believes she can resolve the debts in the future. (Items 1, 3)

As the above summary indicates, Applicant has taken some recent limited action on her debts. First, her payments have resolved a small portion of the debt alleged. Second, the payments she has made were mostly recent and many were undertaken after the SOR was issued. (Item 1) She did not submit evidence that she remained in contact with her creditors during her periods of delinquency or that she received financial counseling.

### **Personal Conduct**

When Applicant completed her July 1, 2021 SF-86, she failed to disclose any delinquent debts and specifically failed to disclose any of the debts alleged in her SOR. She admitted that the information she provided was inaccurate adding that she found the questions confusing and that she “should have been checking [her] credit report annually.” She did, however, freely and candidly discuss all of her debts and financial situation with the investigator during her August 25, 2021 and September 8, 2021 OPM PSIs. The investigator noted and discussed other errors and/or incomplete or inaccurate information that Applicant provided on her SF-86 to include her identifying information, residence, employment, references, police record, and prior investigations. (Items 2, 3)

### **Character Evidence**

In her post-FORM response, Applicant submitted a draft letter of resignation effective December 31, 2022, to her employer. In her letter, she stated that she was honored and humbled to have been able to contribute to the service and family members she served for the past 16 years. She stated that her employment experience made her a radiation technician, and she was grateful to have had this opportunity. She closed stating that her husband accepted a job offer out of state and would be relocating. (Item 21)

She stated in a separate email that she “will miss being able to contribute and do my best for the U.S. Navy and their constituents.” (Item 22) Applicant submitted photographs of two folded U.S. American flags displayed in her home and noted that several of her family members served in the U.S. Armed Forces. (Item 23-25)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, 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(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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a clearance favorable 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

### **Financial Considerations**

AG ¶ 18 articulates 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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” and “(c) a history of not meeting financial obligations.” The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists potential mitigating conditions:

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant is able to receive full credit under AG 20(d) with regard to the debts in SOR ¶¶ 1.n and 1.p, debts that she settled for lesser amounts. With regard to the remaining SOR debts, AG ¶¶ 20(b) and 20(d) are partially applicable. However, full credit under these mitigating conditions is not warranted given the fact that Applicant failed to act responsibly and neglected to remain in contact with her creditors. Some circumstances adversely affected her finances, including her spouse's underemployment and the assistance her homeless stepfather required. However, she only began to make payments long after her accounts were delinquent.

The evidence does not support application of any of the other potential mitigating conditions. Applicant's financial delinquencies are ongoing and she has not established that her debts are being resolved or are under control. Nor did she document that any of the remaining debts are not her responsibility.

## **Personal Conduct**

Applicant admitted that when she completed her SF-86, she failed to provide complete or accurate information regarding her financial situation. She added that she became confused when completing her SF-86. I also note that she made numerous other mistakes or failed to report required information when completing her SF-86. She discussed these shortcomings during her OPM PSIs. Applicant's confusion and lack of attention to detail cannot be construed as a willful and deliberate attempt to undermine the investigative process. Although the information she provided regarding her financial situation, and other issues, on her SF-86 proved to be incorrect, I attribute these lapses

to carelessness and am satisfied that she did not deliberately and intentionally fail to disclose her delinquent debts with the intent to deceive.

The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant refuted the allegation of falsification of her SF-86. No disqualifying condition under Guideline E was established in this record, so discussion of potentially mitigating conditions is not warranted.

### **Conclusion**

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guidelines F and E, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of her adult life, and she is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting that her long-standing financial problems are being addressed, doubts remain about her suitability for access to classified information. As noted, personal conduct concerns were not established. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

Applicant chose to rely on the written record. In so doing, however, she did not submit sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her outstanding delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

## 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.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

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ROBERT TUIDER  
Administrative Judge