



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



In the matter of: )  
)  
) ISCR Case No. 22-00695  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

01/23/2024

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant incurred delinquent debts and failed to timely file federal tax returns 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 April 2, 2020, in connection with her employment in the defense industry. On April 19, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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; 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 subsequently submitted an undated Answer to the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on August 29, 2023. On October 20, 2023, DOHA issued a notice scheduling a video-teleconference hearing on November 15, 2023.

The hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 4. Applicant testified and offered Applicant's Exhibits (AE) A through H. All exhibits were admitted without objection. At the end of the hearing, I held the record open until November 30, 2023, to provide Applicant the opportunity to submit additional information.

On November 29, 2023, Applicant sent an e-mail (AE I), along with three years of tax returns (AE J, AE K, AE L) and two recommendation letters (AE M, AE N). The next day, with another e-mail (AE O), she submitted an old budget (AE P), evidence of an appointment scheduled with a credit counselor (AE Q), and three years of work evaluations (AE R). All of her post-hearing exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on November 27, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all of the SOR allegations (SOR ¶¶ 1.a-1.g) but for SOR ¶ 1.b, which she denied, all with brief explanations. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 31 years old. She earned a college degree in business administration and finance in December 2018, in State 1. She worked as a financial analyst for a bank from December 2015 to February 2019, mostly while in college. (Tr. 41) She also had other jobs as a server in various restaurants. In early 2019, she relocated to State 2 to be closer to her family. After that, she had a variety of short-term jobs and periods of unemployment until finding work as a financial analyst with a defense contractor in February 2020. She has never held a clearance. She has never married, and she has no children. (GE 1; Tr. 23-28) She works full time. She has an annual salary of about \$75,000. (Tr. 25-26)

Applicant attributed her debts to her period of unemployment and underemployment after moving in early 2019. She did not have enough money saved up and fell behind on her bills. (Tr. 25-28) She recently retained a debt-relief company to challenge and pay her unpaid debts. She paid \$378 to retain them and then pays them about \$100 a month. (AE B; Tr. 30, 37-38, 50)

Applicant disclosed delinquent debts and unfiled federal income tax returns on her SCA. (GE 1) The debts in the SOR total about \$17,365. Her debts are established by her admissions and by credit reports from July 2020 and April 2022 in the record. (Answer; GE 2, GE 3) There is also a credit report from November 2023 in the record. (GE 4)

SOR ¶ 1.a (\$694) is a debt placed in collection by a bank. (GE 2, GE 3) Applicant asserted that she paid the debt around the time that the account was closed by the creditor (and likely sent to collections). She believes she owes about \$300. She hopes to settle this debt through the debt-relief company. (Tr. 29-31) This account remains unpaid. (GE 4)

SOR ¶ 1.b (\$98) is a past-due cell phone or internet bill. (GE 2) Applicant paid the debt in April 2022. (AE A; Tr. 28)

SOR ¶ 1.c (\$5,229) is an account placed for collection by the university Applicant attended in State 1. (GE 2) As of November 2023, the balance was \$2,523. (AE C) She is on a \$210 a month payment plan for the balance, and she made the first payment in late 2023 (Tr. 21-22, 28-29; AE B – AE F, AE H)

SOR ¶ 1.d (\$4,989) is an auto account placed for collection. This is a car loan Applicant took out after moving to State 2. She made payments for a time but could not afford the car. The car was repossessed, then she paid to reacquire it, then it was repossessed again, in March 2020. She hopes to settle this debt through the debt-relief company, but she has not had contact with the creditor for several years. (Tr. 32-35) The account remains unpaid. (GE 4)

SOR ¶ 1.e (\$4,726) is a consumer account placed for collection. (GE 3) This account was a loan she took out in 2018, when she lived in State 1. She hopes to settle this debt through the debt-relief company. (Tr. 35-37)

SOR ¶ 1.f (\$1,629) is an account placed for collection by a payday loan service. (GE 3) It remains unpaid. (Tr. 38-39)

SOR ¶ 1.g alleges that Applicant failed to timely file her federal tax returns for tax years (TY) 2017 and 2018. She disclosed on her April 2020 SCA that those returns were unfiled. (GE 1 at 44) She asserted that her 2018 taxes had been filed and paid within the last year but acknowledged that her TY 2017 tax return was unfiled. She said she had assistance from a tax preparer but did not know what happened. During these tax years, she was working at a bank, during and after college. (Tr. 39-42, 63) Post-hearing documentation of the TY 2017 filing reflects that she owes about \$1,425. (AE J) She did not provide documentation regarding TY 2018.

