



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



In the matter of:

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ISCR Case No. 15-07034

Applicant for Security Clearance

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

06/02/2017

**Decision**

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Clearance is granted.

**Statement of the Case**

On May 2, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On May 27, 2016, Applicant answered the SOR allegations and requested a decision based on the administrative record instead of a hearing. On June 16, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the

FORM on June 24, 2016. She filed a response on July 5, 2016, whereupon, the case was assigned to me on April 7, 2017. On May 4, 2017, I re-opened the record *sua sponte* to afford Applicant the opportunity to submit additional exhibits. (Items 5) Department Counsel did not object. Within the time allotted, she submitted eight documents that I identified and incorporated into the record as Item 6 through Item 13.

### **Evidentiary Ruling**

In Applicant's Response to the FORM, she noted that the investigator who interviewed her on July 27, 2015, misconstrued much of what she told him in the subsequent interview summary, prepared as part of the Report of Investigation, and proposed for admission by Department Counsel, as Item 3. As such, this document is not properly authenticated and is inadmissible under Directive ¶ E3.1.20.

### **Findings of Fact**

Applicant is a 33-year-old single woman. She has an associate's degree and she has been working for a defense contractor as a software developer since March 2015. (Item 1 at 10, 12)

Applicant incurred approximately \$34,000 of delinquent debt, as alleged in the SOR. Approximately \$33,500 constitutes a delinquent student loan account, as alleged in subparagraph 1.a. The remaining three debts are delinquent utilities and internet service providers (subparagraphs 1.b – 1.d). Applicant incurred the student loan in 2004. She was working towards an associate's degree, and after relocating, considered finishing it at a different institution online. (Answer at 1) She met with an admission's representative from the online university, and at his urging, executed a master promissory note, which gave the university permission to calculate her prospective financial aid, so that they could let her know how much tuition would cost.

Applicant eventually decided not to attend the online university, instead, choosing to complete her associate's degree at a local junior college. Unbeknownst to Applicant, when she executed the promissory note with the online university, she authorized them to take out an \$8,000 loan on her behalf to pay for the first semester's tuition. Because Applicant never enrolled in the university, they returned the money to the lender. The lender still considered it an open loan. When Applicant discovered that she was responsible for the loan approximately ten years later, it had increased to \$33,000. Applicant "takes full responsibility" for the loan. (Answer at 2) She intends to satisfy this loan and the other SOR debts "as soon as [she] can." (Answer at 2)

Applicant's ability to begin making payments on this debt has been hampered by financial issues related to health problems and family crises. Specifically, before she discovered she owed the student loan delinquency, she underwent a series of surgeries to correct a painful, congenital disorder. (Item 6) Because of the rareness of the disorder, her medical insurance did not cover the treatment. (Item 8) Consequently, she had to take out multiple loans to pay for the procedures. When she began this treatment regime, she had a

job with a higher salary than her current job's salary and she had financial support from her family. (Item 6) After she began the surgical procedures, she lost her job. Although she found a job working for her current employer, it paid less money. In addition, at or about this time, her father was diagnosed with cancer, rendering him unable to provide any continued financial support. (Item 6)

In March 2017, Applicant began searching for a part-time job with the intent of generating extra cash to satisfy these debts. Since then, she has contacted multiple prospective employers. (Items 9-13) She maintains a budget. She earns approximately \$40,000 and has approximately \$16 of monthly discretionary income. (Item 7)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 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. 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>1</sup>

## **Analysis**

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

The security concerns about financial considerations are set forth 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.

Applicant’s SOR delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions are potentially applicable:

AG ¶ 20(a) 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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<sup>1</sup> The factors under AG ¶ 2(a) are as follows:

(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.

AG ¶ 20(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; and

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant unknowingly incurred her most significant debt, the student loan, after it was opened by a school where she applied, but never closed when she decided not to matriculate there. When she realized the debt was delinquent, it had increased through interest and late fees, from \$8,000 to \$33,000. Although she signed a document authorizing the school to apply for the loan on her behalf, she was 21 years old at the time, and did not understand the document's terms.

Applicant's inability to make any progress toward debt satisfaction relates to circumstances beyond her control, as she lost a job that paid a higher salary than her current job shortly after incurring costly medical expenses associated with a series of surgeries to correct a rare congenital disorder. In addition, at about this time, her father, whom she relied upon, at times, for financial support, was diagnosed with cancer, rendering him unable to help her.

Per Applicant's budget, she has minimal monthly discretionary income. She has been diligently applying for a part-time job to increase her cash flow and begin debt satisfaction. I conclude that the conditions that resulted in the financial problem were largely beyond Applicant's control and that her actions at trying to find a part-time job to supplement her income and pay her debts constitute responsible actions. AG ¶ 20(b) applies.

Applicant has yet to gain a part-time job to enable her to begin making payments. Consequently, her job search efforts, though commendable, do not trigger the application of AG ¶¶ 20(c) or 20(d). Nevertheless, three of the four SOR debts are nominal debts totaling approximately \$500, and Applicant incurred the most significant one, the student loan, more than ten years ago under unusual circumstances that are unlikely to recur. I conclude AG ¶ 20(a) applies.

### **Whole-Person Concept**

Applicant incurred \$34,000 of delinquent debt and does not currently have enough discretionary income to begin resolving it. All but \$500 of this debt constitutes a student loan that a prospective college applied for on her behalf that somehow remained outstanding, accruing interest and penalties over the years, after she decided not to attend the college. Although Applicant readily acknowledges that she signed an agreement authorizing the prospective school to apply for the loan on her behalf, the fact that she remained responsible for a student loan, with all of its attendant compound interest and penalties for non-payment, for a school that she never attended is unusual. Moreover,

Applicant was only 21 years old when she entered the agreement with the prospective college, and did not understand its specifics.

Applicant's inability to develop a payment plan to satisfy this debt since she became aware of it does not relate to irresponsibility or bad judgment. Rather, she simply has not possessed the discretionary income to develop a payment plan, as a significant percentage of her discretionary income has been used to satisfy loans that she entered to help her pay for multiple medical procedures she needed to correct a congenital birth defect.

Perhaps Applicant's current financial circumstances would disqualify her for eligibility for a loan. However, security clearance adjudications are not governed by the same criteria as loan eligibility criteria. One's ability to satisfy delinquent debts is an important factor in ascertaining security clearance eligibility, but it is only one of multiple factors under the whole-person concept, which includes an evaluation of the nature, seriousness and surrounding circumstances underlying the financial problem, and the age and maturity of the applicant when the problem began. Evaluating Applicant's case in this light, I conclude that the negative security inferences generated by her outstanding debt are outweighed by these aforementioned whole-person factors. Applicant has mitigated the security concern.

### **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:	FOR APPLICANT
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Subparagraphs 1.a – 1.d:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge