



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



In the matter of: )  
)  
) ISCR Case No. 23-01319  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2024

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on December 2, 2022. (Item 2) On June 30, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) On July 10, 2023 Applicant provided a response to the SOR, and requested a decision based upon the administrative record (Answer). (Item 1)

A copy of the file of relevant material (FORM), dated July 21, 2023, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant received the FORM on August 9, 2023, and she was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She timely submitted her Chapter 13 bankruptcy petition she completed in August 2023, which I labeled as Applicant’s Exhibit (AE) A. On November 29, 2023, the case was assigned to me.

## **Evidentiary Matter**

Department Counsel submitted an Amendment to the SOR on July 21, 2023. He requested the caption be changed to reflect “Applicant for Security Clearance” rather than “Applicant for Public Trust Position.” He also amended the case caption with “ISCR” instead of “ADP,” and he changed the opening SOR paragraph to reflect Applicant’s eligibility for a security clearance. Pursuant to the Department of Defense (DOD) Directive 5220.6 ¶ E.3.1.13, I agree the amended changes are necessary to accurately reflect that Applicant is in process for national security eligibility for access to classified information rather than eligibility for access to sensitive information. Accordingly, the amendment is adopted without objection.

## **Findings of Fact**

Applicant is 38 years old. She has never been married but she does cohabitate with a domestic partner. She has an 11-year-old daughter. Based on her December 2022 SCA, she was currently enrolled in college but she had not yet earned a college degree. Since January 2015, she has worked for a government contractor as an inspector, except for a period of approximately 15 months beginning in January 2020 when she worked for another government contractor. Her employer is sponsoring Applicant for a DOD security clearance so she can perform specific job duties. This is her first application for security clearance eligibility. (Item 2)

The SOR alleges that Applicant is responsible for seven accounts (SOR ¶¶ 1.a-1.g) that were either placed into collection, charged off, as well as two vehicles that were repossessed, for a combined total amount of \$37,403. She did not disclose any delinquent accounts under the financial section of her December 2022 SCA. In her Answer, Applicant admitted all of the allegations except for SOR ¶¶ 1.d and 1.g, which had a combined total balance of \$4,070. She stated her car insurance account, alleged in SOR ¶ 1.d was current and said she continues to carry insurance with the insurance provider. She failed to provide an explanation as to why she denied SOR ¶ 1.g, and she did not submit any supporting documentation. The credit reports in the record support the SOR allegations. (Items 1, 2, 5, 6)

SOR ¶ 1.a alleges a delinquent account in the amount of \$32,079, for a repossessed vehicle. This debt is the largest debt in the SOR. During her background interview in February 2023, Applicant confirmed to the investigator that her responses under the financial section of the SCA were accurate. She was then confronted with this delinquent account information. She told the investigator that she had no knowledge of this account. In her April 23, 2023 interrogatory response, she listed that she had co-signed a car loan for her friend, who is now deceased. She does not know where the car is located and she has not made any payments to this creditor. This debt remains unresolved. (Items 2, 3, 4, 5, 6)

SOR ¶ 1.b alleges an account referred for collection in the amount of \$483, for an unpaid cable company debt. During her February 2023 background interview, Applicant told the investigator that she had no knowledge of this account. In her April 23, 2023 interrogatory response, she listed that this “old satellite TV bill” is not satisfied and she

had not made any arrangements to pay this account. This debt remains unresolved. (Items 2, 3, 4, 5)

SOR ¶ 1.c alleges an account referred for collection in the amount of \$448, for an unpaid credit card debt. During her February 2023 background interview Applicant told the investigator that she had no knowledge of this account. In her April 23, 2023 interrogatory response, she listed that she still had no knowledge of this delinquent debt. This debt remains unresolved. (Items 2, 3, 4, 5)