Applicant also acknowledged that her tax returns for TY 2020 and TY 2022 remained unfiled. She filed an extension for 2020 but not 2022. She let the tax filings “slip through the cracks.” She was on a leave of absence for several months in 2022 due to a death in the family. State 2, where she now lives, does not have a state income tax. (Tr. 42-46, 63) After the hearing, Applicant also provided copies of her TY 2020 and TY 2022 federal income tax returns. They reflect that she owes about \$5,882 and \$2,815 in past-due taxes, respectively. (AE K, AE L) Applicant said she had requested payment plans for her unpaid taxes. (AE I) She therefore owes about \$10,122 in past-due federal taxes

from TY 2017, 2020, and 2022, not including penalties and interest. It is not clear that any of the past-due tax returns have been filed.

Applicant provided a budget from about July 2023. She noted several of her SOR debts and other revolving debt. She has a loan of about \$7,300 against her 401k retirement plan at work. Her budget at the time reflects a negative balance and limited if any savings. (Tr. 51; AE P) Applicant said she recently moved in with her sister to cut down on rent and other expenses. She said she has about \$1,200 left over each month after bills are paid. (Tr. 48-50) Her plan is to settle her debts, repair her credit, and file her tax returns. (Tr. 58-59; AE G, AE H) She scheduled an appointment with a credit counselor in early December 2023. (AE O, AE Q)

Applicant's credit reports reflect that she has several active credit cards, and she estimated that she has a combined balance of about \$5,000, though she acknowledged it could be as high as \$30,000. She owes about \$66,000 in federal student loans. (GE 4) She has applied for a reduced payment plan now that the loans are being removed from (COVID-19 pandemic) forbearance. She has not participated in other credit counseling. (Tr. 53-61)

Applicant submitted reference letters from acquaintances who attested to her honesty, work ethic, and dependability. (AE M, AE N) In her year-end reviews, her supervisors all rate her as "[s]trong," note that she is making progress in her job, and say that she has an "amazing attitude." (AE R)

### **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;
  
- (c) a history of not meeting financial obligations; and
  
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

After working her way through college, Applicant incurred delinquent debts when she was not able to earn enough income to pay her expenses. She incurred other delinquent debts after moving to a new state in 2019. AG ¶¶ 19(a) and 19(c) apply.

Applicant also failed to timely file her federal income tax returns for TY 2017 and TY 2018. These tax years were shortly after she finished her college degree. AG ¶ 19(f) applies to those unfiled returns. Other unfiled returns from later tax years, and any resulting tax debt, were not alleged in the SOR, so they cannot be considered disqualifying conduct. However, those matters may be addressed in mitigation, below.

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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 incurred delinquent debts after college and after moving to a new state to be closer to her family. To her immense credit, she worked her way through college and earned a degree. She had sporadic employment until beginning her current job in February 2020. Her debts, however, are largely ongoing, and continue to cast doubt on her current judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant's debts are largely due to incurring debt and expenses beyond her means, without a meaningful plan to address them. She has had recent hardships in her family, and she had to stop work for several months. She has moved in with family to cut down on expenses, However, she has not yet begun to address her debts in a meaningful way. She has retained a debt-relief company to help her settle her debts and is pursuing credit counseling, but she has not yet put a reasonable payment plan in place, and her

debts are not yet being resolved or under control. She has filed most of her past-due tax returns, but those returns suggest that she owes about \$10,000 or more in past-due taxes, which is new debt she has also not yet addressed. 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), 20(c), and 20(d) therefore do not fully apply to mitigate security concerns about her finances.

Applicant prepared her TY 2017 federal tax return. She said she had filed her TY 2018 return, but this is not documented in the record. She also had two other late-filed returns, from TY 2020 and TY 2022. Those returns, and any resulting debts, are not alleged in the SOR but they undercut any mitigating effect otherwise shown. AG ¶ 20(g) is not established. Applicant did not provide sufficient evidence to mitigate security concerns about her debts and tax issues.

### **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 credited with working her way through college and with beginning a fine career as a financial analyst. She is well-regarded at work and in her personal life. Nevertheless, she 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 take 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.c-1.g:	Against Applicant
Subparagraph 1.b:	For 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