



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07010

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

07/25/2017

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**Decision**

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CURRY, Marc E., Administrative Judge:

Between 2009 and 2012, Applicant incurred more than \$100,000 of delinquent debt. Although she is paying some through a garnishment, she has not addressed the overwhelming majority of the debt. Under these circumstances, Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

**Statement of the Case**

On June 6, 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, explaining why it was unable to find it clearly consistent with the interests of national security to grant or continue security clearance eligibility. 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, admitting all of them, and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on February 13, 2017. On March 16, 2017, I scheduled a hearing for April 7, 2017. The hearing was held as scheduled. I received three Government exhibits (GE 1 – 3), nine exhibits from Applicant (AE A – AE I), and I considered Applicant's testimony, together with three character witnesses. At the close of the hearing, I left the record open to allow Applicant the opportunity to submit additional exhibits. Within the time allotted, she submitted three additional exhibits. Department Counsel did not object, and I incorporated them into the record as AE J through AE L. The transcript was received on April 17, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.<sup>1</sup>

### **Findings of Fact**

Applicant is a 45-year-old single woman. She earned a bachelor's degree in business administration in 1994 and a bachelor's degree in information technology in 2010. Since 2007, she has worked for a defense contractor as a network administrator. Applicant is highly respected on the job. According to an upper-level supervisor, she is one of the best and most knowledgeable employees in the organization. (Tr. 64)

Applicant owes creditors approximately \$135,000 in delinquent debt, as alleged in the SOR. It consists primarily of student loans (subparagraphs 1.b-1.d; 1.f-1.i; 1.n-1.q) and medical bills stemming from a three-day hospitalization in 2011 (subparagraphs 1.v-1.aa) (Tr. 52)

Applicant began incurring these debts in 2009 shortly after moving from her mobile home to her mother's house. (Tr. 19) She moved in order to assist her mother manage her household affairs. Applicant kept her mobile home. (Tr. 39)

Shortly after Applicant moved, her mother fell ill and died. The costs of managing both her mother's home and her mobile home, while attending college, and commuting 100 miles roundtrip, daily to work caused Applicant to become delinquent in her debts. (Tr. 40-41)

In 2012, Applicant moved to an apartment within walking distance of her job. (Tr. 46) Also, she voluntarily surrendered her mobile home to the lender. The lender resold it and

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Applicant owes no deficiency. She is unaware of any legal or financial obligations related to her mother's home. Currently, her niece is living in the home.

The only SOR debts that Applicant is currently satisfying are a group of accounts owed to a student loan creditor (subparagraphs 1.c-1.d; 1.f-1.g). She has been paying this debt through a garnishment of approximately \$227 per month since 2014. (AE D) The current balance is \$24,904. Applicant considered filing for bankruptcy protection, but did not have enough money to pay the attorney. (Tr. 46) She has not received any financial counseling.

In addition to Applicant's SOR debts, she owes the Internal Revenue Service (IRS) approximately \$1,700 in delinquent income taxes, and she owes the state revenue authority \$794 for 2014. (AE F at 1, 68) She incurred this debt because her reportable income was unusually high after the creditor alleged in subparagraph 1.e, canceled its \$8,646 debt and reported it to the IRS. Since August 2016, Applicant has been paying the IRS \$100 per month, and since April 2017, she has been paying her state income taxing authority \$28 per month through installment agreements. (Tr. 54; GE F at 8, 74)

Applicant earns a net income of approximately \$2,500 per month. (AE k at 3-4) She maintains a budget. Over the past 18 months, her monthly disposable income has ranged between \$300 and \$800. (AE K at 2)

### **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. 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 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.

## **Analysis**

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

Under this guideline, “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 or sensitive information.” (AG ¶ 18) Applicant’s delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” 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, 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 person has received or is receiving 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; 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.

Applicant’s financial trouble did not occur because of extravagant or foolish spending. Instead, her financial problems were part of an unsuccessful attempt to help her ailing mother with her expenses, while balancing her personal expenses. She consulted an attorney about her financial distress, who recommended she file for bankruptcy protection. However, she could not afford to pay the attorney’s retainer fee. Since 2014, she has moved to a location much closer to work, thus eliminating burdensome commuting expenses. In 2016, she began paying a federal income tax delinquency that was not

alleged in the SOR, and in 2017, she began paying a state income tax delinquency that was not alleged in the SOR, through installment plans. AG § 20(b) and AG ¶ 20(g) apply.

Conversely, Applicant is paying the most money to reduce her debt through a wage garnishment. Such payments have limited probative value in assessing mitigation. Moreover, she has more than \$100,000 of delinquent debt that she has not yet begun to address. Under these circumstances, the steps she has taken thus far constitute sufficient evidence of good-faith efforts to resolve her debts, but the large amount outstanding and unaddressed renders AG ¶ 20(c) inapplicable.

### **Whole-Person Concept**

In assessing the whole person, 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(d).<sup>2</sup> Applicant is an exceptional worker and a person of good character. The circumstances surrounding the incurrence of the debt is somewhat mitigating. However, these factors are not sufficient to overcome the security concern given the extremity of her delinquent debt, and the minimal amount resolved, to date. Under these circumstances, Applicant has not carried the burden.

### **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 J:	AGAINST APPLICANT
Subparagraph 1.a – 1.aa:	Against Applicant

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<sup>2</sup> The factors under AG ¶ 2(d) 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.

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge