



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-02574  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

08/22/2017  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns. Applicant mitigated the personal conduct security concerns due to the passage of time. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 15, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order (Exec. Or.) 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 implemented by the DoD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs

apply to all adjudicative decisions issued on or after June 8, 2017, including this one.<sup>1</sup> Any changes resulting from the issuance of new Adjudicative Guidelines did not affect my decision in this case.

Applicant answered the SOR on August 8, 2016, and requested a decision on the administrative record, in lieu of a hearing. On October 25, 2016, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 8. Applicant received the FORM on November 4, 2016. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on November 28, 2016, and submitted several documents. She did not object to the Government's evidence.

The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 8 are admitted into evidence without objection. The documents Applicant submitted with her answer were marked as Applicant's Exhibits (AE) A through AE L, and her FORM Response documents were marked as AE M through AE Q. AE A through AE Q are admitted without objection. The case was assigned to me on August 8, 2017.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a-1.j, and ¶¶ 2.a, 2.b, and 2.d. She denied SOR ¶ 2.c, with explanations and documents. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 41-year-old employee of a defense contractor. She has worked on and off for various employers in the defense industry, with a clearance, since about August 2007. Applicant earned her bachelor's degree in systems information in 2015. (AE K, AE L; Items 2, 3, 4)

After a year as a cashier (2001), Applicant worked as an administrative assistant with a local city government from 2002 to 2005. She was laid off when the contract ended. She was then unemployed from May 2005 until August 2007. She then worked as a helpdesk technician for a defense contractor until November 2008 (SOR ¶ 2.c).<sup>2</sup> She was hired by another defense contractor a month later, but was terminated in July 2009 after she over-used her company cellphone. (SOR ¶ 2.d). (Item 4)

Applicant worked for another defense contractor, in a similar position, from July 2009 to May 2010. She left that position due to complications with a pregnancy. She was on bedrest until the baby was born, in January 2011, and then she cared for the

---

<sup>1</sup> The new Adjudicative Guidelines are available on the DOHA website at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

<sup>2</sup> SOR ¶ 2.c alleged Applicant was terminated for tardiness and absences, but the Government withdrew the allegation based on her answer. (AE J; FORM at 4)

baby until daycare started in November 2011. She then had sporadic employment until she was hired by another defense contractor in August 2012. She was laid off again in January 2015. She was unemployed until September 2015, when she was hired by her current employer. (AE A; Items 2, 3, 4).

Applicant was married from February 2010 to October 2015. She and her former husband separated in about May 2013. In April 2014, she was granted a judgment of limited divorce, including sole legal and physical custody of their daughter (now age 6). Applicant's ex-husband was ordered to pay her \$777 a month in child support. The divorce was finalized in October 2015. (Item 2) She also has two daughters, ages 10 and 17, with a former boyfriend. The child support debt at SOR ¶ 1.a relates to these two children. (Item 2)

The relationship between Applicant and her boyfriend led to incidents of abuse and domestic violence. In July 2002, they had an argument. While she was holding their two-year-old daughter, Applicant picked up a knife and cut or stabbed her boyfriend with it. She was subsequently charged with second-degree assault, reckless endangerment, and assault with a deadly weapon with intent to injure. The charges were dismissed a month later.<sup>3</sup> (SOR ¶ 2.a) (Items 2, 8, FORM Response)

In April 2005, Applicant and the boyfriend had an argument and physical altercation outside their daughter's school. Both were arrested, but no charges were filed. (SOR ¶ 2.b) (Item 2, FORM Response)

Applicant ended the relationship in 2008. She moved out and left her two children with him. The boyfriend then sought custody, a dispute which took a year-and-a-half to resolve in court. He was awarded custody of the two girls, and Applicant was ordered to pay child support. Applicant explained that the child support was back-dated to the date when her boyfriend, the custodial parent, filed the suit. As a result, Applicant's child support has been in arrears since the child support order was issued. (Item 2, 3)

Applicant's sporadic employment impacted her ability to pay her child support obligations and also led to other delinquent debts. She reported the child support debt on her September 2012 security clearance application. She indicated she was about \$25,000 in arrears at that time. She was not able to pay the child support when she was on bedrest before her third daughter was born, and during other periods of unemployment. (Item 3)

Applicant's credit reports show that she owed between \$30,000 and \$40,500 in past-due child support between September 2012 and May 2016).<sup>4</sup> \$853 of her 2013 federal tax refund was applied towards the debt. As of March 2016, her employer

---

<sup>3</sup> Three weeks before this incident, Applicant was in another physical altercation with the boyfriend, and was taken to the hospital in an ambulance. She attempted to get the relevant medical records from the hospital for verification but was unable to do so. (FORM Response; AE M)

<sup>4</sup> Items 5, 6, 7.

received an order from child support authorities to withhold \$913 monthly from her pay, with \$100 a month allocated to arrears. (AE F, AE H)

Applicant's most recent payment summary, from September 2016, shows that she had paid \$58,376 in total child support since March 2009. As of November 2016, she was paying \$1,063 a month in child support (\$813 for current obligations, and \$250 for arrears). (AE O) Her Applicant has documented several years' worth of child support payments, though there are gaps when she was unemployed. She also still owed about \$40,571 in child support at that time. (AE E, AE P)

Going forward, there is no documented indication that Applicant arranged to have her child support payments withdrawn from her pay, or had set up another payment schedule. She provided no documents establishing such a payment plan. She also did not provide sufficient documentation establishing her current income.

Applicant fell behind on some of her other SOR debts in 2014, and her delinquencies increased after she lost her job in January 2015. This included ¶¶ 1.b (a charged-off consumer debt for \$11,465); 1.c (a charged-off debt for \$2,475); 1.d (a consumer debt in collection for \$2,012); 1.e (a charged-off debt to a department store for \$1,982); 1.f (a charged-off debt to another department store for \$1,900); 1.g (a charged-off consumer debt for \$1,481); 1.h (a charged-off credit card debt for \$996); 1.i (an unidentified delinquent medical debt for \$200); and 1.j (a consumer debt in collection for \$2,476). (Items 1, 2, 6, 7)

Applicant provided several bank account statements from 2015. As of December 31, 2015, she had less than \$30 in her bank accounts. She also had an auto loan with a balance of over \$31,000. She was paying \$340 a month towards the loan automatically. (AE N) Applicant provided no more recent financial information about her monthly income or expenses. She indicated that she has moved in with family to cut down expenses, and she stated she is avoiding large purchases. (FORM Response)

In October 2016, Applicant entered into an agreement with a debt settlement company. Under the agreement, she is to pay \$198 every two weeks. The company proposed to pay off or settle \$22,500 of her debts for an estimated \$16,800 to \$18,600. (AE Q) Applicant did not provide proof of any payments towards this agreement, nor did she provide proof that any of her SOR consumer debts have been paid, through the agreement or otherwise).

## **Policies**

It is well established that no one has a right to a security clearance.<sup>5</sup> As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent

---

<sup>5</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

standard indicates that security determinations should err, if they must, on the side of denials.”<sup>6</sup>

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(a), 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.”

Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the 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.” The applicant 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern 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. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

---

<sup>6</sup> 484 U.S. at 531.

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

Applicant has numerous unresolved delinquent debts. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has had several periods of unemployment since 2007, when she began working in the defense industry. These were largely due to circumstances beyond her control, such as multiple job lay-offs, and a pregnancy with complications.<sup>7</sup> As a result, she fell behind on her child support obligations and other debts. The first prong of AG ¶ 20(b) applies.

For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. She has had difficulty making a dent in her child support delinquency, which remains significant. However, she also documented that she has attempted to remain compliant with her obligations and has kept the authorities informed when her employment changes. AG ¶ 20(b) applies as to SOR ¶ 1.a. It also applies to mitigate the small medical debt at SOR ¶ 1.i.

However, with respect to her other debts, Applicant did not provide sufficient information that she acted responsibly under the circumstances to warrant full credit

---

<sup>7</sup> Applicant's termination in 2009 after over-using her company phone was not a circumstance beyond her control, but it also pre-dates the SOR debts.

under AG ¶ 20(b). Similarly, as to her non-child support debts, she did not establish enough of a track record of steady payments or other evidence of financial stability to show that she “initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts” as required under AG ¶ 20(d).

The DOHA Appeal Board has noted that:

An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 07-06842 at 3 (App. Bd. May 21, 2008).<sup>8</sup>

Applicant signed up for a debt management program in October 2016, but provided no documents to establish that she was actively participating in the program, or is otherwise executing a reasonable plan to repay her creditors or otherwise resolve her debts. AG ¶¶ 20(b) and 20(d) are not fully applicable.

There is insufficient evidence to find that through the debt reduction program, she “is receiving financial counseling for the problem from a legitimate and credible source.” There is limited information about her current finances through which she might establish that her attempts to resolve her significant delinquencies are reasonable under the circumstances. Further, her bank statements indicated that she had a \$30,000 car loan, was living paycheck to paycheck, with no savings to use to pay off her significant debts. Applicant did not establish that her financial problems are being resolved and are under control. AG 20(c) does not apply.

Likewise, there is insufficient evidence to conclude that her financial issues are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

---

<sup>8</sup> ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009); *see also* ISCR Case No. 09-08462 at 3 (May 31, 2011).

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

Applicant was in a volatile and abusive relationship with her boyfriend, the father of her two older daughters. She was twice arrested, in 2002 and 2003, for her part in physical altercations with him. In the first, she stabbed or cut her boyfriend with a knife while holding their infant child in her arms. This led to felony charges against her. In addition, Applicant was terminated from a job in 2009 after over-using her company cell phone. AG ¶¶ 16(c) applies.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The above mitigating conditions fully apply. Applicant's two arrests occurred about 15 years ago. She has not had any other criminal charges or arrests since then. She ended the relationship with the boyfriend in 2008. Applicant's termination in 2009 after over-using her company cellphone was an isolated incident that occurred eight years ago. AG 17¶¶ 17(c) and 17(d) apply to mitigate the personal conduct security concerns.

### **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(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 Guideline F and Guideline E in my whole-person analysis. I also considered the factors that led to Applicant's financial difficulties and the steps she has taken to rectify them. Applicant did not provide sufficient evidence that she has a reasonable plan for repaying her delinquent debts. I conclude Applicant did not mitigate the financial considerations security concerns. She mitigated the Guideline E security concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

### **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:	For Applicant
Subparagraphs 1.b-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Subparagraph 2.c:	Withdrawn
Subparagraph 2.d:	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 security interest of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

---

Braden M. Murphy  
Administrative Judge