



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



In the matter of: )  
)  
) ISCR Case No. 14-01893  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

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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. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On September 4, 2014, the Department of Defense (DOD) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on February 7, 2015, and elected to have her case decided on the written record. On September 2, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on October 27, 2015, and it was received on November 17, 2015. Applicant was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. There were no objections by Applicant or Department Counsel to any evidence offered. The Government's documents identified as Items 2 through 9 and Applicant's documents marked as Items 10 through 22 are admitted into evidence. The case was assigned to me on December 10, 2015.

### **Findings of Fact**

Applicant did not admit or deny the allegations in SOR ¶¶ 1.a or 1.h. She denied the remaining allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. She served in the military as an inactive reservist from 1988 to 1991 and on active duty from 1991 to 2007. She was honorably discharged in the paygrade E-5. She married in 1994 and divorced in 1996. She has a child from the marriage who is 21 years old. Applicant completed a security clearance application (SCA) in December 2008, which is the most current included in the record. After being discharged from the military, she was unemployed from November 2007 until January 2008. She was interviewed by a government investigator in February 2013 and did not disclose any other periods of unemployment. She disclosed that she earned a bachelor's degree in 2012. In her response to the FORM, she provided a document to show that she completed the requirements to participate in a college graduation ceremony in November 2015. It is unknown if Applicant completed another degree.<sup>1</sup>

During Applicant's background investigation interview she acknowledged she filed bankruptcy under Chapter 13 in December 2009. She explained that in late 2008 her father became ill, and she was having difficulty paying her bills. Her father's care was her priority. She did not provide any amplifying information regarding what her actions were regarding his care and its impact on her finances. She indicated she did not recall the list of creditors regarding her bankruptcy, but indicated she had credit cards and a car loan that were included in the bankruptcy.<sup>2</sup> A review of Applicant's bankruptcy documents shows she listed the following creditors that are included in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.k, 1.m, 1.n, and 1.o. Applicant disclosed during her interview that the debts in SOR ¶¶ 1.d, 1.e, and 1.f were student loans she had obtained in 1989, 1990, and 1991, while attending college and that they were deferred. She disclosed that some of the debts brought to her attention by the investigator were in collection and she did not recall the status of others. As part of the Chapter 13 wage earner plan, she disclosed that she was to pay \$480 a month. The bankruptcy

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<sup>1</sup> Item 2, 22. The college graduation ceremony is for a different institution than Applicant disclosed during her 2013 interview.

<sup>2</sup> Item 9.

documents show that the bankruptcy was dismissed in March 2011 due to Applicant's failure to make the plan's payments.<sup>3</sup>

The debts alleged in the SOR are supported by credit reports from January 2009, December 2012, February 2013, and February 2014.<sup>4</sup> In addition, Applicant responded to government interrogatories on April 3, 2014. The interrogatories listed the debts she had discussed during her background interview that are now included in the SOR. It asked her to provide documentation as to her actions to resolve the debts. Applicant did not dispute any of the debts.<sup>5</sup>

Applicant had a child custody dispute with her ex-husband. She was required to pay child support. The state required the child support to be garnished from her wages. She paid \$500 monthly for child support, which included a portion for arrearages. In her interrogatory response she stated: "I have not paid any other accounts. I saved and paid 2 big sums on the child support. Once the child support is paid off I will pay the other debts."<sup>6</sup> In July 2015 her child support requirements were terminated.<sup>7</sup>

Applicant acknowledged during his background interview that the debt in SOR ¶ 1.b (\$3,337), was owed to an apartment complex for a broken lease when she vacated the apartment in June 2011 without providing notice to the landlord. During her interview, she indicated she intended to contact the creditor and resolve the debt. In her answer to the SOR, she denied the debt and stated it was no longer on her credit report.<sup>8</sup>

Applicant indicated in her answer to the SOR that the debts in ¶¶ 1.i (charged off - \$927); 1.k (charged off - \$493); and 1.m (charged off - \$6,877) are not on a February 2015 credit report. These debts are included in earlier credit reports.<sup>9</sup> There is no evidence she paid or resolved these debts. The debt in SOR ¶ 1.i was opened in October 2006, and the last activity on the account was in February 2009. The debt in SOR ¶ 1.k was opened in December 2008, and the last activity on the account was in January 2009. The debt in SOR ¶ 1.m was opened in June 2006, and the last activity on the account was in August 2008.

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<sup>3</sup> Items 4, 9.

<sup>4</sup> Items 3, 5, 6, 7, and 8.

<sup>5</sup> Item 9.

<sup>6</sup> Item 9.

<sup>7</sup> Item 13.

<sup>8</sup> Item 9; Answer to SOR.

<sup>9</sup> Items 3, 5, 6, 7 and 8,

Applicant indicated the debts in SOR ¶ 1.j (\$1,164) and ¶ 1.l (\$1,560) are for credit cards she reported to the credit bureau as lost or stolen. Her January 2009 credit report reflects they were reported as such.<sup>10</sup>

Applicant indicated that the student loans in SOR ¶ 1.d (\$2,037), ¶ 1.e (\$684) and ¶ 1.f (\$1,793) were consolidated and she began participating in a rehabilitation program in February 2015. She completed the nine month program in November 2015, and her loans were removed from delinquency status. She made her first payment of \$200 on the new payment plan. She provided supporting documents.<sup>11</sup>

In November 2014 Applicant contacted the collection account creditor for the debt in SOR ¶ 1.c (\$245), which was for cable service. She paid the collection account in November 2015. She provided supporting documents.<sup>12</sup>

In her answer to the SOR regarding the debts alleged in ¶¶ 1.g (\$925), 1.h (\$21,939), and 1.n (\$971), Applicant stated they are “a work in progress.” No further information was provided by her regarding these debts. The account in SOR ¶ 1.g is a telecommunication debt, which was opened in January 2004, and the last activity was February 2010; ¶ 1.h is an auto loan account opened in August 2008, and the last activity was November 2010; and ¶ 1.n is an account with a bank, which was opened in October 2006, and the last activity was March 2009. Applicant stated in her answer: “I am working to correct my past mistakes with all parties and fixing my credit history in the process.”<sup>13</sup> No information was provided by Applicant about the debt in SOR ¶ 1.o (\$90).

In response to the FORM, Applicant provided an undated letter from a law firm she stated she hired in September 2014 that is helping her with her “credit issues.” She indicated that now that her child support payments are complete she can focus on other bills. She also indicated that now that she completed college she will use her additional resources to pay delinquent debts.<sup>14</sup>

## **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 and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

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<sup>10</sup> Item 3.

<sup>11</sup> Answer to SOR; Response to FORM; Items 14, 15, 16, 17, 18, 19, 20.

<sup>12</sup> Item 21.

<sup>13</sup> Items 3, 5, 6, 7, 8, 9; Answer to SOR.

<sup>14</sup> Items 10, 12.

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 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.

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 relating to the guideline 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>15</sup>

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

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

Applicant filed Chapter 13 bankruptcy in 2009. She failed to make the payments on the plan and it was dismissed in March 2011. Applicant had numerous delinquent debts totaling approximately \$42,952. Some have been delinquent since at least 2008. There is sufficient evidence to support the application of both 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, 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;

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<sup>15</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 has delinquent debts that are not resolved. Some of the debts alleged in the SOR are no longer listed on her 2015 credit report. She failed to provide evidence that they were resolved or paid. Applicant's delinquent debts are still being addressed. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her failure to timely address her delinquent debts casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant indicated she began having financial problems when her father became ill in late 2008. She did not elaborate on the specific financial impact her father's illness had on her. She had a period of unemployment after leaving the military. These conditions were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. There is evidence she filed Chapter 13 bankruptcy in 2009, but failed to maintain the required monthly payments and it was dismissed. In 2015, after receiving the SOR, Applicant began a rehabilitation program regarding her student loans. She hired a law firm to help her with credit issues. In November 2015, she paid the debt in SOR ¶ 1.c. Her failure to complete her Chapter 13 payment plan and failure to take action on debts until after she received the SOR does not show she acted responsibly. Applicant has debts that are no longer on her most current 2015 credit report. There is no evidence that she paid them or took action to resolve them. I find AG ¶ 20(b) partially applies.

Applicant hired a law firm to help her resolve her credit issues. I assume that she is receiving some type of financial counseling from the firm. She has paid one small debt and her student loans have been removed from delinquency status. Her actions show that she is attempting to address some of her delinquent debts. However, her response that some debts are a "work in progress" indicate that there are not yet clear indications that her financial problems are being resolved or are under control. AG ¶ 20(c) partially applies.

Applicant's obtained her student loans in 1989, 1990, and 1991. Although they may have been deferred for a period, it cannot be overlooked that she did not take action to start to pay them until February 2015, more than 25 years from when she received her first loan. She participated in a rehabilitation program and has made one payment since the loans were removed from delinquency status. She paid the debt in SOR ¶ 1.c, but none of the other debts alleged have been resolved. AG ¶ 20(d) marginally applies to these debts.

Applicant denied all of the debts in the SOR and did not respond to two of the allegations. There is sufficient evidence to conclude the debts alleged belonged to her. The fact that some of the debts are not listed on her most recent credit report does not mean that she resolved them. She disputed the debts in SOR ¶¶ 1.j and 1.l indicating her credit cards were lost or stolen. The dispute is noted on one of the credit reports. I find in her favor on these allegations. Applicant did not provide documentary proof to dispute the legitimacy of the remaining debts.

### **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(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 45 years old. She served in the military and received an honorable discharge. Applicant has a history of financial problems dating from at least 2008. She filed Chapter 13 bankruptcy in 2009, but failed to make the required payments, and it was dismissed in 2011. After receiving the SOR, she began to address her delinquent student loans and she paid one small debt. Some of her debts are no longer included on a recent credit report. Applicant did not provide evidence that she resolved these debts. She indicated other remaining debts are a "work in progress" but failed to articulate what that meant. Although Applicant is now working with a law firm to help her with her credit issues, she does not have a reliable track record to conclude her finances are stable and she will be diligent in following through on resolving her financial problems. 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 arising under Guideline F, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge