



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-05097
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., and Benjamin Dorsey, Esq., Department  
Counsel

For Applicant: *Pro Se*

07/19/2017

**Decision**

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 12, 2014. On February 29, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

On March 21, 2016, Applicant answered the SOR (SOR Answer), and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 25, 2016, and the case was assigned to me on February 2, 2017. On February 8, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 1, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 7 were admitted into evidence without objection. I appended to the record the Government's exhibit list as HE I. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. At Applicant's request, I left the record open to March 24, 2017. Applicant did not provide any additional documents. DOHA received the transcript (Tr.) on March 8, 2017.

On June 8, 2017, the DOD implemented new AG.<sup>1</sup> Accordingly, I have applied the June 2017 AG.<sup>2</sup> However, because the September 2006 AG were in effect on the date of the hearing, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

### **Findings of Fact<sup>3</sup>**

Applicant, age 51, has never been legally married.<sup>4</sup> She has three children, two of whom are now adults and one of whom is now deceased. She received a bachelor's degree in 2010. She has steadily worked full time as an administrative assistant or data analyst for defense contractors since at least 2002. For the past five years, she has been contracted out to the same government agency. She previously worked as a civilian in the U.S. Navy from approximately 1986 through 1993. Applicant has held a security clearance since approximately 1984 or 1989.<sup>5</sup>

The SOR alleged 16 delinquent debts totaling \$94,883, as follows:

- four apartment-rental accounts (three court judgments and one in collection status) totaling \$6,334 (SOR ¶¶ 1.a, 1.c, 1.d, and 1.o);
- five medical accounts (one court judgment and four in collection status) totaling \$32,320 (SOR ¶¶ 1.b, 1.k-1.n);
- a \$29,154 federal tax lien (SOR ¶ 1.e);

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

<sup>3</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from the SOR Answer, the SCA (GE 1), and the summaries of Applicant's January 12, 2015 and April 15, 2015 interviews with an investigator in connection with this security-clearance investigation (GE 2).

<sup>4</sup> In 1993, she was married briefly to a man whom she later discovered had been already married. Their marriage certificate was never filed and deemed null and void. Tr. at 28.

<sup>5</sup> See also Tr. at 8, 29-31, 35, 78. Applicant provided these two dates during the hearing. The discrepancy was not resolved.

- two State A tax liens totaling \$6,379 (SOR ¶¶ 1.f and 1.g);
- a \$10,576 federal student-loan account in collection status (SOR ¶ 1.h);
- a \$8,341 balance owed on an automobile loan after a voluntary repossession (SOR ¶ 1.i);
- a \$1,047 charged-off furniture account (SOR ¶ 1.j); and
- a \$782 cell-phone bill in collection status (SOR ¶ 1.p).

Applicant's admissions to three of these debts (SOR ¶¶ 1.e, 1.i, and 1.o) total \$41,006. The SOR also alleged a 2005 Chapter 7 bankruptcy that was discharged in 2006 (SOR ¶ 1.q), use of a company-issued travel card for personal expenses (SOR ¶ 1.r), a 1984 arrest for felony credit-card fraud (SOR ¶ 1.s), and a 1997 arrest for misdemeanor issuance of a bad check (SOR ¶ 1.t). Applicant admitted the allegations set forth in SOR ¶¶ 1.q and 1.r.

Applicant moved out of her apartment, without sufficient notice under the terms of her lease, in 2013 when her father became ill and she needed to help with his care. Her landlord placed the account for collections in the amount of \$3,511 (SOR ¶ 1.o). She plans to pay this debt once she resolves her IRS and student-loan debt.<sup>6</sup> Before moving out, she paid her monthly rent late three times because of her pay-schedule. Each time, the landlord obtained a judgment against Applicant. The total amount for all three judgments was \$2,823 (SOR ¶¶ 1.a, 1.c and 1.d). Applicant claimed, without providing any corroborating documentation, that she paid all rents due before the court dates of the judgments which resulted in them being dismissed.<sup>7</sup>

Applicant incurred medical bills for services rendered by Hospital A in connection with her gall bladder surgery and follow-up appointments, which occurred on a date not specified in the record. By 2014, Hospital A had placed five accounts for collection in the total amount of \$2,081, of which the Government alleged only three totaling \$1,361 (SOR ¶¶ 1.k-1.m). Only two of those accounts (both unalleged debts totaling \$720) appeared on her credit report in 2015, and none appeared in 2016. At the hearing, Applicant testified that another \$29,605 medical-collection account also related to this surgery (SOR ¶ 1.n). That account appeared on her credit report in 2014 but not in 2015 or 2016. At the hearing, Applicant claimed that her health insurance should have covered 100% of these medical bills, and that she disputed the account with a credit bureau (on a date not specified). During her 2015 interview, Applicant explained that she changed jobs at the end of the month in which her surgery occurred and that, because the hospital did not file her claim until the following month after her insurance had expired, her insurance company refused to pay the bills. She did not mention whether the follow-up appointments occurred before or after her insurance expired. Applicant did not provide any corroborating documents in support of her claims.<sup>8</sup>

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<sup>6</sup> See also GE 5-7; Tr. at 47-49.

<sup>7</sup> See also Tr. at 68-70. One of the judgments may relate to a cleaning fee (Tr. at 48; GE 2 at p. 7-8).

<sup>8</sup> See also GE 7 at p. 10-11; GE 6 at 2; GE 7; Tr. at 49-52, 70-72. I will consider any unalleged debts only to evaluate mitigation and whole person.

In July 2013, the IRS filed a \$29,154 tax lien against Applicant for taxes owed in tax years 2007 through 2012 (SOR ¶ 1.e). Applicant attributed the lien to taxes that accumulated from 1) a \$7,000 inheritance she received in 2004; and 2) her employer not deducting enough taxes from her pay in 2010. Since then, she has incurred additional fees and penalties. In 2012, she hired Tax Firm A to assist her in negotiating with the IRS. Applicant claimed, during her 2015 interview, that she made monthly \$200 payments to the IRS beginning in 2011 until she was laid off in 2014. At the hearing, she could not recall having made any direct payments to the IRS, but rather that the IRS had taken her tax refunds over the years to apply towards the balance due. She admitted that she had not contacted the IRS until after she received a letter from them. Tax Firm A expected to receive a letter from the IRS within a few weeks of February 28, 2017, confirming a proposal that they sent on a date not specified in the record. Without providing dates or specific details, Tax Firm A stated that Applicant has been on “various” resolution programs during the course of their representation. At the hearing, Applicant confirmed that the IRS had not yet made a decision on the proposal.<sup>9</sup>

In 2012, State A filed two tax liens against Applicant totaling \$6,379 (SOR ¶¶ 1.f and 1.g). Applicant claimed that both liens had been released due to a residency status error. Applicant proffered a credit report evincing the release of the larger of these two liens (SOR ¶ 1.g/\$5,863). She did not provide corroborating documentation as to the release of the other lien (SOR ¶ 1.f/\$516).<sup>10</sup>

In 2004, Applicant borrowed \$6,618 from the federal government to help her daughter pay for school. In June 2016, the account had been placed for collections with a balance of \$13,335 (SOR ¶ 1.h) and Applicant was accepted into a loan rehabilitation program. Under the terms of that program, she agreed to timely pay the collection company at least nine monthly payments of \$181 beginning June 2016. At the hearing, without providing any corroborating documentation, Applicant claimed that she has not missed a payment.<sup>11</sup>

In December 2006, Applicant leased a \$26,400 car with monthly payments of \$550. When she could no longer afford the monthly payment due to a salary reduction, she voluntarily surrendered her vehicle (on a date not specified in the record). By 2014, the lender had charged off the account in the amount of \$8,291 for the balanced owed after the car sold (SOR ¶1.i). Applicant plans to pay this debt once she resolves her IRS and student-loan debt.<sup>12</sup>

In May 2013, Applicant financed the purchase of a bedroom set in the amount of \$1,727. She stopped making payments due to a salary reduction. In February 2014, the creditor charged off the account in the amount of \$1,047 (SOR ¶ 1.j). Without providing

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<sup>9</sup> See also AE B, GE 5-7; Tr. at 62-68, 83-87.

<sup>10</sup> See also Tr. at 60-62; AE A at 2.

<sup>11</sup> See also AE D; GE 5-7; Tr. at 39-41, 60.

<sup>12</sup> See also GE 5-7; Tr. at 52-53, and 60.

any corroborating documentation, Applicant claimed that she disputed the account with a credit bureau on the basis that the debt was unknown to her. However, during her 2015 interview, she acknowledged the debt and promised to pay it.<sup>13</sup>

Applicant disputed SOR ¶ 1.p (cell-phone collection account/\$786) on the basis that she does not have a cell-phone account with the originating creditor. At the hearing, without providing corroborating documentation, Applicant claimed (on a date not specified) that she filed a dispute on-line with a credit bureau. The account appears on her credit report in 2014, but not in 2015 or 2017. At the hearing, Applicant opined that she would make arrangements to pay the account if it were determined to be valid.<sup>14</sup>

In 2005, Applicant filed a Chapter 7 bankruptcy (SOR ¶ 1.q) because she was unable to pay her debts totaling approximately \$10,000 after having “overextended herself financially” by “living beyond [her] means.”<sup>15</sup>

In 2007, Applicant used her company-issued travel credit card to pay for personal expenses totaling approximately \$1,300 in violation of company policy (SOR ¶ 1.r). Applicant’s supervisor verbally reprimanded her and directed her to pay the account in full by a certain date, which she did. She may also have had a ten-day suspension.<sup>16</sup>

Applicant was found guilty of credit-card fraud and credit-card theft (both misdemeanors) in June 1984 (SOR ¶1.s). She was also found guilty of issuing a bad check (a misdemeanor) in March 1997 (SOR ¶ 1.t). The 1984 charge involved Applicant using a calling card, which she knew to have been stolen by a friend, to make a phone call. In the SOR Answer and during the hearing, Applicant denied the 1997 charge and claimed that it related to her brother.<sup>17</sup>

Applicant attributes her post-bankruptcy financial problems to a period of underemployment and to financially assisting her adult children (with school, living, and other expenses, as needed). She has been always been a single parent without the assistance of child support. During a ten-month period between 2013 and 2014, Applicant’s annual salary with Contractor A was reduced from \$89,000 to \$46,000 due to contract-funding issues. She left Contractor A to take a position with Contractor B for an annual salary of \$76,000, which she continues to earn with her current employer who took over the contract for Contractor B. Besides the credit counseling that she presumably received in connection with her bankruptcy proceedings, she also received some credit counseling from her current employer. Applying what she learned from her

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<sup>13</sup> See also GE 7 at p.10; Tr. at 51-52.

<sup>14</sup> GE 5-7; Tr. at 46-47.

<sup>15</sup> See also Tr. at 45-46, 74.

<sup>16</sup> See also Tr. at 32, 45, 82-83.

<sup>17</sup> GE 3 and 4; Tr. at 42-44.

recent counseling, she created a spreadsheet to manage her finances each pay period.<sup>18</sup>

At the hearing, Applicant opined that her financial situation was improving given that she had been current with her bills without incurring any new debt. However, Applicant's 2016 and 2017 credit reports revealed two new debts in collection status that were not alleged in the SOR: a \$425 pet hospital bill and a \$588 medical bill. In September 2014, Applicant took a cruise that she financed via an installment plan in an amount less than \$1,000. In September 2015, she purchased a new car to replace one that had "died." Her current salary is approximately \$3,600 per month. She uses any sums left after expenses to pay down her debt.<sup>19</sup>

Applicant is highly regarded for both her trustworthiness and work performance by a former and a current co-worker. Her current employer commended her work performance.<sup>20</sup>

### **Policies**

"[N]o one has a 'right' to a security clearance."<sup>21</sup> As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information."<sup>22</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>23</sup>

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

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<sup>18</sup> Tr. at 74, 80-82.

<sup>19</sup> See also AE A at 4; GE 5 at 2; Tr. at 35-39, 46, 74, 77, 80-82.

<sup>20</sup> AE E-G; Tr. at 78-79.

<sup>21</sup> Department of the Navy v. Egan, 484 U.S. 518, 528 (1988).

<sup>22</sup> Egan at 527.

<sup>23</sup> EO 10865 § 2.

possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>24</sup> Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.<sup>25</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>26</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>27</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>28</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>29</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>30</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>31</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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

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<sup>24</sup> EO 10865 § 7.

<sup>25</sup> See *Egan*, 484 U.S. at 531.

<sup>26</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>27</sup> See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

<sup>28</sup> Directive ¶ E3.1.15.

<sup>29</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>30</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>31</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . .

Applicant's financial indebtedness establishes three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required). Her 2005 bankruptcy filing establishes AG ¶ 19 (e) (consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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; and



AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Given the passage of 20 years without any recurrence and the underlying circumstances, I find that Applicant's financial-related crimes (SOR ¶¶ 1.s and 1.r.) are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment. However, she has substantial delinquent debt that remains unresolved. The concerns about her misuse of a travel card and bankruptcy filing remain security significant in light of her ongoing financial indebtedness.

AG ¶ 20(b) is not established. Applicant's surgery, Hospital A's delay in filing her insurance claim, and her salary reduction were circumstances beyond her control. However, Applicant did not meet her burden to demonstrate that she acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant is credited with having received financial counseling and using a spreadsheet to manage her finances each pay period. However, because she did not avail herself of the opportunity to submit corroborating documentation post-hearing, I cannot conclude that she resolved the debts alleged in SOR ¶¶ 1.a, 1.c and 1.d; that she successfully disputed the debts alleged in SOR ¶¶ 1.b, 1.f, 1.k-1.n, 1.j, and 1.p; or that she established an agreement with or made payments to the creditors alleged in SOR ¶ 1.e or 1.h. Because she provided documented proof, I find that the debt alleged in SOR ¶ 1.g has been resolved. While I credit Applicant's efforts to address her student loan and tax debt, I cannot conclude that her financial problems are under control at this time.

AG ¶ 20 (e) is not established. Applicant articulated reasonable bases to dispute the legitimacy of her State A tax liens (SOR ¶¶ 1.f and 1.g), her Hospital A medical debts (SOR ¶¶ 1.b, 1.k-1.n), and her cell-phone debt (SOR ¶ 1.p). However, except as to the debt alleged in SOR ¶ 1.g, she did not provide documented proof to substantiate the bases of the disputes or sufficient evidence to demonstrate actions taken to resolve them. She did not articulate a reasonable basis to dispute her furniture debt (SOR ¶ 1.j).

AG ¶ 20 (g) is not established. Applicant has worked with a tax firm to negotiate a resolution to her federal tax debt (SOR ¶ 1.e) since 2012. Because she did not provide any corroborating documents, I cannot conclude that Applicant made monthly payments to the IRS between 2011 and 2014. She did not otherwise meet her burden to prove that she reached any agreements with the IRS and made direct payments pursuant thereto.

For these reasons, I find that SOR ¶¶ 1.g, 1.s, and 1.t have been mitigated, and that SOR ¶¶ 1.a through 1.r. have not been mitigated.

## **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness and failure to timely pay federal taxes. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

## **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.f: **Against Applicant**

Subparagraph 1.g: **For Applicant**

Subparagraphs 1.h – 1.r: **Against Applicant**

Subparagraphs 1.s – 1.t: **For Applicant**

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge