



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



In the matter of:

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ISCR Case No. 12-08157

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

08/07/2015

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant incurred substantial delinquent indebtedness but, despite regular full-time employment, demonstrated neither means nor effective efforts to resolve it. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on January April 25, 2012. On October 10, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on November 14, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 3, 2015. The case was assigned to me on February 19, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 25, 2015, and I convened the hearing, as scheduled, on March 18, 2015. The Government offered Exhibits (GE) 1 through 5, which were admitted after Applicant's objections were determined to go to the accuracy and weight, not admissibility, of her prior sworn admissions. Applicant testified on her own behalf; presented witness testimony from her fiancé (hereinafter referred to as "W"); and offered exhibits (AE) A through G, which were admitted without objection. I granted Applicant's request to leave the record open until April 8, 2015, for submission of additional evidence, then granted her additional time to organize and submit her voluminous post-hearing submissions due to problems attempting to transmit them via email. DOHA received the transcript of the hearing (Tr.) on March 26, 2015. Applicant eventually submitted additional evidence by regular mail, which was marked and admitted as AE H without objection, and the record closed.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor, where she has worked in unclassified areas since August 2006. Preceding that employment, she had been employed by municipal governments since January 2003. She is divorced, with four sons ranging in age from 23 to 28. She earned a GED in 1985, an associate's degree from a community college in 1995, and a bachelor's degree from a for-profit online university in 2009. She has no military service and has never held a security clearance. (GE 1.) In her response to the SOR, Applicant denied all of the allegations concerning her delinquent debts set forth in SOR ¶¶ 1.a through 1.h.

SOR ¶¶ 1.a and 1.b allege two delinquent student loan debts, totaling approximately \$49,000. Applicant cosigned with her eldest son on these loans in August 2006 and October 2005, respectively, in connection with his undergraduate education. The original loan disbursements were \$16,760 (in 2006), and \$10,695 (in 2005). Applicant showed that her pay was garnished about \$1,200 for a delinquent student loan in April and May of 2012, after which her employer received a release and stopped the garnishment. (AE H, Part 1.) She testified that this garnishment followed a judgment concerning these loans, and when she learned that her son had not been making the payments she brought them current to end the garnishment. She further testified that her son had since obtained new employment and resumed payments on these loans, which are now in a current status. The documentation she provided contradicts this version of events. The last documented payment toward either of these loans occurred in July 2010, and they were charged off by the original lender and placed with the current creditor for collection in May 2011. (AE G; GE 3; GE 5. See *also* GE 2 at 7.) On May 14, 2014, that creditor obtained a \$29,462 default judgment against Applicant and her son with respect to the debt alleged in SOR ¶ 1.a, with post-judgment interest accruing at the rate of 12% per annum thereafter. No evidence of any payment toward this judgment was offered, nor was any evidence of either loan having been

rehabilitated or in a current status. Applicant's January 2015 credit report reflects an outstanding balance due of \$17,496 on the SOR ¶ 1.b debt; and interest on this debt is accruing at just under 5%. These debts are not resolved. (AE G; AE H, Part 2; GE 3; Tr. 80-83.)

The SOR erroneously alleges, in SOR ¶ 1.c, that Applicant owes a deficiency balance of \$87,727 to the mortgage lender who foreclosed on the home she owned from February 2007 until August 2012. That creditor elected to use the state's non-judicial foreclosure procedure, which precludes pursuit of any deficiency debt after resale of the real estate serving as security for the mortgage loan. Applicant bought the home in question in February 2007 for \$288,500. She borrowed the entire purchase price in her first mortgage loan, which required monthly principal and interest payments of \$2,022. She could not afford these payments, together with the associated escrow and other home ownership costs, and stopped making her mortgage payments in March 2009. She continued to live in the home until November 2010, when she resumed living in W's home where she had also lived after her 1995 divorce from her husband and from August 2005 to February 2007. (GE 1; GE 5; AE E; AE F; AE H, Part 3.) The creditor foreclosed and sold the home in August 2012 for \$301,219; at which time she owed \$373,052 with late fees and interest. Applicant's mortgage payments, late fees, and interest were delinquent by \$79,646 in April 2012 (GE 5 at 13); and \$87,727 in May 2013 (GE 2 at 47; GE 3 at 3.) After Applicant moved back into W's home, but before the foreclosure sale, W arranged for at least one tenant to rent the home for payments of \$500 per month. (GE 2 at 4.) Applicant and W describe her choice to stop paying her mortgage obligations as a decision to "strategically default"; implying without further explanation that this describes more responsible conduct than some other type of default while continuing to occupy or rent out the property for three and a half years without paying for it. (Tr. 104; AE H at 43.)

A \$396 charged-off credit card debt is alleged in SOR ¶ 1.d. The several record credit reports reflect that this account, which is one among several accounts Applicant had with the same bank, was opened in July 2003 and became delinquent in March 2011. (GE 2 at 37-38; GE 3 at 2; GE 4 at 3; GE 5 at 5.) On May 23, 2012, she told an investigator from the Office of Personnel Management (OPM) that this was a closed account that was charged when her second son overdrew an associated account, and that if she was still able she planned to satisfy this debt. (GE 2 at 7-8.) In her November 2014 answer to the SOR, she said that she had no knowledge of the account. She stated during her testimony that she was still working to identify and possibly dispute the debt. (Tr. 71.) In her post-hearing submission, she provided information showing payments toward other accounts with the creditor bank, but no evidence that the alleged delinquency was resolved. She concluded, "I can continue to follow up on this account to resolve it." (AE H, Part 4.) It remains unresolved.

During the six years that Applicant attended schools pursuing her associate's and bachelor's degrees, she took out numerous student loans from various sources. The three student loan debts alleged in SOR ¶¶ 1.e through 1.g were placed for collection by the original creditors in September and October 2010. They involve a total

of \$17,136<sup>1</sup> in delinquencies. Applicant provided voluminous documentation of payments she has made toward some of her other student loans, but no evidence of payment or other attempted resolution concerning these debts despite her claims, in her answer to the SOR and testimony, that they were all being paid as agreed. (AE C; AE D; AE H, Part 5; Tr. 71-78.)

Applicant identified the delinquent \$4,293 debt alleged in SOR ¶ 1.h as probably being another student loan or possibly a home equity loan from her mortgage lender, but the record credit reports reflect that it is the past-due balance from an unsecured five-year \$10,000 installment loan she obtained from that bank in March 2005 and stopped paying in late 2008. Although she claimed it was being paid as agreed along with her other student loans, she provided no evidence of payments or other actions to resolve this debt. (AR; GE 2 at 40; GE 4 at 5; GE 5 at 6; AE H, Part 5; Tr. 84-86.)

Applicant has earned “highly effective” performance ratings, and received numerous awards and certificates recognizing her professional achievements from her current and former employer. She has worked continuously to obtain educational credentials and technical training certifications, and her company has selected for a number of overseas project teams. (AR; AE A; AE B; Tr. 42-44, 94.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, 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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

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<sup>1</sup>SOR ¶ 1.e erroneously alleges \$6,195 instead of the correct amount of \$6,159. (GE 3 at 2; Tr. 74.)

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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 concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant has \$70,825 in unresolved student loan, credit card, and installment loan debts that became delinquent between 2008 and 2011, and remain unresolved. She demonstrated neither the means nor any effort to resolve them, although she has made payments toward other substantial indebtedness. She also defaulted on her home mortgage loan in March 2009, but continued living in or renting out the house until it was sold in foreclosure in August 2012, at which time she had failed to make more than

\$80,000 in previously agreed payments. These substantial debts raise security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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's SOR-listed delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. Her history of financial irresponsibility goes back more than six years, with no demonstrated period of meeting those voluntarily undertaken debt obligations despite working full time for her current employer since August 2006. She therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). She voluntarily incurred all of the debt in question, and has been fully employed during the period the payments became delinquent. This is not responsible action under the circumstances.

Applicant provided no evidence of financial or credit counseling, and failed to demonstrate substantial progress toward debt resolution or changes to bring her financial situation under control. She no longer owes her mortgage lender more than \$80,000 in payments that she "strategically" chose not to make, but that history of financial irresponsibility remains a security concern in conjunction with her remaining

unresolved debts. Accordingly, she did not establish mitigation under MC 20(c) or (d) with respect to any SOR allegations. MC 20(e) is not implicated because all debts of concern are well documented in Applicant's credit reports, and she offered no documented proof of any basis to dispute them.

### **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(a):

- (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 pertinent facts and circumstances surrounding this case. Applicant has incurred substantial delinquent indebtedness that she has made no documented effort to repay. Her significant delinquent debts remain outstanding, creating the ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence of financial problems are unlikely, or that behavioral changes demonstrate rehabilitation. Applicant is a mature and experienced individual who is well-regarded at work but is also accountable for her financial choices and irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge