



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



In the matter of: )  
)  
) ISCR Case No. 23-00592  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: Scott Loftis, Esq., Personal Representative

02/20/2024

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**Decision**

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MURPHY, Braden M., Administrative Judge:

In 2019, Applicant breached a financial and fiduciary duty of trust by misappropriating funds during a period of financial strain. She later incurred additional delinquent debts. Many of those debts are being resolved, but, particularly given her prior conduct, she did not provide sufficient evidence to mitigate resulting financial conditions security concerns. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 20, 2021, in connection with her employment in the defense industry. On April 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The CAS 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 April 20, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Answer) With her Answer, she also submitted documents which were admitted during her hearing as Applicant's Exhibits (AE) A through E. In September 2023, she submitted additional documents to DOHA, which were also admitted during her hearing as AE F, AE G and AE H. The case was assigned to me on August 29, 2023. On October 4, 2023, DOHA issued a notice scheduling the hearing for November 2, 2023, by video-teleconference.

Pre-hearing e-mails from September and October 2023 between myself, Department Counsel, Applicant, and her personal representative, regarding procedural matters are all included in the record as Hearing Exhibit (HE) III. The Government's exhibit list and discovery letter were marked during the hearing as HE I and HE II, respectively.

The hearing convened as scheduled. At the hearing, Department Counsel offered documents that I marked as Government's Exhibits (GE) 1 through 7. Applicant's SOR exhibits and the supplemental documents (AE A – AE H, above) were supplemented by additional documents, marked as AE I through AE O. All the exhibits were admitted without objection. Applicant and two other witnesses also testified. At the end of the hearing, I held the record open, initially until November 16, 2023, to provide Applicant the opportunity to submit additional information. On November 6, 2023, she timely submitted an e-mail (AE P) and other documents (described in AE P), which were marked as AE Q through AE U and admitted without objection. Some of Applicant's exhibits are duplicative. DOHA received the hearing transcript (Tr.) on November 13, 2023. The record closed on November 6, 2023, following Applicant's indication that she had nothing further to submit.

### **Findings of Fact**

In Applicant's Answer to the SOR, she admitted SOR ¶¶ 1.a-1.f and denied SOR ¶¶ 1.g and 1.h, with a narrative statement and explanations. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 36 years old. She earned an associate degree in 2020. She has been married and divorced twice, most recently from 2015 to March 2020. She has no children. (GE 1; Tr. 45-46, 77) Applicant served in the U.S. Air Force for 15 years and 5 months, from January 2006 to June 2021, when she was medically retired honorably as a staff sergeant (E-5). (AE R) She has a 100% service-connected disability and receives \$3,622 a month in compensation. (AE Q; Tr. 37-38, 46-49)

After leaving the Air Force, Applicant held a job with a contractor, earning an annual salary of \$36,000, from June 2021 to November 2021. Since then, she has worked full time as a trainer for another defense contractor. She now earns an annual salary of

\$72,000. With her VA benefits, she earns about \$100,000, annually. She has held a clearance since her Air Force career. (GE 1; Tr. 39-40, 47-49, 101-102)

The delinquent debts in the SOR (¶¶ 1.b-1.h), mostly consumer debts, total just over \$23,000. They are established by credit reports, from October 2021, November 2022, April 2023, and October 2023, (GE 4-GE 7, inclusive). Applicant also provided numerous credit reports as part of her case, from April 2023 (AE E), June 2023 (AE G, AE H), and October 2023 (AE O).

Applicant explained that her debts began during an abusive marriage. Both she and her then-husband were in the Air Force. They were living in separate states. He had young children. Their plan was that she would get a house on base and he would cover the difference what the basic housing allowance would not cover. This did not happen. She got a part-time job, but she stopped this work in 2018 when he retired from the Air Force and moved to State 1, where she was. She moved out of base housing and could not afford to pay the bills that resulted. She got an off-base apartment. Her then husband got a job as a contractor on base for about four to six months but was fired. Debts piled up, and she retained a debt relief company in about 2017-2018 but to no effect. (Tr. 26-27, 77-81)

Applicant's ex-husband paid the mortgage for their home in State 1 but was not able to do so once he lost his contractor job. Ultimately, Applicant was responsible for all the expenses, including feeding his children. She did not tell him they were in financial trouble and was afraid to do so. She did not have access to all the family's funds and accounts. (Tr. 27-28, 78-84)

In 2019, Applicant was president of her squadron's "booster club," a social organization that organizes community events, activities, and fundraisers. She had access to, and management responsibility for, the booster club's checking account. The checking account was used to deposit donations and to fund appropriate club expenditures. (GE 3 at 2; Tr. 84-86)

In August 2019, it came to the attention of unit leadership that a civilian club member had to use her personal funds to purchase items for a booster club function because the booster club checking account was underfunded. When she was confronted about the matter, Applicant admitted that she had appropriated booster club funds for personal use. (GE 3 at 2; Tr. 89-90)

Applicant explained that there had been a booster event on base. She had cash in hand when the event ended. She did not go to the bank. She told her chief she was going to deposit the money but she did not. She told her first sergeant the next day. She denied being confronted. Applicant acknowledged misappropriating funds on four occasions between April and August 2019 when her conduct was discovered. Most instances involved less than \$100. Applicant used the money for gas, groceries, and other household expenses. She did not have access to her husband's savings account that she was putting money into. Applicant testified that this was a very hard time in her life. She

did not believe she had any other options, and she did not think she could go to someone else for help. (Tr. 50-58, 91-94, 101)

In an October 2019 Article 15 proceeding, Applicant was punished for wrongful appropriation under \$1,000 under Article 121 of the Uniform Code of Military Justice (UCMJ). (GE 2 at 4, Tr. 92-94) (SOR ¶ 1.a) She was reduced to the grade of senior airman, but the reduction was suspended through mid-April 2020 when it was forgiven. She forfeited \$250 in pay. She was also reprimanded for willfully disregarding Article 121:

Your actions and careless attitude have brought discredit upon both you and this unit. Using booster club funds for your own personal use is unacceptable. You have proven that you are not dependable. Any further incidents will be dealt with more severely. (AE S)

After her reprimand, Applicant was removed as booster club president. She was allowed to continue with booster club activities and to handle money at events, which she did later that fall but she was not allowed to make bank deposits. She completed the suspension period without incident Her rank was not reduced, and she retired in June 2021 as a staff sergeant (E-5). (Tr. 33-35, 89, 97-99; AE R) There is no indication that her clearance was impacted.

Applicant testified that no one in her command lost confidence in her. She repaid the money right away. This was an isolated incident. She said she made a horrible decision, felt embarrassed and let a lot of people down. She deeply regrets what she did, feels ashamed and guilty, and wishes she had reached out to someone such as her first sergeant and asked for help. (Tr. 28-32, 35-36, 96-97)

Two days after her actions came to light in August 2019, Applicant told her husband she wanted a divorce. (Tr. 28-29, 32) He asked to keep their furniture to provide for his daughters. He wanted her to pay half of the mortgage. She asked only for the \$3,000 she had in savings, but he told her it had been spent. She bought a bed and dresser to use in an apartment and essentially started over from scratch. (Tr. 28-32) Their divorce was finalized in March 2020.

In June 2021. Applicant retired from the Air Force and moved to State 2. She said all the SOR debts became delinquent due to her marital difficulties. She had signed up for debt relief in about 2017 or 2018 but also acknowledged she neglected her debts because she could not pay them. (Tr. 28-32)

Applicant said all of the SOR debts but for SOR ¶ 1.b have been addressed and paid. She reached out to all of the creditors after her background interview in October 2021. She said she had bills to pay, took the debt with the lowest amount first and went from there. Tr. 61-62) She provided an updated SOR response at her hearing. (AE I)

SOR ¶ 1.b (\$8,125) is a charged-off consumer account. Applicant admitted the debt and said in her answer that “the 1099C has been filed in my taxes.” (Answer, AE I)

The last payment on the account was in May 2021. She is negotiating repayment and intends to follow up. Her last interaction with the creditor was the week before the hearing. Her personal representative will be assisting her in negotiating repayment. (Tr. 30, 42-43, 59-63, 100, 105.) The debt, now \$9,011, remains pending. (GE 7 at 7)

SOR ¶ 1.c (\$6,253) is a consumer account placed for collection. Applicant admitted the debt and said she was working on a payment plan. The debt was paid in October 2023. (AE I, AE N; Tr. 30, 43, 63-64)

SOR ¶ 1.d (\$611) is a charged-off consumer account. (GE 4 at 5) Applicant admitted the debt and said that “the 1099C has been filed in my taxes.” (Answer; AE I) She asserted that she talked to the creditor and was told the debt was cancelled. (Tr. 30, 40-43, 64-66) The debt remains unpaid on an October 2023 credit report. (GE 7 at 6)

SOR ¶ 1.e (\$1,063) is a charged-off consumer account with a large retailer. Applicant admitted the debt and said “the 1099C has been filed in my taxes.” (Answer; AE I) She asserted that she talked to the creditor and was told the debt was cancelled. Tr. 30-31, 40-43, 64-66) The debt remains unpaid on an October 2023 credit report. (GE 7 at 7)

Both of the debts for SOR ¶¶ 1.d and 1.e are to the same initial creditor, bank S. In her post-hearing submissions, Applicant documented that bank S issued IRS Form 1099-Cs for two debts, cancelling one debt, a charge account, for \$883, on March 20, 2022, and cancelling another debt, a credit card, for \$342, on June 11, 2021. (AE U) However, she acknowledged that her representations in her SOR answer that she had filed the requisite IRS Form 1099-C forms with her tax returns were inaccurate. (Tr. 99-100; Answer)

SOR ¶ 1.f (\$3,530) is a military consumer account with Applicant’s ex-husband. It has been charged off. Applicant admitted the debt, made an agreement to pay in installments in November 2022. She said she had made an initial payment of \$1,652. The debt is being paid through a debit card connected to her checking account. She makes regular payments, as recently as October 2023. The balance is now \$2,143. (Tr. 31, 43, 66-68; GE 7 at 4; AE I, AE B, AE K)

SOR ¶ 1.g (\$2,598) is a cell phone or internet account that has been placed for collection. (GE 5 at 2) Applicant denied the debt, as it had been paid. She paid \$1,689 in March 2023 by debit card and later established that the debt has been paid (AE C, AE L; Tr. 31, 44, 68-69)

SOR ¶ 1.h (\$2,598) is a consumer account placed for collection by a bank. (GE 5 at 3) Applicant denied the debt, as it had been paid. She provided supporting documentation. (AE D, AE I, AE M; Tr. 31, 44, 69-70)

On her August 2021 SCA, Applicant disclosed her article 15 proceeding regarding her misappropriation of funds, noting that the punishment had been suspended and

removed from her record after six months. (GE 1 at 23; Tr. 49-50) She also discussed the matter in her background interview. (GE 2 at 4)

However, Applicant did not disclose any delinquent debts, charged-off debts, or debts in collection, on her SCA. (GE 1 at 40 -- Delinquency Involving Routine Accounts). She also did not reveal those debts in her October 2021 background interview until she was confronted about them. (GE 2 at 4) She said she did not track her credit at the time she completed her SCA. She acknowledged telling the interviewer that she was going to pay all of her debts by the end of 2021, but acknowledged in her testimony that this was "wishful thinking." (Tr. 70-72) Personal conduct security concerns under Guideline E, either as to the booster club incident, or to her lack of candor during the security clearance process, are not alleged in the SOR.

Applicant testified that while her financial stability is a work in progress, her finances are now much improved. She has some money in the bank, and in a 401(k) pension. She can take care of herself. She keeps a budget. She has no late tax returns or tax debts. She participated in credit counseling through Air Force family readiness in 2019 after the booster club incident. Her personal representative for this hearing, a personal friend, is also a bankruptcy attorney and good financial resource. (Tr. 73-76)

Applicant also sees a mental health counselor with the VA on a monthly basis and attends appropriate appointments with a psychiatrist and psychologist. She has done so for about four years, since her divorce. She also saw a behavioral health counselor after the booster club incident. (AE T; Tr. 94-96)

Ms. S, a friend and former coworker of Applicant's testified and provided a character letter. Ms. S has a clearance. Applicant is a hard worker. She is a good person with good morals, and she tells the truth. She is very responsible. Ms. S would trust Applicant with her children. Ms. S is aware of Applicant's debts and the Article 15. She has no issues with Applicant's judgment, trustworthiness, or reliability. (Tr. 108-116; AE F, AE J)

Applicant's supervisor, Mr. T, testified. He has known Applicant since she was hired about 18-24 months before the hearing. They have daily contact. She has an excellent work ethic, is proactive, and is a top performer. She is reliable and dependable. He understands how marital and family issues can cause financial strain. He is aware that she is resolving her debts. She makes him aware of problems that arise. (Tr. 119-130) Another current supervisor, Mr. B, provided a similar letter. (AE J)

Applicant's first sergeant at the time of the booster club incident wrote a recommendation letter. He said the incident occurred at a difficult time for her, she had a lapse in judgment, and made a mistake. She "acted swiftly and responsibly to rectify the situation" by reporting to him what had happened the next day. He was impressed with her honesty, integrity, and willingness to accept responsibility. She repaid the money. He believes she is of high moral character. He recommends her for a security clearance

without hesitation. (AE A) Applicant also provided letters of reference from October 2019 from other supervisors who worked with her at the time, knowing of the incident. (AE J)

## **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. 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
- (d) “deceptive or illegal financial practices such as embezzlement, employee theft, . . . and other intentional financial breaches of trust.”

Applicant experienced significant financial instability in the final years of her second marriage. Her husband withheld funds from her, despite her caring for his children while they were both in the Air Force. Finding herself short of funds for household items in mid-2019, she misappropriated funds on about four occasions from an Air Force squadron booster club of which she was the president, a position of fiduciary trust that came with access to booster club funds and the club's bank account. The funds she took were relatively small, but her actions came to light when the club's account ran short of money. Her actions as a booster club volunteer satisfy AG ¶ 19(d) as an “intentional financial breach of trust.” In this role, she also had a “financial obligation” to act in the booster club's best interest, and not her own. She did not do that, and AG ¶ 19(c) also applies to her misconduct.

Applicant repaid the money, was fined and reprimanded, and was essentially on probation for six months, at which point the offense was forgiven and her reduction in rank was not enforced. About two years later, she was medically retired from the Air Force under honorable conditions. The financial difficulties Applicant had experienced continued, however, and the SOR debts alleged are all established under AG ¶¶ 19(a) and 19(c).

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; and

(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;

(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.

AG ¶ 19(e) is established for the debts at SOR ¶¶ 1.g and 1.h, both of which Applicant denied and documented that they had been paid. Applicant received some financial counseling from a base family readiness center, while still in the Air Force after the booster club incident. Her debts continued, however. AG ¶ 20(c) therefore does not fully apply.

Applicant experienced significant financial problems during her second marriage, and those problems were likely caused by her husband's abuse, financial instability, and unemployment. The first prong of AG ¶ 20(b) therefore applies. For a brief period in mid-2019, not knowing where else to turn for help, Applicant took money from the booster club to help make ends meet. While this conduct is now rather dated (more than four years ago) it was nonetheless an act of poor judgment and a breach of trust. Applicant's financial problems continued. It also undercuts her reasonableness and good faith under AG ¶¶ 20(b) and 20(d).

While Applicant has resolved many of her delinquent debts in the SOR, she began doing so only after receiving the SOR. The timing of Applicant's actions undercuts a finding that she has acted reasonably in addressing her debts and in full good faith. Further, the fact that an applicant has delinquent debts, no matter the circumstance, is a potential security concern. This is because the fact of the delinquencies places an applicant in a position of vulnerability where they might be tempted to act in their own interest rather than as a fiduciary. The problem here is that this applicant already did that. With some of applicant's delinquencies remaining unresolved, I cannot therefore find that

there is no risk of recurrence and that her prior actions do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

While Applicant disclosed her Article 15 proceeding and “suspended bust” on her August 2021 SCA, she did not disclose any ongoing delinquent debts. Nor did she acknowledge them until she was confronted in her background interview. Her explanation that she was not keeping track of her credit is not credible, given her prior history of financial instability, which strongly suggests that she knew she had ongoing delinquencies from and after her second marriage. Further, even if it were credible, a lack of awareness of finances is additionally problematic. A personal conduct security concern regarding Applicant’s answers to the general financial questions was not alleged, but her lack of candor can be considered in mitigation.

The booster club incident is now several years old. Applicant has resolved many of her SOR debts. Taken independently, a security concern might be resolved here. But I have to address her prior conduct and her ongoing delinquencies together, and in doing so, I cannot find that the financial considerations security concerns are fully mitigated in this case.

### **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. I considered Applicant’s honorable Air Force service and the recommendations of her supervisors and work colleagues. However, Applicant did not provide sufficient evidence to mitigate the security concern shown by her delinquent debts and prior misconduct. Overall, the record evidence leaves me with questions and doubts as to her eligibility for a security clearance at this time.

## 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.b:	Against Applicant
Subparagraphs 1.c-1.h:	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