



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03276
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/22/2023

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On April 7, 2021, 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 May 11, 2021 (Answer). She requested a hearing before an administrative judge. The case was assigned to me on May 16, 2023.

The hearing was convened as scheduled on July 10, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 5 without objection. Applicant testified at the hearing but did not present any documentary evidence.

**Amendment to the SOR**

During the hearing, based on Applicant's testimony, Department Counsel moved to amend the SOR under ¶ E3.1.17 of the Directive to add the following allegation:

1.h. You failed to pay, as required, state sales tax for your business for at least tax years 2017 and 2019 through 2021.

The motion was granted without objection. I provided Applicant the option to continue the hearing until a later date to allow her the opportunity to respond to this new allegation, however, she wanted to proceed without a continuance. I left the record open until July 24, 2023, to allow Applicant to submit relevant documentation. She timely submitted Applicant Exhibits (AE) A through E that I admitted without objection. She also submitted a document identifying these exhibits that I have labeled as Hearing Exhibit (HE) 1. I received a transcript (Tr.) of the hearing on July 17, 2023. (Tr. 56-65)

### **Findings of Fact**

Applicant is a 61-year-old employee of a government contractor for whom she has worked since May 2023. She worked for the same contractor from October 2009 until July 2022, when she quit because she suffered serious health issues. She married in 1988 and divorced in 1998. She has an adult daughter. She took some online college courses from 1996 until 1997 but did not earn a degree. She earned a vocational certificate in 2005. She served on active duty in the Air Force from 1987 until 1994, when she earned an honorable discharge. (Tr. 18-26, 30; GE 1, 2; AE B, C)

In the SOR, the Government alleged Applicant's seven delinquent debts totaling approximately \$30,000 (SOR ¶¶ 1.a through 1.g), and delinquent state sales taxes for the business she owns (SOR ¶ 1.h). These delinquencies consist of the following: credit cards (SOR ¶¶ 1.a through 1.e); a utility (SOR ¶ 1.f); a telecommunications debt (SOR ¶ 1.g); and state sales taxes (SOR ¶ 1.h). 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. (Tr. 64; Answer; GE 1-5)

Applicant has not resolved the debts alleged in SOR ¶¶ 1.a through 1.g. As evidenced by the Government credit reports, the debts in SOR ¶¶ 1.a and 1.c through 1.e were delinquent by early 2017, and the debt in SOR ¶ 1.b was delinquent by March 2019. As evidenced by her listing them in her March 2020 Electronic Questionnaire for Investigations Processing (SF 86), the debts in SOR ¶¶ 1.f and 1.g were delinquent by March 2020. She disputed the amount of the debt in SOR ¶ 1.g, but she did not provide documentation to substantiate why she owes less. She relies on the fact that she disputed the debt, and the debt no longer appears on a credit report as proof that she resolved it. She claimed that she reached out to the creditors for the debts in SOR ¶¶ 1.a, 1.f, and 1.g "during COVID" to attempt to resolve those debts, but she did not hear back from those creditors. She has not made any resolution attempts on those debts since then. She has made no resolution attempts on the remaining debts (SOR ¶¶ 1.b through 1.e), because she claimed she did not have the available funds to make payments. She claimed that she has made payment arrangements with several of her creditors after the hearing and is scheduled to make payments beginning in August 2023. She provided no documentation to corroborate these arrangements and did not specify the creditors or the payment amounts. (Tr. 35-36, 40-44; Answer; GE 1-5)

In 2017, Applicant became delinquent on state sales tax to State A for the food-truck business (Food Truck) she owned, because she was not collecting those taxes during her sales transactions. She was not collecting the taxes because she was disorganized, did not understand the process, and had other expenses she covered instead. In about 2018, she made a payment arrangement with State A to pay \$150 per month to satisfy the Food Truck's delinquent sales taxes, but she defaulted on those payments in about 2020 because the Food Truck was not making enough money. In about November 2022, State A audited the Food Truck and determined that the business owed about \$12,000 in delinquent sales taxes. In about May 2023, she made a payment arrangement with State A to pay about \$450 per month towards those delinquent sales taxes. She has been current on this payment arrangement since she made it. She now appropriately collects the state sales tax for the Food Truck and does not believe that she will fall further behind on these taxes in the future. (Tr. 48-55, 58-61, 68-71; GE 1, 2; AE A)

In addition to the aforementioned causes of her delinquent state sales taxes, Applicant's delinquencies were caused by her starting a business in 2016 that was losing money until 2022, when it started to break even. The COVID-19 pandemic contributed to the Food Truck's problems by not allowing her to fully operate it. She also had a 10-month period of unemployment from July 2022 until May 2023, that was caused by a serious chronic health issue that caused her to fear for her life. After a diagnosis and treatment, this chronic health issue has stabilized. She had additional health problems when she fell in September 2022, causing a concussion and a broken bone. She also broke her wrist in March 2023. (Tr. 18-20, 26-40, 65; Answer; AE B-E)

Applicant earned about \$4,600 per month in take-home pay before she became unemployed in July 2022. She has earned about \$4,800 per month in take-home pay since she was rehired in May 2023. She has received about \$165 per month from the Department of Veterans Affairs (VA) in disability benefits. She is not delinquent on any accounts other than those listed in the SOR, but she has been a month behind on her car payment, her car insurance, and her cable bill in the last few months. She does not have much money left over after her expenses are paid and has about \$160 combined in her checking and savings accounts. She has no retirement savings as she cashed those out to help her stay afloat while she was unemployed. She owes \$3,000 to her siblings that she borrowed while she was unemployed. She also survived on Medicaid and food stamps while she was unemployed. She believes that she will be able to start saving enough money to pay her delinquencies, including the money she owes her siblings, in September or October 2023. Despite the financial problems the Food Truck has caused her, she plans to continue with it. (Tr. 20-26, 65-67)

### **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 longstanding financial delinquencies, Applicant has a history of being unable to pay her debts. The above listed conditions are applicable, 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;
- (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 made a payment arrangement to pay the Food Truck's delinquent sales taxes and she has complied with that agreement. AG ¶ 20(d) and AG ¶ 20(g) fully apply to the allegations in SOR ¶ 1.h.

Applicant has not resolved any of the other SOR debts, so they are ongoing. She has not shown that she has sufficient surplus income to pay these debts and has not maintained a track record of financial responsibility. As evidenced by the timing, the primary reason these debts became delinquent was that the Food Truck was unsuccessful (COVID, her health issues, and unemployment merely delayed her ability to address the delinquencies afterward). She has shown an unreasonable willingness to stick with it despite it not turning a profit. For these reasons, I cannot find that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's non sales tax financial issues resulted from causes such as health issues, unemployment, and an unsuccessful business venture, which were largely beyond her control. For AG ¶ 20(b) to fully apply, she must also show that she acted responsibly under the circumstances. She has not. She has not resolved any of the debts in SOR ¶¶ 1.a through 1.g. She attempted to make a payment arrangement on only some of these debts. With respect to those attempts, the evidence shows that she did so "during COVID" and made no such effort again until after the hearing. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). For these reasons AG ¶ 20(b) and AG ¶ 20(d) do not fully apply to the debts in SOR ¶¶ 1.a through 1.g.

Applicant claimed that she disputed the amount of the debt in SOR ¶ 1.g. While claiming an inaccurate balance on a debt is a reasonable basis to dispute it, she did not provide documented proof to substantiate that the balance was too high. Furthermore, her evidence of actions she took to resolve the issue is insufficient. She claimed, without documentary corroboration, that she disputed the debt with the creditor, and then the debt disappeared from her credit report. There are many reasons other than favorable resolution that a debt does not appear on a credit report, and it is her burden to provide evidence that a successful dispute caused the removal. She has not provided this evidence. See ISCR Case No. 20-03691 (App. Bd. Mar. 29, 2023) at 3. AG ¶ 20(e) does not apply to the debt in SOR ¶ 1.g. None of the mitigating conditions fully apply.

### **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 honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

### **Conclusion**

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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Benjamin R. Dorsey  
Administrative Judge