SOR ¶ 1.d alleges an account referred for collection in the amount of \$483, for an unpaid insurance account. During her February 2023 background interview Applicant told the investigator that she had no knowledge of this account. In her April 23, 2023 interrogatory response, she provided a current insurance card by the insurance carrier to show that this account was up-to-date and in good standing. I find there is sufficient evidence to support her claim. This debt is satisfied. (Items 2, 3, 4, 5)

SOR ¶¶ 1.e and 1.f allege two delinquent medical accounts in the total amount of \$323. During her February 2023 background interview Applicant told the investigator that these were old medical bills from her 2018 gallbladder surgery. She forgot to list these debts on her December 2022 SCA, and she admitted she had received collection notices for these accounts in 2022. She told the investigator that she would pay these accounts in full within the next month or two. In her April 23, 2023 interrogatory response, she listed that “these are old medical bills” and she had not yet made any payment arrangements for these accounts. These debts remain unresolved. (Items 2, 3, 4, 5)

SOR ¶ 1.g alleges a delinquent account in the amount of \$3,587, for a repossessed vehicle. During her February 2023 background interview Applicant told the investigator that she had no knowledge of this account. In her April 23, 2023 interrogatory response, she listed that she still had no knowledge of this delinquent debt. She denied this debt in her Answer, but she did not provide an explanation or supporting documentation to show her correspondence with this creditor or what steps she took to settle this account. This debt remains unresolved. (Items 2, 3, 4, 5)

Applicant provided a personal financial statement with her April 2023 interrogatory response. Her monthly net income was \$3,571. After paying her monthly expenses, she was left with a monthly net remainder of \$945. It does not appear she was paying any of the SOR creditors, except for her current insurance carrier alleged in SOR ¶ 1.d. During her February 2023 background interview Applicant told the investigator that her current finances were fine. She pays her bills on-time, and she lives within her means. (Items 3, 4)

Department Counsel made it clear in the Government’s July 2023 brief that Applicant had not provided any evidentiary documentation to show what steps she had taken to resolve her significant delinquent debt. Applicant responded to the FORM by providing a Chapter 13 bankruptcy petition that was filed in August 2023. Some of the SOR debts are listed in the petition, and Schedules E and F showed that several new creditors were also included. The total amount of Applicant’s liabilities, to include secured and unsecured claims, was \$69,491. There is no evidence that Applicant has made any

monthly payments to the bankruptcy trustee in accordance with a bankruptcy plan. (AE A)

## **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 concern under Guideline F (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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts and her admissions establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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

(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 or provides evidence or actions to resolve the issue.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant did not disclose any financial delinquencies on her December 2022 SCA, and in February 2023, she told the investigator that her finances were fine. Six months later, she filed for Chapter 13 bankruptcy protection with liabilities totaling almost \$70,000. I am unable to find that there were conditions beyond Applicant's control which contributed to her financial problems. There is no evidence that she has made any payments to the bankruptcy trustee. Although her filing for bankruptcy protection is a step in the right direction in getting her finances under control, Applicant should have taken this action much sooner. There is no documented history of her making systematic monthly payments to the trustee in accordance with her bankruptcy plan.

Applicant did not provide sufficient information to mitigate the financial concerns in this case. She did not provide any correspondence or payment arrangements with her creditors. Overall, I find that Applicant has not demonstrated that she acted responsibly to address her financial delinquencies in a timely manner. She did not provide sufficient evidence to mitigate the financial considerations security concern.

### **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.

Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake.

Applicant did not provide documentation of communications with any of her delinquent creditors. She could have made more of an effort to have her increasing debt resolved by filing her Chapter 13 bankruptcy petition earlier, and then she could have submitted documentation of the regular payments made to the bankruptcy trustee. Applicant only took action to file for bankruptcy protection after receipt of the SOR.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of her delinquent debts, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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. In light of all the facts and circumstances surrounding this case, I conclude Applicant has not met her burden of proof and persuasion. At the present time, Applicant did not mitigate the financial considerations security concerns or establish her eligibility for a security clearance.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e – 1.g:	Against Applicant

## **Conclusion**

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

Pamela C. Benson  
Administrative Judge