



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01330
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

07/13/2023

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant mitigated the criminal and personal conduct security concerns, but failed to mitigate the financial considerations security concerns. Clearance is denied.

**Statement of the Case**

On September 30, 2022, the Department of Defense Consolidated Adjudications Services (DODCAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant her security clearance eligibility. The DOD CAS took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On October 31, 2022, Applicant answered the SOR allegations, admitting all of the allegations, except SOR subparagraph 3.d, and requested a decision on the written

record instead of a hearing. On November 30, 2022, the Government prepared a File of Relevant Material (FORM), consisting of a brief, together with six attachments (Items 1 – 6) in support of its position. Applicant received a copy of the FORM on December 1, 2022, and was given 30 days to file a response. Applicant did not file a response, and on January 30, 2023, the case was assigned to me. On May 12, 2023, I re-opened the record *sua sponte*, extending it through May 30, 2023, to allow Applicant the opportunity to submit exhibits. Applicant did not submit any exhibits, whereupon, I closed the record on May 31, 2023.

### **Findings of Fact**

Applicant is a 33-year-old, single woman with two children, ages 14 and 6. She is a high school graduate and has taken some college courses. (Item 2 at 10) She has been working for a federal government contractor as a security alarms dispatcher since 2021 (Item 2 at 12).

Over the years, Applicant incurred approximately \$58,000 of delinquent debt. (Answer at 5) Approximately \$54,000 consists of student loan debt, as alleged in subparagraphs 1.a and 1.b, a credit card account, as alleged in subparagraph 1.c, and a medical bill, as alleged in subparagraph 1.d. Applicant attributes her difficulty with keeping up with her debts to the difficulties of making ends meet as a single mother of two children. (Item 2 at 4) The credit account alleged in subparagraph 1.c, totaling, \$1,921, was opened, unbeknownst to her, by her ex-boyfriend, an authorized card user, and she incurred the medical bill, alleged in subparagraph 1.d, totaling \$1,333, after a car accident.

Applicant contends that she applied for a student loan debt relief plan that will forgive \$20,000 of the debt, and she promised to set up a payment plan to satisfy the remainder once the \$20,000 was forgiven. (Item 1 at 4) Applicant provided no proof of a loan forgiveness application, nor did she provide proof that part of her student loan debt has been forgiven, or that she has arranged a payment plan.

Applicant closed the account alleged in subparagraph 1.c, and contends that she will pay the balance once she receives an insurance settlement from an automobile accident in which she was involved. (Item 1 at 4) Similarly, Applicant contends that she will satisfy the medical bill, as alleged in subparagraph 1.d, after she receives the settlement.

In September 2008, while at home breastfeeding her newborn child, Applicant's then boyfriend began to beat her. Attempting to escape his abuse, Applicant ran to her kitchen. Her then boyfriend chased her into the kitchen and did not stop attempting to beat her until she grabbed a kitchen knife and cut him. (Item 1 at 4) Subsequently, he contacted the police, who arrested Applicant the next day, and charged her with possessing an instrument of a crime, simple assault, aggravated assault, reckless endangering, terroristic threats, harassment, and attempted criminal homicide. The state

later dismissed the charges after concluding that Applicant acted in self defense. (Item 6 at 7) Applicant no longer has contact with her ex-boyfriend. (Item 6 at 7)

One morning before going to work, Applicant's mother, who typically took care of Applicant's child while she was at work, called and told her that she was running late. Afraid to be late to work, Applicant contacted a neighbor who agreed to watch the child until Applicant's mother arrived. Applicant then left for work and told the neighbor to enter the home through the unlocked back door.

The neighbor did not come to the home immediately, as promised. (Item 1 at 4) While no caregivers were present, Applicant's child, then eight years old, attempted to cook food, and started a fire. Ultimately, the child exited the house without being harmed, and his grandmother arrived before the fire could spread. Applicant, however, was charged with endangering the welfare of a child, and recklessly endangering another person. After completing 40 hours of court-ordered volunteer work, the charges were dismissed. (Item 4 at 4)

In the fall of 2020, Applicant enrolled her son in a private school. (Item 1 at 4) Frustrated with the harder schoolwork and the transfer, in general, Applicant's son became rebellious, frequently misbehaving in school and not performing his assigned tasks. Applicant disciplined him by periodically taking away his video games, his cell phone, his laptop computer, and his extracurricular activities. (Item 1 at 5) In June 2020, after the principal notified Applicant that he was going to expel her son, Applicant whipped her son five to six times with a switch. (Item 4 at 11)

The next day, Applicant told a classmate, who then told a school administrator. Subsequently, child protective services initiated an investigation and discovered welts on Applicant's child's legs that were indicative of the type of beating that he described to his classmate. Subsequently, in July 2021, Applicant was arrested and charged with possessing an instrument of a crime, simple assault, aggravated assault, and endangering the welfare of a child. (Item 1 at 4) Applicant voluntarily began parenting classes. Later, she pleaded guilty to simple assault, and agreed to continue the parenting classes and attend therapy, as part of probation. (1 at 5) After she completed these steps, the child protective services case was closed and the criminal case was dismissed. (Item 1 at 11)

In December 2015, Applicant was fired from her job for bringing her child to work, as alleged in subparagraph 3.b. (Item 1 at 6) In April 2017, and later in September 2019, Applicant was fired from her employment for repeated tardiness, as alleged in subparagraphs 3.c and 3.d, respectively. (Item 1 at 6) Applicant's problems with job stability resulted from difficulties balancing her work schedule and care for her children, as a single parent. Specifically, she could not afford professional daycare and was dependent on friends and family to watch her children. If they were late to her home to pick up her children, she was late to work, or in the situation alleged in subparagraph 3.b, if a child-care provider cancelled at the last minute, she had to take her child to work. (Item 1 at 12)

In addition to repeated tardiness, Applicant's employer, as referenced in subparagraph 3.d, fired her for job abandonment. Applicant denied that she abandoned the job and contended that she stopped coming to work after being injured in a car accident. Despite successfully applying for leave under the Family Medical Leave Act, her employer construed her failure to come to work as job abandonment, and denied her request for unemployment benefits. Applicant appealed this decision, and the unemployment commission ruled in her favor, and concluded that her failure to come to work did not constitute job abandonment. (Item 1 at 12)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## **Analysis**

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

Under this concern, "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." (AG ¶

18) Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting's financial obligations." Applicant attributes her financial problems to difficulties making ends meet as a single mother of two children. Moreover, she incurred one of the debts after her then boyfriend used her credit card without her knowledge. Conversely, Applicant did not provide substantiating evidence for any steps that she was taking to satisfy or otherwise resolve her debts. Under these circumstances, the surrounding circumstances which contributed to her financial problems trigger the partial application of AG ¶ 20(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) . . . " but her failure to detail how she acted responsibly under the circumstances, renders the second prong inapplicable. Similarly, absent any evidence supporting her claim that approximately half of her student loan debt will be forgiven, or any evidence of financial counseling, none of the remaining mitigating conditions are applicable. I conclude that Applicant has failed to mitigate the financial considerations security concerns.

### **Guideline J, Criminal Conduct**

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness [and] by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." (AG ¶ 30)

Applicant's domestic violence charges stemming from the altercation with her ex-boyfriend in 2008, the 2016 child endangerment charge, and the 2021 child abuse charge, trigger the application of AG ¶ 31(b), "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally prosecuted charged, or convicted."

The following mitigating conditions under AG ¶ 32 potentially apply:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's charge for assaulting her ex-boyfriend stemmed from an episode that occurred 15 years ago. Moreover, Applicant did not cut her ex-boyfriend until after he repeatedly beat her, and until after she tried to run away from him to no avail. The court subsequently dismissed the charges against her. AG ¶ 32(a) applies.

Applicant's 2016 charge related to leaving her child alone in the home occurred from unusual circumstances that are unlikely to recur, as she made child care plans with her mother before leaving the home, then, when her mother informed her she was running late, made child care plans with a neighbor who failed to follow through on a promise to watch her child until her mother arrived. The court dismissed the charges after Applicant completed volunteer work. Both AG ¶¶ 32(a) and 32(b) apply.

The criminal charges stemming from Applicant's corporal punishment of her child are recent, as the episode did not occur until two months before the issuance of the SOR. Nevertheless, Applicant, with the assistance of child protective services, successfully completed the probation requirements, completing parenting classes and therapy, leading to the closure of the case. AG ¶ 32(b) applies, and AG ¶ 32 (a) is partially applicable, in that the behavior does not cast doubt on Applicant's trustworthiness, reliability, or good judgment. I conclude Applicant has mitigated the criminal conduct security concerns.

### **Guideline E, Personal Conduct**

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." (AG ¶ 15)

The conduct alleged in subparagraphs 2.a through 2.c is cross-alleged in SOR subparagraph 3.a, and is mitigated for the same reasons, as discussed above. SOR subparagraphs 3.b and 3.c are involve issues of childcare concerns, not security concerns. As such, AG ¶ 15 does not apply. When Applicant applied for unemployment benefits after her termination from her job in March 2020, the unemployment benefits commission concluded that she did not abandon the job, as alleged by the employer. In addition, the repeated tardiness was indicative of childcare problems, rather than issues of security concern. I conclude that AG ¶ 15 does not apply. In sum, I resolve the allegations set forth in SOR subparagraphs 3.a through 3.d in Applicant's favor.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Applicant never provided any documents substantiating her contention that her debts would either be forgiven or paid through an insurance settlement. Absent any such documentation, promises to pay or resolve debts are merely speculative and do not satisfy her burden of establishing that the security concerns have been mitigated.

### **Formal Findings**

Formal findings for 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.d:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a – 3.d:	For Applicant

### **Conclusion**

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

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Marc E. Curry  
Administrative Judge