



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00841
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

06/27/2023

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 12, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR on July 31, 2022 (Answer). She requested a hearing before an administrative judge. The case was assigned to me on April 6, 2023.

The hearing was convened as scheduled on May 25, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 7 and Applicant Exhibits (AE) A through G without objection. Applicant and two other witnesses that she called testified at hearing. Applicant's union representative was present but did not participate in the hearing. At Applicant's request, I left the record open until June 8, 2023, for her to provide post-hearing documents. She timely submitted AE H through J that I admitted without objection. I received a transcript (Tr.) of the hearing on June 2, 2023.

## Findings of Fact

Applicant is a 53-year-old employee of a government contractor for whom she has worked since May 2021. She has never married but has lived with two different long-term cohabitants. She lived with her first cohabitant from about 1997 until 2000. She has lived with her current cohabitant since about June 2014. She has a 24-year-old son whose father is the first cohabitant referenced above. Her son is very intelligent but has certain behavioral issues that require her to financially support him. She earned a high school diploma in 1988 and took some community college courses but did not earn a degree. (Tr. 32, 34-37, 39-43, 45-46; Answer; GE 1, 2)

In the SOR, the Government alleged Applicant's nine delinquent debts totaling approximately \$46,600 (SOR ¶¶ 1.a through 1.i). It also alleged her 2001 Chapter 7 bankruptcy petition and 2002 Chapter 7 discharge (SOR ¶ 1.j). These delinquencies consist of credit cards (SOR ¶¶ 1.a through 1.g) and federal and state taxes for the 2021 tax year (SOR ¶ 1.h and SOR ¶ 1.i, respectively). She admitted the SOR allegations with additional comments. Her admissions are adopted as findings of fact. The SOR allegations are established through her admissions and the Government's credit reports. (SOR; Answer, GE 3-7)

Applicant's financial issues began in about 2000 when her cohabitant was injured and was not able to work. Later, despite being able to work, he was not employed and was not looking for a job. Having only one income, Applicant paid her bills while she was able, but in about 2001 she could no longer afford to do so. She filed a petition in Chapter 7 bankruptcy in November 2001 and received a Chapter 7 discharge in March 2002. She also ended the relationship with her son's father during this time. (Tr. 45-47; Answer; GE 6)

After her fresh start in March 2002, she began opening additional accounts. She largely stayed current on those accounts until about 2015 when she had some unforeseen expenses. She opened the unsecured loan listed in SOR ¶ 1.a to consolidate some of her credit cards. However, in about 2016, she again began having trouble paying her bills. Her son and mother, who were living together, each had acute mental health issues. In about 2016, her cohabitant cheated on her. From June 2019 until June 2020, she used a credit repair company. Shortly after she stopped using this company, to protect her son's mental health and provide for a place where she could live away from her cohabitant if needed, she rented an apartment where her son lives and where she can stay. She also pays for a significant portion of her son's living expenses. (Tr. 35-37, 47-50; Answer; GE 2-5, 7)

In 2018, Applicant developed a rare form of glaucoma that required expensive medications and procedures and contributed to her financial strain. Given these health and family related added expenses, she could not afford to pay some of her other financial obligations, including the SOR debts. In May 2021, when she began her new job, she started earning about twice as much money as the job she worked from about 1998 until then. She claimed that this dramatic income increase would help her resolve her delinquencies. She also claimed that she is no longer paying expenses related to

her glaucoma so that has freed up some of her income to address her delinquencies. (Tr. 49-51; Answer; GE 2-5, 7)

On July 14, 2022, Applicant engaged the services of a debt consolidation company to help her resolve her delinquent consumer debts through monthly payments. She enrolled about \$32,000 in delinquent debt in this program and agreed to pay \$542 monthly to be disbursed toward the enrolled debts. She enrolled the debts listed in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e in this program. Through this debt consolidation company, as of January 2023, she had paid about half of the agreed upon settlement amount on the debt listed in SOR ¶ 1.b. However, she also claimed that she did not recognize this debt and does not believe it is hers. She has not disputed it with the creditor. In 2019, the credit repair company disputed it on her behalf with the credit reporting agencies. There is no evidence of the resolution of the dispute; however, the debt does not appear on the August 2022 or April 2023 credit reports. There is no evidence that the debt consolidation company has made any payments on the remaining enrolled debts. However, the enrolled debts will be paid according to the terms of her agreement with the debt consolidation company. (Tr. 51-53, 67; Answer; GE 1-4; AE A)

Instead of simply waiting on the debt consolidation company, Applicant settled the debts listed in SOR ¶¶ 1.c, 1.d, and 1.f by contacting the creditors directly and paying less than the full amount. She provided documentary evidence of these settlements. In October 2022, she contacted the collection agency and the creditor of the debt in SOR ¶ 1.e to try to settle that debt, but she claimed that both stated that they were no longer collecting the debt because the statute of limitations had lapsed. This debt is scheduled to be paid pursuant to the terms of her debt consolidation agreement. She claimed that she contacted the creditor of the debt in SOR ¶ 1.g, but the creditor had no record of her in their system, so she has not paid anything on that debt. (Tr. 53-57, 77-80; Answer; GE 2-5, 7; AE B-E, H)

Applicant owed delinquent federal and state income taxes for the 2021 tax year in the amounts of \$9,918 and \$2,327, respectively. She became delinquent on these taxes because she could no longer claim her son as a deduction and did not have sufficient income withheld from her wages. While not alleged in the SOR, she also owed federal taxes in the amounts of \$4,112 for tax year 2019, \$1,465 for tax year 2020, and \$4,000 for tax year 2022. In April 2020, she made a payment arrangement to pay \$200 per month on her delinquent federal taxes. As of June 2023, she has remained current on her IRS payment plan. On June 1, 2023, she made a lump sum payment of \$8,000 to the IRS. There is no evidence of the current amount she owes the IRS, but the latest documentary evidence Applicant provided reflected a balance of \$461 for tax year 2019, \$1,514 for tax year 2020, \$10,570 for tax year 2021, and \$4,000 for tax year 2022. These balances do not reflect Applicant's June 1, 2023, \$8,000 payment. (Tr. 59-60, 69-76, 81; Answer; GE 2; AE F-J)

Beginning in September 2022, Applicant began making monthly state tax payments of \$210. On May 30, 2023, she paid off her delinquent state taxes for the 2021 tax year with a payment of \$1,120. She borrowed money from her retirement account to pay the \$8,000 IRS payment and the \$1,120 state tax payment. While it is

not alleged in the SOR, she owes delinquent state taxes for tax year 2022 in the amount of about \$1,100. She has not made a payment arrangement on her delinquent taxes for the 2022 tax year, but she plans to do so. She has not taken any action to avoid owing federal and state taxes on future income tax returns but claimed that she will do so by having more of her wages withheld. She also claimed that she will use her retirement savings to pay her remaining delinquent federal and state taxes with a lump sum. (Tr. 59-60, 69-76, 81; Answer; GE 2; AE F-J)

Applicant brings home about \$4,000 per month in wages. Her cohabitant, with whom she reconciled, brings home about \$2,500 per month in wages. They share some of their earnings and expenses. She pays about \$1,200 per month for her son's rent and living expenses. She does not pay any of the mortgage or rent where she resides. She has about \$3,000 in a savings account and about \$100,000 in retirement accounts. She claimed she has about \$1,900 in surplus earnings at the end of each month. She spoke over the phone once with an advisor for a non-profit credit counseling service, and they went over her income and expenses and budgeting advice. (Tr. 35-37, 60-64; Answer; GE 2)

Applicant's supervisor testified that Applicant does well at work, has a strong work ethic, and shows integrity. He believes that she can be entrusted with handling classified information. Her son testified that her financial issues were usually due to circumstances beyond her control. He noted that she is a good person, is altruistic, and has always been good to him. Several family members, friends, and work colleagues provided character reference letters on her behalf. They all referenced her honesty, integrity, reliability, and they believe she would protect sensitive information. (Tr. 21-37; Answer)

## **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 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 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**

### **Guideline F, Financial Considerations**

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

As evidenced by her 2001 Chapter 7 bankruptcy petition and her other financial delinquencies that began as early as 2015, Applicant has a history of being unable to pay her debts. The above listed conditions are made applicable by SOR ¶¶ 1.a and 1.c, thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's 2001 bankruptcy petition and 2002 bankruptcy discharge occurred over 20 years ago. I find that this conduct occurred long enough ago and infrequently enough that it is unlikely to recur. AG ¶ 20(a) fully applies to the allegation in SOR ¶ 1.j.

Applicant's federal and state income tax delinquencies were caused by her failure to account for her tax withholdings from her wages. These conditions were not

beyond her control. Mitigating Condition AG ¶ 20(b) does not apply to her delinquent federal and state taxes. Apart from her delinquent taxes, Applicant's financial problems arose because of domestic issues, her family's mental health problems, and her medical issues. These conditions were largely beyond her control. To fully avail herself of AG ¶ 20(b), she must also show that she acted responsibly under the circumstances with respect to these debts. I find that her efforts in engaging a credit repair company, a debt consolidation company, and contacting creditors to resolve debts through payment show that she acted responsibly. AG ¶ 20(b) applies to the non-tax related SOR debts.

While Applicant had a phone call with a credit counseling company, she presented insufficient evidence that this counseling was from a legitimate or credible source, or that this single phone call provided meaningful financial counseling. AG ¶ 20(c) only partially applies.

Applicant made payment arrangements with the IRS and the relevant state taxation authority. Her payments to the IRS began in 2020. She has consistently made her required monthly payments. She also made a significant lump sum payment from her retirement savings toward both debts. She claimed that she will use more money from her retirement savings to pay her remaining tax debt. I found her to be credible when she testified that she would resolve her tax debts with retirement savings, and her \$8,000 payment from that source bolsters her reliability. She is paying on several of her other delinquent debts through a debt consolidation company, and she contacted other creditors to make payments and settle SOR debts. For all but two of the remaining SOR accounts, she is either making payments or has satisfied those debts. AG ¶ 20(d) applies. For the above stated reasons, AG ¶ 20(g) applies to her tax delinquencies. While she has not made payments on the two remaining debts, she contacted the creditors to try to make payment arrangements, but the creditors effectively would not accept her money based upon their internal policies.

As several of the mitigating conditions apply, I find that Applicant has mitigated the financial considerations security concerns. Her financial issues do not cast doubt on her current reliability, trustworthiness, and good judgment.

### **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.

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 have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's positive character evidence and good job performance.

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **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.j:	For Applicant

### **Conclusion**

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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Benjamin R. Dorsey  
Administrative Judge