



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01370
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

04/20/2016

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On May 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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; 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 September 1, 2006.

Applicant answered the SOR on June 19, 2015, and requested a decision based on the record. She later changed her request to have a hearing before an administrative

judge.<sup>1</sup> The case was assigned to me on January 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 8, 2016. I convened the hearing as scheduled on March 1, 2016. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through I, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 10, 2016.

### **Findings of Fact**

Applicant admitted SOR allegations ¶¶ 1.a through 1.i and denied 1.j through 1.m. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. She earned her bachelor's degree in December 2015. She married in 2011 and has no children. She served on active duty in the military from 2000 to 2003 and in the reserves until 2005 when she was honorably discharged. She has been steadily employed since July 2013. She has worked for her current federal contractor for about a year and earns \$63,000. Her husband has been steadily employed and earns about \$50,000 annually.<sup>2</sup>

Applicant acknowledged that she has delinquent debts that need to be paid and resolved. She attributed her past financial problems to being young, attending school, and making poor decisions. It appears Applicant had periods of unemployment in the past, but in her October 2013 interview with an Office of Personnel Management (OPM) investigator she indicated that she also voluntarily took time off from school and working, and her husband supported her during some of these periods.<sup>3</sup>

In approximately 2003-2005 Applicant obtained private student loans. She estimated the total amount of the loans was \$18,773. The debts in SOR ¶¶ 1.f (\$10,770) and 1.g (\$8,003) reflect these loans. She also obtained federal student loans during this time. She stated that she did not understand the repayment process. She was making a monthly payment of \$200, but was notified by a creditor in 2004 that a loan was delinquent.<sup>4</sup> She believed that her payments were being applied to the total amount of all of the loans and not to one individual loan. She did not have the money to pay the loan at the time. Applicant stopped attending college for a period. The private loans eventually dropped off her credit report and she forgot about them. She has not contacted the creditors because she cannot currently afford to make payments. She testified that she has a repayment plan to address the private student loans, but is

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<sup>1</sup> Hearing Exhibit I.

<sup>2</sup> Tr. 24-28, 73.

<sup>3</sup> Tr. 75-76; AE E; GE 2.

<sup>4</sup> It is unclear if Applicant was making payments on the private loans or the federal student loans.

paying small delinquent debts first. She anticipated she will start repaying these loans in 2018 and complete payment in March 2019.<sup>5</sup>

Applicant consolidated her federal student loans in approximately 2006 or 2007. She testified that she was confused and thought her private student loans were part of the consolidation. She did not understand that her other student loans were privately funded. Her federal loans were deferred when she was attending school. When she returned to school she obtained additional student loans. She stated she started paying \$250 toward her federal student loans in about 2007 and her last payment was in January 2014. A payment history was not provided. She provided a document from the loan creditor that indicated there are no past-due payments, the aggregate balance of the loans is \$27,033, and her next payment is due in June 2016. The amount of the future payment is unknown. Applicant also provided a document that lists all of her federal student loans with the total balance owed of \$58,409. Applicant testified that the debts in SOR ¶¶ 1.a, 1.b, 1.c and 1.e are these student loans, and they are all in a deferment status. She anticipates that she will be provided a monthly payment amount by the creditor, and she will be required to pay it after the deferment expires.<sup>6</sup>

Applicant purchased a vehicle in approximately 2005 or 2006. She failed to make timely monthly payments and the car was repossessed in 2007. In her October 2013 statement to the OPM investigator, she indicated she got behind on her car payments because she was paying a judgment. The car was sold and the deficiency balance is \$9,449. Applicant told the investigator she intended to contact the creditor and arrange a payment plan. At her hearing, she indicated she had not yet contacted the creditor, but she has included the debt in her overall debt repayment plan and intended to satisfy the debt by 2019. She currently owns a 2004 car with a loan balance of approximately \$3,500 and her husband has a 2013 car with a loan balance of \$22,000. She is not a cosigner to his loan. Applicant provided a budget and it appears the monthly payment on her husband's loan is \$515. Her monthly budget shows different amounts each month for her car loan.<sup>7</sup>

The debt in SOR ¶ 1.h (\$1,364) was for a broken lease from 2011. She paid the debt in 2014.<sup>8</sup> The debt in SOR ¶ 1.i (\$338) for medical services was incurred in 2010. Applicant paid it in 2015.<sup>9</sup>

During her 2013 interview, Applicant was confronted with the debts in SOR ¶ 1.j (\$228) and 1.m (\$73) that were on her credit report. At that time, she denied she had ever had accounts with the creditors. At her hearing, she again disputed the accounts

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<sup>5</sup> Tr. 29, 43-46, 48-50, 54-57; AE F.

<sup>6</sup> Tr. 28-43, 49, 51-57; AE A, B, and I.

<sup>7</sup> Tr. 58-63; AE F and G.

<sup>8</sup> Tr. 63-64; AE C.

<sup>9</sup> Tr. 65-66; AE E.

indicating that she telephonically contacted the creditors, had difficulty getting responses, and had sent dispute letters the day of her hearing.<sup>10</sup>

Applicant originally denied the debt in SOR ¶ 1.k (\$284), but at her hearing, she acknowledged it could be a medical debt she owed from about 2003 to 2005. She intended on paying the debt in March 2016. She also originally denied the medical debt in SOR ¶ 1.l, but acknowledged it was her debt from about 2003 to 2005. She hoped to pay the debt in March 2016.<sup>11</sup>

Applicant went on a cruise in 2008. She and her husband purchased a timeshare in 2012. Their monthly payments are \$235 and their annual maintenance payment is \$850. She provided documents to show she has paid her rent and utilities on time since October 2014.<sup>12</sup>

Applicant provided a copy of her budget for March 2016 through March 2017. Her budget for March 2016 included rent (\$1,030), tithes (\$660), other charity (\$40), electric (\$120), Sirius/XM (annual \$225), cable/phone (\$165/\$225), car loan (\$515), gym membership (\$40), Netflix (\$10), therapy (\$110), Spotify (\$25) and Lifelock (\$30).<sup>13</sup> In addition, Applicant listed debts such as her car loan, credit cards, a furniture loan, a Christmas loan, and other debts. The amounts to be paid on these debts varied in anticipation that the balances were being paid down each month. She provided a separate document listing her proposed plan to be debt free in the future. She listed the balances owed on debts she intends on paying in 2016 as \$12,226. She intends on having other debts paid in 2017 with current total balances of \$21,750. She indicated her timeshare would be paid off in 2018. Its current balance is \$13,000. She anticipated her husband's car loan (\$22,000) and her private student loans (\$18,800) would be paid off in 2019. Applicant noted on her proposed repayment plan that her student loans are deferred. In her budget she does not list her student loans and a payment amount was not included in her future plan or budget. At her hearing, she acknowledged she would have to budget for their repayment.<sup>14</sup>

Applicant indicated she has about \$1,000 in savings and about \$2,000 in a retirement account. Her husband has about \$3,000 in a retirement account. She testified she is making progress in paying some of her delinquent debts and intends to

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<sup>10</sup> Tr. 66-68, 70-71; AE H.

<sup>11</sup> Tr. 68-70.

<sup>12</sup> Tr. 46-48, 76; AE D.

<sup>13</sup> The amount Applicant lists for each expense is consistent through March 2017 except that the amount of her tithes fluctuates between \$660 to \$880.

<sup>14</sup> Tr. 72, 77-88; AE F and G.

pay all of her debts. She indicated she is taking a self-paced financial course and has taken financial wellness courses through her church.<sup>15</sup>

## **Policies**

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 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 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 access to classified information will be resolved in favor of 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 not drawn 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 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.

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<sup>15</sup> Tr. 88-89; 91; Answer to SOR.

Section 7 of Executive Order 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 for financial considerations is set out in AG ¶ 18:

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.

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.<sup>16</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has delinquent debts that she began accumulating in 2004. The above disqualifying conditions apply.

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

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<sup>16</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 was made aware that her debts were a security concern when she was interviewed in 2013. She indicated to the investigator that she forgot she had private student loans she owed from 2003 through 2005. She intends on resolving those loans by 2019. Applicant's remaining student loans total over \$58,000. They are in a deferred status. In June 2016 she will be required to make monthly payments. The amount of the payment is unknown. She had a vehicle repossessed in 2007 and owes a deficiency balance that she has not paid, but anticipated paying it by 2019 (SOR ¶ 1.d, \$9,449). During her 2013 interview, Applicant denied owing the debts alleged in SOR ¶¶ 1.j, 1.k, 1.l and 1.m, but at her hearing she admitted owing the medical debts in ¶ 1.k and ¶ 1.l. These debts were delinquent from 2003 to 2005. She indicated her intention to pay them, but had not at the time of her hearing. The remaining two debts in SOR ¶ 1.j and 1.m she disputed and she sent dispute letters to the creditors. In 2015, she paid the debt in SOR ¶ 1.i (\$338), a medical debt incurred in 2010. She incurred the debt in SOR ¶ 1.h (\$1,364) in 2011 and paid it in 2014. Applicant has resolved some debts, but others are not yet resolved. Considering the long period of time and inactivity on some of her debts, I cannot find they occurred under unique circumstances or are unlikely to recur. Her failure to timely address her financial problems cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to being young, poor decision-making, attending school, and periods of unemployment. It is understandable that as a young person Applicant was not sophisticated in handling her finances. This is somewhat beyond her control. Some of her unemployment was likely beyond her control, but it appears she also voluntarily took time off. This was within her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant was made aware in 2013 that her finances were a security

concern. She has been working since 2013. She made a budget, but it does not include planning for her biggest debt, her student loans. In addition, in 2012 she and her husband purchased a timeshare when she was aware she had a deficiency owed for a repossessed vehicle. She stated she forgot about her private student loan. She only recently paid some small debts that she was made aware of in 2013. I find AG ¶ 20(b) partially applies.

Applicant paid some of the debts alleged in the SOR. AG ¶ 20(d) applies to those debts. She also indicated she is participating in a self-paced financial course and has taken a financial wellness course at her church. Although Applicant has made some effort to pay some debts, there is insufficient evidence to conclude her finances are under control. She indicated she hopes to be debt-free by 2019, but failed to include her \$58,000 student loan debts in her computations, although she acknowledges she owes them. AG ¶ 20(c) partially applies.

Applicant indicated to the OPM investigator that she never had accounts with creditors alleged in SOR ¶¶ 1.j through 1.m, but later acknowledged two of them that she intends to pay. The remaining two she sent dispute letters to the creditors. AG ¶ 20(e) applies to 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.



Applicant is 32 years old. She served in the military and was honorably discharged. She is married. She recently earned a bachelor's degree. She has been employed since 2013. Applicant obtained two private student loans in 2003 to 2005. She testified that she was unable to pay them and then forgot about them. She intends to pay them in the future. She also obtained federal student loans that are deferred. She owes a deficiency balance on a car that was repossessed in 2007. She purchased a timeshare in 2012. Applicant's recent payment history for her monthly expenses shows she has consistently met her commitments. However, Applicant still has delinquent debts that are not paid. She acknowledges the debts and expressed her plans to pay them in the future. She is paying the small debts first. Applicant needs more time to implement her financial plan and show significant progress toward addressing her delinquent debts. At this juncture, Applicant does not have a reliable financial track record and her finances are a security concern. It is too early to conclude she will successfully follow through on her promises. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations.

### **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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraph 1.k-1.l:	Against Applicant
Subparagraph 1.m:	For 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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge