



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02494
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

12/01/2023

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant’s financial problems were largely caused by marital problems. She and her husband are now separated and planning a divorce. As part of their agreement to separate, they sold their house and split the proceeds. Using her share of these proceeds, Applicant satisfied all the delinquent debts. I conclude Applicant has mitigated the financial considerations security concerns. As for the personal conduct allegation of intentional failure to disclose bills that were in charged off or collection status, I conclude these omissions were unintentional given the amount of information that Applicant shared on her security clearance application about her financial condition. I conclude that there are no personal conduct security concerns. Clearance is granted.

**Statement of the Case**

On May 2, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On March 21, 2022, Applicant answered the SOR, denying all the allegations except subparagraphs 1.h through 1.j., and she requested a hearing. On April 28, 2023, the case was assigned to me. On June 13, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing, scheduling the hearing for July 17, 2023.

The hearing was held as scheduled. I received eight Government exhibits, marked as Government Exhibit (GE) 1 through GE 8, and I received ten exhibits from Applicant, marked as Applicant's Exhibit (AE) A through AE J, and I considered the testimony of Applicant. I kept the record open at Applicant's request to allow her to submit additional exhibits. Within the time allotted she submitted one exhibit that I marked and incorporated into the record as AE K. The transcript was received on July 26, 2023.

### **Findings of Fact**

Applicant is a 57-year-old woman with three adult children. Although she is legally married, she has been separated from her husband since September 2021, and they are in the process of filing for a divorce. (Tr. 102)

Applicant is a high school graduate and she earned an associate degree in business administration in 1999. (Tr. 27) Currently, she works for a contractor as a security specialist. (Tr. 44) She has been promoted twice during the past six months. (Tr. 44) She has held a security clearance since 2014. (Tr.14)

Since 2002, financial problems have compelled Applicant to file for bankruptcy protection three times. Applicant's first bout with financial difficulties, beginning in the early 2000s, occurred when her husband, a U.S. military member, received permanent change of station orders to a location where expenses such as housing and DOD public schooling were not provided, and there was no convenient access to a commissary. (Tr. 33) Applicant, then a stay-at-home mother, considered taking a job to help make ends meet. (Tr. 35) However, this proved untenable as she was pregnant with her third child and was pre-occupied with raising the two older children. (Tr. 35) Subsequently, Applicant and her husband decided to file for Chapter 7 bankruptcy protection. (GE 7) On May 7, 2002, the bankruptcy judge discharged their debt. The amount of the discharged debt is unknown from the record.

Applicant's next bout of financial problems occurred approximately five years later and was triggered by marital problems when her husband "abandoned [Applicant] and [their] kids" and began seeing another woman. (Tr. 36) When her husband moved, he stopped helping pay the bills. Furthermore, Applicant discovered that he had not been using the base housing allowance to pay the rent, and that they were three months behind. (Tr. 36) Although Applicant was working at this time, she again fell behind on the bills. (Tr. 36)

Applicant filed for Chapter 13 bankruptcy protection in 2007. (GE 6) She included \$45,000 of debt in the bankruptcy petition. (GE 6 at 27) Applicant failed to make bankruptcy payments, prompting the court to dismiss the petition in July 2008. (Tr. 37)

Subsequently, Applicant and her husband reconciled. (Tr. 37) At or about this time, Applicant's financial fortunes changed for the better, as she obtained a job as a general manager of a major restaurant chain, and a part-time job working at a hospital. (Tr. 37) The income from these jobs, together with the income of her husband, enabled Applicant to satisfy her delinquent debts.

For the next ten years Applicant's finances remained stable. (Tr. 37) Then, in approximately 2018, her husband lost his job. (Tr. 38, 76) Depressed, he struggled with suicidal ideation, and stopped either looking for another job or helping pay the bills. (Tr. 38, 81) Their joint income decreased by \$250,000, to \$50,000 annually. (Tr. 88)

In September 2019, Applicant and her husband filed for Chapter 13 bankruptcy. (GE 5) The petition included \$97,291 of debt. (GE 5 at 32) Applicant's financial situation worsened further when her employer laid her off from the job the same month. (Tr. 99; GE 1 at 12) Shortly thereafter, the bankruptcy court dismissed the bankruptcy petition. (Tr. 98) Applicant remained unemployed for four months. (GE 1 at 13)

Applicant was unemployed through February 2020. (GE 8 at 1) In 2021, she and her husband again separated. (Tr. 102) In September 2022, they sold their house for 1.1 million dollars. (Tr. 101) They had originally purchased it in 2016 for \$800,000. (Tr. 79) They netted \$140,000 which they split. (Tr. 104) Using her share of the profit from the sale of the house, Applicant satisfied all of the SOR debts, alleged in SOR subparagraphs 1.a through 1.g, and made an agreement to satisfy the debt as set forth below:

Debt	Amount	Date Satisfied	Record Evidence
1.a	\$18,655	8/22/22	D; Tr. 106, 111
1.b.	\$4,216	8/31/22	E
1.c.	\$3,726	Payment letter undated	J
1.d.	\$494	Payment letter undated	F
1.e.	\$1,162	8/31/22	G
1.f	\$16,129	9/8/2022	H
1.g.	\$1,341	9/27/22	I

Currently, Applicant has \$25,000 in savings. (Tr. 128) She keeps a budget and has approximately \$2,000 left over each month (Tr. 147) Also, she has less than \$2,500 of

credit card debt, and she has no automobile car loan debt. Applicant remains separated from her husband and has initiated divorce proceedings. At the conclusion of the divorce proceedings, she anticipates receiving \$1,000 per month as her share of her husband's pension. (Tr. 145)

The SOR alleges that Applicant did not disclose her debts that had been either turned over to collection, suspended, charged off, or cancelled in the past seven years, as required, on a security clearance application (SCA) completed in February 2020. She admits omitting these debts from her SCA, but contends that the omissions were unintentional. She explained that she was aware that the debts were delinquent, but unaware that they had been turned over for collection, suspended, charged off, or cancelled. Elsewhere on the security clearance application, Applicant disclosed her 2007 and 2019 bankruptcy petition filings, and she disclosed financial counseling assistance she was receiving in response to the question, "are you currently utilizing or seeking assistance from any other similar resource to resolve your financial difficulties." (GE 1 at 45) She elaborated further that she was "negotiat[ing] directly with the companies . . . to eliminate all [her] debts," and that she had "sent letter[s] to the companies to get a[n] accurate balance of how much [she] owes . . .," and that she had contacted credit reporting agencies to get copies of credit reports and credit scores. (GE 1 at 45)

Applicant has been working at her current job since September 2021. (AE K) According to her supervisor, she "has exuded exceptional trustworthiness and dedication in the performance of her duties." (AE K)

### **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. According to AG ¶ 2(a), 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 ¶ 1(d) 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.

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.

## **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 recurrent history of bankruptcy filings and delinquent debts triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's first bout of financial problems, experienced in the early 2000s, occurred when her husband, a military member, received permanent change of station orders to a location where he did not receive the typical support such as a base housing allowance or access to a DOD public school or commissary. (Tr. 33) Applicant's next bout of financial problems occurred in 2007 after her husband left the family and stopped paying his share of the bills, and Applicant's most recent financial problems occurred after her husband lost his job and was unable to help with the bills. Applicant and her husband are now separated and planning to divorce. Using her share of proceeds from the sale of their home, Applicant has paid all of the SOR debts.

Applicant's financial problems were recurrent and she just recently resolved them. Conversely, nearly all of her financial problems over the last 15 years have stemmed from marital instability when her estranged husband either would not, or could not, help with the bills. Because Applicant is pursuing a divorce, her financial stability will no longer be dependent on her husband, minimizing the likelihood of debt recurrence. Under these circumstances, I conclude AG ¶ 20(a) applies.

Applicant's marital instability, as described above, together with her unemployment from September 2019 to February 2020, constitute circumstances beyond her control. After she decided to separate from her husband, she used her sale of the proceeds from the sale of the home to satisfy all of her debts. Currently, she has minimal credit card debt, \$25,000 in savings, and \$2,000 in monthly discretionary income. Under these circumstances, all of the remaining mitigating conditions are applicable. I conclude Applicant has mitigated the financial considerations 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) Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (*Id.*) Applicant's failure to include the debts alleged in the SOR on the 2020 security clearance application in response to requests to disclose debts that had been suspended, charged, off, cancelled or turned over to a collection raises the issue of

whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.”

Applicant did not disclose her delinquent debts in answer to certain specific questions on her SCA. However, she discussed her finances in depth elsewhere on the security clearance application, disclosing her bankruptcy petitions and her work with credit counseling companies to resolve her financial issues. Under these circumstances, I find that her contention that the omission of the SOR debts was unintentional is credible. I conclude that AG ¶ 16(a) does not apply and that there are no personal conduct security concerns.

### **Whole-Person Concept**

Applicant’s financial problems were caused by circumstances beyond her control, she addressed them responsibly, and they are unlikely to recur for reasons discussed in the financial considerations section, above.

### **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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge