



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



In the matter of: )  
)  
) ISCR Case No. 23-02598  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 28, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 18, 2023, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 22,

2024. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5. (Item 1 is the SOR) Applicant did not provide a response to the FORM, did not object to the Government's evidence, and did not submit documents. The Government's evidence is admitted. The case was assigned to me on June 12, 2024.

### **Findings of Fact**

Applicant admits the SOR allegations in ¶¶ 1.a, 1.b, 1.f, and 1.g. She denies the SOR allegations in ¶¶ 1.c, 1.d, 1.e, 1.h, and 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She attended college from November 2016 to May 2017 but did not earn a degree. She married in 2013. She disclosed on her May 2023 security clearance application (SCA) that she has one child who is 23 years old. In her SOR answer, she says she has three children. She disclosed she was employed by a federal contractor from October 2010 to November 2018. She was then unemployed from November 2018 until May 2019 when she was hired by her current employer. (Items 2, 3)

Section 26 of Applicant's SCA asked if in the past seven years she had any possessions or property repossessed; if she had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or canceled for failing to pay as agreed; had been evicted for non-payment; had been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt. Applicant answered "no" to all the above inquiries and did not disclose any delinquent debts. (Item 3)

In August 2023, Applicant was interviewed by a government investigator as part of her background investigation. She was asked if she had any accounts that were in collection or 120 days past due. She told the investigator that she had old accounts that were in collection. She was asked if she had any current accounts in collection or more than 120 days past due. She told the investigator "no." She was confronted with the delinquent debts that are alleged in the SOR. Throughout her answer to the SOR, she stated the debts were all six or seven years old and refers to accumulating them when she was laid off, which she disclosed was from November 2018 to May 2019. (Items 2, 4)

Regarding SOR ¶ 1.a (\$13,444), Applicant acknowledged to the government investigator that this account was for a repossessed vehicle. She attempted to settle the debt in May 2019, but the creditor was unwilling and wanted her to pay the full amount owed. She told the investigator she did not have the funds to repay the account in full and she did not intend to take any further action on the debt. In her SOR answer, she admitted the debt and said it was the result of her being laid off. She believed the debt was from

six or seven years ago and it is charged off. She said that is why she has not paid it. (Items 2, 4)

SOR ¶ 1.b (\$3,571) is a personal loan that is in collection. Applicant told the government investigator she did not intend to take any further action on the debt. In her SOR answer, she admitted the debt and said it was the result of being laid off six or seven years ago and it is charged off. She said that is why she has not paid it. (Items 2, 4)

Applicant told the government investigator that she was current and making payments on the debt in SOR ¶ 1.c (\$2,185). She was afforded an opportunity by the investigator to provide documents to show she was making payments. She did not. In her SOR answer, she denied the debt and said it was from six or seven years ago and it was charged off. She said she had been making monthly payments for two years. She did not provide any documentary proof of her payments. (Items 2, 4)

Applicant told the government investigator that the debt in SOR ¶ 1.d (\$738) was a bill from a medical provider that incorrectly charged her insurance company. She said she had contacted the insurance company and obtained the correct billing code that she then provided to the medical provider. She said the medical provider never corrected the error. She did not intend to take any further action on the debt. In her SOR answer, she provided the same response. She has not taken any further action to resolve the debt. (Items 2, 4)

The debt in SOR ¶ 1.e (\$620) is for a credit card. Applicant told the investigator that she paid the delinquent account and was all caught up on payments and the account was in good standing in 2019. In her SOR answer, she stated she disputed the debt with the creditor. She did not provide any documentary evidence that she disputed the debt or that it was resolved. (Items 2, 4)

Applicant told the government investigator she did not intend to take any further action on the debt in SOR ¶ 1.f (\$519). She admitted the debt in her SOR answer, and said she told the investigator that the debt was due to being laid off six or seven years ago and then it was sold to a collector and was charged off, so that is why she had not made any payments. (Items 2, 4)

Applicant told the government investigator that she did not intend to take any action on the debt in SOR ¶ 1.g (\$171). In her SOR answer, she admitted the debt and said it was accurate. She said she told the investigator it became delinquent six or seven years ago, and it was charged off. She said that was why she did not make payments. (Items 2, 4)

Applicant told the government investigator that the debt in SOR ¶ 1.h was for a credit card, and she did not intend to take any further action. She denied the debt in her SOR answer, and said she told the investigator that the debt was six to seven years old and was charged off. She said that is why she did not make payments. (Items 2, 4)

Applicant explained to the government investigator that she fell behind on paying the accounts noted above when she was laid off from her job in November 2018. She was unemployed for six months. She was the primary earner in the household. Her husband only works part-time. Prior to being laid off she earned about \$125,000 and after she was laid off her unemployment benefits were only \$300 a week. She had difficulty making ends meet and paying her bills, and hence she got behind. Once she regained employment in May 2019, she did her best to catch up on her accounts. She was asked by the investigator why she did not intend to take any further actions on her delinquent accounts, and she said it was because she was afraid that by acting on the accounts, it would have a negative impact on her credit score. She was given an opportunity by the investigator to provide any documents regarding her finances and she declined to do so. (Item 4)

In Applicant's answer to the SOR she denied falsifying facts regarding her delinquent debts. She said "when brought up during my security interview I spoke to each item with the investigator." She then stated, "I was laid off with three children and the primary breadwinner. The accounts were charged off hence why I didn't pay them." (Item 2,

Applicant's SCA, statements to the government investigator, answer to the SOR, and her July 2023 credit report substantiate the debts alleged in the SOR. Applicant did not disclose any of her delinquent debts on her SCA. She did not voluntarily disclose her delinquent debts to the investigator even after she was asked directly. She denied she had any debts until they were "brought up" during her interview by the government investigator. Based on her statements that she had old debts and then failed to disclose any delinquent debts despite claiming all of them were due to being laid off in 2018, which was within the seven-year inquiry, I find by substantial evidence, she deliberately failed to disclose any of her delinquent accounts.<sup>1</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See, e.g., ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

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 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." 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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 security concern relating to the guideline for 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that she does not intend to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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

(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 experienced financial difficulties when she was laid off from November 2018 to May 2019. She was unable to pay her debts during that time. Her unemployment was beyond her control. For the full application of AG ¶ 20(b) she must provide proof that she acted responsibly. She has not provided evidence of any efforts to repay any of the delinquent debts alleged. She stated that she does not intend to pay them because they were charged off and it might impact her credit score. She has not acted responsibly. AG ¶ 20(b) does not apply.

Applicant's debts are recent and ongoing. She has not resolved any of them and does not intend to do so. There is no evidence she has taken financial counseling. She disputes certain debts but failed to provide any documented proof to substantiate the basis of her dispute or attempts to resolve them. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware she had delinquent debts that were incurred while she was unemployed. She deliberately failed to disclose them on her SCA. The above disqualifying condition applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
  
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not correct her omission until she was confronted with the accounts during her background interview. She did not make a prompt good-faith effort to correct the omissions. Deliberately failing to be honest in an SCA is not minor. Her actions cast doubt on her reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

### **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(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.



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 Guidelines F and E in my whole-person analysis.

Applicant is responsible for presenting evidence in mitigation. She failed to meet her burden of persuasion. If there is any doubt concerning personnel being considered for national security eligibility, I am required to resolve that doubt in favor of the national security. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations and Guideline E, personal conduct.

### **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.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge