



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



In the matter of: )  
)  
) ISCR Case No. 22-01893  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mark D. Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2024

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant incurred delinquent debts during a period of diminished income. She did not provide sufficient evidence to mitigate the resulting security concerns under Guideline F (financial considerations). Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 9, 2020, in connection with her employment in the defense industry. On November 18, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DCSA issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 21, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Answer) The case was assigned to me on June 1, 2023. The case was initially set for hearing by video-teleconference on October 14, 2023, convened briefly, but did not occur because Applicant was not prepared to proceed. It was rescheduled to December 4, 2023. (Oct. 14 Transcript at 1-12) A hearing notice was duly issued.

The hearing convened as rescheduled. Department Counsel offered documents that I marked as Government's Exhibits (GE) 1 through 6, of which GE 1-5 were admitted without objection. Government Exhibit 6, the unauthenticated summary of Applicant's background interview, was not admitted. (Tr. 19-21) Applicant testified and offered Applicant's Exhibits (AE) A through F, all of which were admitted without objection. At the end of the hearing, I held the record open until December 14, 2023, to provide Applicant the opportunity to submit additional information, but she did not do so before the record closed. DOHA received the hearing transcript (Tr.) on December 14, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a-1.l, 1.n, and 1.o, and she denied SOR ¶ 1.m, all with explanations. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 28 years old. She has never married. She has two young children. She graduated from high school in 2013. She attended college between 2013 and 2017 but did not earn a degree. She held a variety of jobs at fast-food restaurants and other minimum-wage jobs (\$7.25 to \$8 an hour) both while in school and afterwards, from 2014 to 2020. She was assigned to work part time for a defense contractor in February 2020, and she was hired by the same contractor as a full-time employee in June 2020. She works as a technician. (Tr. 26-29, 54-56; GE 1; AE D)

Applicant disclosed some debts on her SCA. (GE 1) The debts in the SOR total about \$37,700. They include federal student loans, medical debts, utilities, rent, and other debts. The debts are established by credit reports in the record, from March 2020 and May 2022. (GE 2, GE 3) The record also includes credit reports from April 2022 (part of GE 5) and October 2023 (GE 4)

Applicant used federal student loans to finance her college education. These loans (SOR ¶¶ 1.a-1.f, 1.h-1.j) total \$32,399. She dropped out of college in 2017 to care for her first child. She fell behind on repayments in the years that followed, a time when she was working at fast-food restaurants in minimum- wage jobs. She also acknowledged that she was immature and had no experience with money when she was younger and did not understand "what I was getting into" financially. (GE 1; Tr. 31-32, 54-56)

Applicant's student loans were listed as past due on the 2020 and 2022 credit reports. (GE 2, GE 3, GE 5) She acknowledged that she made no payments after she left school in 2017. Her tax refunds were withheld for a period to address the debt, but she

said her refunds were also returned to her during the COVID-19 pandemic (when federal student loans payments were deferred by Presidential Executive Order. (Tr. 32-33, 39)

An October 2023 credit report shows the loans as being in “pays as agreed” status. (GE 4) The COVID-19 deferment program ended in October 2023, and individuals are to begin repaying their federal student loans. On October 23, 2023, Applicant applied for the U.S. Department of Education’s “Fresh Start Initiative,” under which her defaulted student loans would be transferred to a loan servicer. She owes about \$32,500 in loans and interest. She expressed interest in “Income Driven Repayment.” No payment is currently due (as of October 2023). (AE B) She said she has made \$50 payments every two weeks since October 23, 2023. (AE A at 6; Tr. 30-32, 40-41)

SOR ¶¶ 1.g (\$2,498) and 1.h (\$185) are past-due medical debts. (GE 2, GE 3) They occurred due to pregnancy complications requiring an ambulance and emergency treatment. Applicant said she began paying these debts in October 2023. (Tr. 36-38, 41-42)

SOR ¶ 1.i (\$281) is a past-due cable debt. (GE 3 at 3) Applicant said she never received a bill at the apartment complex where she lived at the time. (Answer) She called the debt collector and was told that the account is closed. She is disputing the debt with credit bureaus. (AE A; Tr. 33-34, 42-43)

SOR ¶ 1.m (\$62) is a past-due energy bill from 2017. (GE 3 at 3) It is the only debt Applicant denied in her SOR response, asserting that it has been paid. She is disputing the debt with credit bureaus on that basis. (AE A; Tr. 33-36)

SOR ¶ 1.n (\$1,194) is a past-due rental debt to an apartment complex. (GE 3 at 3) Applicant said she broke her lease because “no one ever came to fix anything.” (Answer) This was in 2017. (Tr. 27) This apartment had drainage problems and the building was a safety hazard because there were racoons living in the stairwell. (Tr. 37) She has set up a payment agreement, with \$100 payments every two weeks, beginning in early November 2023, with final payment in early April 2024. (AE C)

SOR ¶ 1.o (\$1,150) is a consumer debt placed in collection by a bank. (GE 3 at 4) Applicant said that this debt has been partially paid. (Answer) In late October 2023, she called the debt collector and was told that the account is closed. She is disputing the debt with credit bureaus. (AE A; Tr. 33-34. 43-44)

Applicant works full time and earns \$19.25 an hour (\$770 a week), an increase from \$15.80 an hour in mid-2022. (GE 5 at 13-14) She estimated that she earns \$1,300 every two weeks. This is her sole income. She receives no child support. She has lived with her mother since 2018. She pays \$300 in rent and has about \$2,130 in monthly expenses, according to the list of expenses she provided. This suggests a surplus of about \$450 each month. There is no evidence of tax issues or credit counseling. (Tr. 29-30, 44-48; AE F)

Applicant loves her job. She feels the hearing process has “helped me to put some fire behind my feet” and get her finances organized. She wants to further her training at work so she can receive better opportunities. She is well-regarded at work, and provided awards and training certificates (Tr. 48-49, 57, AE D, AE E)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

Applicant fell behind on her debts after she dropped out of college in 2017 and worked minimum wage jobs. AG ¶¶ 19(a) and 19(c) apply.

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;
- (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.

Applicant used federal student loans to finance her college education. She fell behind on those debts, and others, after she dropped out of college in 2017. For a time, she lived in an apartment complex that had unsafe living conditions. Some debts remain from both her difficult pregnancy and her difficult living circumstances. She held several minimum-wage or low-paying jobs until she was hired by her current employer. Most of her debts, particularly her student loans, are ongoing, so AG ¶ 20(a) does not fully apply.

Applicant's debts are due to circumstances beyond her control, including limited income before her current job. She has made an effort to limit her expenses by moving in with her mother several years ago. She has also not incurred new debts. Her federal student loans were in deferment during the pandemic, and she has applied for the "Fresh Start Initiative" program to bring her loans current, and she plans to address them through an income-driven plan. This will take time, as she recognizes. However, despite their sympathetic origins, Applicant took little action before late 2023 to address her debts. She needs to establish a track record of payments towards her debts to show good faith and responsible action to mitigate the resulting security concerns. AG ¶¶ 20(b) and 20(d) therefore do not fully apply to mitigate security concerns about her finances.

Applicant is disputing several debts with the credit bureaus, but she did not provide sufficient documentation to substantiate that these debts are either paid, resolved, or no longer valid. AG ¶ 20(e) is not fully established.

### **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 the 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(a), 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 considered the potentially

disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is well-regarded at work, and she has received awards and certificates for her accomplishments.

Nevertheless, Applicant did not provide sufficient evidence to mitigate the security concern shown by her delinquent debts. This is not to say she will not be able to establish her eligibility at a future date. But she needs to establish a reasonable plan for addressing her debts and make some concrete steps putting that plan into place. Overall, the record evidence leaves me with questions and doubts as to her eligibility for a security clearance.

### **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.o:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge