



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case: 12-11587
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Catie E. Young

July 15, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on 16 debts (three of which were duplicates) in the total amount of \$58,259. She resolved only three of those delinquent debts and remains indebted to ten creditors. She failed to meet her burden to establish mitigation. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 10, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (AG) effective September 1, 2006.

Applicant answered the SOR on December 8, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 28,

2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2016, scheduling the hearing for May 9, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through S, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on May 19, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits on May 17, 2016, marked AE T through AE CC. Department Counsel had no objections to AE T through AE CC, and they were admitted. The record then closed.

### **Findings of Fact**

Applicant is 32 years old. She has worked for a government contractor since December 2009 and has held a security clearance in connection with her position since that time. (GE 1; AE S; Tr. 25.) She served in the Marine Corps for eight years. (AE D; AE E; AE P; AE S; Tr. 26, 81) She has never had a security violation. (Tr. 25-26.)

Applicant married in 2002 and separated from her first husband in 2004. Their divorce was finalized in 2006. (AE K; Tr. 27-28.) She is remarried. (Tr. 30.) Applicant has a 12-year-old daughter with her first husband. (Tr. 37, 79.)

The SOR alleged Applicant was delinquent in repaying 16 debts in the total amount of \$58,259. In her Answer, Applicant admitted SOR ¶¶ 1.a, 1.f, 1.m, and 1.p. She denied SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.n, and 1.o. Her debts are documented in the record credit reports dated May 22, 2012; August 10, 2015; February 8, 2016; and May 8, 2016 (GEs 3 through 6.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant admits that she is indebted to a collection company in the amount of \$4,882, as alleged in SOR ¶ 1.a. Applicant claims this debt is the same as the debt identified in SOR ¶ 1.f, below. Applicant's February 2016 credit report indicates this collection account originated with the same creditor identified in 1.f. As a result, I find SOR ¶¶ 1.a and 1.f are the same debt. This debt was for a credit card she opened with this creditor after her marriage ended. It became delinquent in 2009. She was only earning \$9 per hour at that time, and used the credit card to make ends meet. She testified she contacted the original creditor three or four years ago to investigate the alleged delinquency. The original creditor referred her to the collection agent. She failed to take further action on this debt until April of 2016, when she sent letters to the credit reporting agencies to contest this debt. (AE A.) Until April 2016, she "put it on the back burner." (Tr. 38.) She testified that she is waiting to hear back from the credit reporting agency to hear who legally owns this debt so that she can make payment arrangements or resolve the debt in full. This debt is unresolved. (GE 5; Tr. 33-39, 50, 68.)

Applicant was indebted to a collection company in the amount of \$3,556, as alleged in SOR ¶ 1.b. Applicant claimed this debt is the same as that identified in SOR ¶

1.j. Applicant's February 2016 credit report indicates this collection account originated with the same creditor identified in ¶ 1.j. As a result, I find SOR ¶¶ 1.b and 1.j are the same debt. It has been delinquent since 2012. Applicant testified she is contesting both of these entries on her credit report because she does not know which debt collection agency legally holds this debt or how the debt was originally incurred. In April 2016, she sent a dispute letter to the credit reporting agencies, formally contesting this debt. She has not contacted either of the listed creditors directly. She failed to address this debt prior to April 2016 because she "didn't need her own credit right now, so [she] kept just prioritizing [her] regular family li[fe] and [her] house." (Tr. 41.) When she learns who owns this legitimate debt, she is willing to resolve it. This debt is unresolved. (GE 5; AE B; Tr. 39-42.)

Applicant was alleged to be delinquent on a retail store credit account in the amount of \$428, in SOR ¶ 1.c. This debt is the same account as the debt alleged in SOR ¶ 1.i. Applicant testified she never had an account with this store. However, during an interview with an agent from the Office of Personnel Management (SI), she disclosed, "She has a [store name] account (Number unknown) she opened sometime in 2006 and that she used [it] to purchase clothing." (GE 2.) Applicant filed a written dispute with the credit reporting agencies. She claimed she attempted to investigate this debt with the creditor in March 2013, but the creditor could find no account in Applicant's name. She presented no documentation from the creditor to substantiate her claim. This debt is unresolved. (GE 3; AE C; Tr. 42-44, 57-59.)

Applicant was alleged to be indebted on a delinquent medical debt in the amount of \$282, in SOR ¶ 1.d. Applicant testified that she called the hospital in April 2016 and requested documentation to substantiate this debt, because she did not live in the state where the hospital is located at the time of the charge. She had not received that documentation at the time of the hearing. In AE F, she presented a bill from a medical creditor requesting payment of \$85.54, which she claimed related to this debt. However, the account numbers do not appear to match. She failed to present anything in writing to document her dispute. This debt is unresolved. (AE F; Tr. 44-47.)

Applicant was alleged to be indebted on a delinquent medical debt in the amount of \$223, in SOR ¶ 1.e. Applicant testified that she did not know what this debt was for, but that she had not yet formally disputed this account. This debt is unresolved. (Tr. 47.)

Applicant was alleged to be indebted on a delinquent credit union account in the amount of \$14,678, in SOR ¶ 1.g. Applicant contends that this is the same account as the debt alleged in SOR ¶ 1.i, which is delinquent in the amount of \$15,000, but failed to introduce evidence to substantiate this claim. Applicant admitted to having one credit card with this creditor during the course of her first marriage, but claimed that she was only an authorized user on this account. Further, she claimed that her ex-husband was assigned this debt in their marital separation agreement. (AE K.) She presented a letter from him stating that he was responsible for this debt. (AE G.) At the time of the

hearing, she had not contacted the creditor to verify the origin of this debt or to arrange repayment. This debt is unresolved. (Tr. 47-50, 53-54.)

Applicant was alleged to be indebted on a delinquent credit union account in the amount of \$10,500, in SOR ¶ 1.h. Applicant testified it was for a vehicle loan. A credit report dated May 2012 reflects that this debt was paid as agreed. It is resolved. (GE 3; GE 4; Tr. 51-53.)

Applicant was alleged to be indebted on a loan account from a credit union in the amount of \$15,000, in SOR ¶ 1.i. Her post hearing documents show she acquired this loan in 2006. This debt was assigned to Applicant as her separate debt in her divorce decree. The loan number, documented on AE U, does not match the auto loan account number discussed above in SOR ¶ 1.h, and as such it appears to be a separate debt. It is unresolved. (GE 3; AE T; AE U; Tr. 47-50, 53-54.)

Applicant was indebted on a delinquent collection account in the amount of \$135, as alleged in SOR ¶ 1.k. This debt was for a cable bill that was placed for collection. Applicant inquired about the debt with the original creditor and was told that the company was unable to verify this account belonged to Applicant. Subsequently, Applicant produced a letter from the original creditor dated May 4, 2016, that stated, "we have made the decision to discontinue our collection efforts," and indicated the account would be deleted from her credit reports. This debt is resolved. (AE V; Tr. 55-57.)

Applicant was indebted on a delinquent, charged-off account in the amount of \$281, as alleged in SOR ¶ 1.m. Applicant testified that she believes this debt is the same as the medical debt identified in SOR ¶ 1.d, but the account numbers for these debts did not appear to match. She has contested this debt with the credit reporting agencies. She has not tried to contact the alleged creditor because the entry on her credit report does not specifically identify the name of the collection agent. This debt is unresolved. (GE 2; Tr. 59-61.)

Applicant was indebted on a delinquent collection account in the amount of \$569, as alleged in SOR ¶ 1.n. Applicant testified she did not recognize this debt. She had not formally contested this debt with the credit bureaus at the time of the hearing because she was busy addressing her other debts and it does not appear in her most recent credit report. Applicant disclosed in her SI that she believed this debt related to a utility bill and that she would research this debt. It remains unresolved. (GE 2; Tr. 61-62.)

Applicant was indebted on a delinquent collection account in the amount of \$260, as alleged in SOR ¶ 1.o. This debt was for a telecommunications bill. She currently uses this service provider and her account is current. She contacted this creditor and the representative was unable to find a delinquent account in her name. She subsequently filed a formal dispute with the credit reporting agencies. This debt is resolved. (AE H; AE O; AE W; AW X; Tr. 63-65.)

Applicant was indebted on a delinquent collection account in the amount of \$73, as alleged in SOR ¶ 1.p. This debt was for a water bill. She has not contacted the original creditor about this debt. She contacted a collection agent handling this debt but was unable to establish if this debt belonged to her. She intends to further research this debt. This debt is unresolved. (Tr 65-67.)

Applicant presented a certificate of achievement, dated April 7, 2016, for her participation in a budgeting class. (AE L.) Applicant has a monthly net remainder of "\$1,622 -1325". (AE X.) Her bank account statements reflect that as of March 31, 2016, she has a \$13,247.21 balance in one account at \$00.06 in another. (AE M; AE N.) She has an additional \$13,227 in a retirement account. (AE CC.) In her SI, dated July 31, 2012, Applicant described her financial situation as "settling down" and indicated she would research and address her delinquencies. (GE 2.) Despite having some disposable income, she has not documented any payments on her legitimate delinquencies.

Applicant was awarded the Navy and Marine Corps Achievement Medal; the Marine Corps Good Conduct Medal; the Global war on Terrorism Service Medal; the Global War on Terrorism Expeditionary Medal (Iraq); the National Defense Service Medal; and the Presidential Unit Citation-Navy. (AE P; AE S.) She has earned a number of certificates for completion of training and for outstanding performance in other areas including track and field. (AE R.) Her on-site supervisor, a professor, colleagues, and fellow Marines recommend Applicant for a security clearance because they believe she is honest, trustworthy, and loyal. (AE O.) Her performance appraisals reflect she has a good work ethic and is a valued employee. (AE Q.) Additionally, Applicant presented an email praising her for her solid performance. (AE BB.)

## **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 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. 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, “[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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant was alleged to be delinquent on 16 debts in the total amount of \$58,259. Of those debts, she established that three debts were duplicated entries (SOR ¶ 1.a is the same as ¶ 1.f; SOR ¶ 1.b is the same as ¶ 1.j; and SOR ¶ 1.c is the same as ¶ 1.l).<sup>1</sup> Of her remaining 13 debts, she resolved only three of them (SOR ¶¶ 1.h, 1.k, and 1.o). Her remaining ten delinquencies establish both an extended history of delinquencies and an inability or unwillingness to satisfy her financial obligations. She has known these debts were of concern to the Government since at least 2012, but has taken little action to resolve them. The evidence raises security concerns under the above conditions, 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.

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<sup>1</sup> While the underlying debts are not resolved, SOR allegations ¶¶ 1.f, 1.j, and 1.l are held in Applicant's favor, below, only to avoid double counting them.

Applicant's financial problems are recent. She has resolved the debts alleged in SOR ¶¶ 1.h, 1.k, and 1.o, but has documented few actions on her remaining debt. Her testimony shows that she has not prioritized repaying her delinquent debt, and she has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant blamed her financial problems on underemployment, and prioritizing her immediate needs and desires over repaying her past delinquencies. She failed to document that her debts were largely caused by circumstances beyond her control. She took responsibility for her irresponsible habits, but failed to demonstrate responsible behavior under the circumstances and did not address her debts in a timely manner. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant provided a certificate of achievement for her participation in a budgeting class as evidence of financial counseling. However, there are no clear indications that her financial problems are being resolved or are under control. Further, her documentation failed to support her claim that she is making a good faith effort to resolve her debts. The evidence shows only a recent flutter of activity to contest debts or contact some, but not all, of her remaining creditors. Her recent actions do little to establish she is acting in good faith to address her debts, instead of ineffectively reacting to the SOR. Mitigation under AG ¶¶ 20(c) and 20(d) have not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not provided any evidence of any formal dispute or a basis for one. While she contested several of her debts with the credit bureaus, she largely admitted owing the underlying debts. Simply filing a dispute with a credit reporting agency does not provide evidence of mitigation under AG ¶ 20(e) on those debts where Applicant admits to the underlying financial obligation, without a more concrete reason for a dispute. Other debts like those identified in SOR ¶¶ 1.e, 1.g, 1.m, 1.n, and 1.p, have not been formally disputed. Mitigation under AG ¶ 20(e) has not been fully established.

### **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.

According to 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 has been a dedicated employee since 2009. She served honorably in the Marine Corps for eight years. She has a reputation for outstanding work. However, she is a mature adult and responsible for her choices and financial obligations. Her financial decisions reflect that she lacks the responsibility, judgment, and trustworthiness required to hold a security clearance. Overall, 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 Financial Considerations security concerns.

### **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:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	For Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	For Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l:	For Applicant
Subparagraphs 1.m:	Against Applicant
Subparagraphs 1.n:	Against Applicant
Subparagraphs 1.o:	For Applicant
Subparagraphs 1.p:	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.

Jennifer I. Goldstein  
Administrative Judge