



Applicant answered the SOR on July 11, 2016 and August 2, 2016, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on September 2, 2016. The Government's evidence is identified as Items 1 through 8. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant responded to the FORM and provided documents that are marked as Applicant Exhibits (AE) A through L. There were no objections by either side and all evidence was admitted. The case was assigned to me on July 3, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.e, and 1.i. She denied the remaining allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. She served in the military from 1989 to 1995 and received an honorable discharge. She married in 1990 and divorced in 2000. She has a child from the marriage, who is 26 years old. She remarried in 2000 and has a child from the marriage, who is 16 years old. Applicant has worked for her present employer since 2001 and is a senior manager.

In April 2010, Applicant completed a security clearance application (SCA).<sup>2</sup> In November 2012, she was interviewed by a government investigator as part of a background investigation. She was confronted by the investigator with delinquent or past due debts from her credit report. The debts were from 2012: SOR ¶ 1.a (mortgage past due \$28,065, alleged in SOR past due-\$22,315); ¶ 1.b (credit card-collection-\$6,393); ¶ 1.d (credit card collection-\$4,307); ¶ 1.e (in 2012, original debt past due-\$125, now with collection company-\$3,525); ¶ 1.g (in 2012, original debt past due-\$64, now with collection company-\$683); ¶ 1.i (credit card collection-\$10,456); ¶ 1.j (credit card collection-\$9,133); and ¶ 1.k (in 2012, credit card, past due \$135, now delinquent balance-\$3,177).<sup>3</sup>

Applicant told the investigator that she was refinancing her mortgage loan and was told not to make payments on the loan until the transaction had been completed. It took three months to refinance the loan. She hoped to have the mortgage current as of April 2014. In her answer to the SOR, she said she was unaware the mortgage loan was reported as delinquent while the modification was in a trial period. In her FORM response, she provided documents to show the loan modification was completed in February 2015. She stated that the loan is no longer delinquent, and it is reflected as

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<sup>2</sup> Item 2.

<sup>3</sup> Item 4.

current on her credit report. Applicant did not provide a copy of the credit report or supporting documents to show payments are current.<sup>4</sup>

During her 2012 interview, Applicant explained to the investigator that the debts in SOR ¶¶ 1.b, 1.d, 1.i, and 1.j were delinquent or past due because they were used to purchase household goods; the interests rates increased; and she was not able to make the high monthly payments. She was working with a financial institution to lower the interest rates and work out settlements. She told the investigator she wanted to resolve the debts by December 2013.<sup>5</sup>

Regarding the debt in SOR ¶ 1.k, Applicant stated that she put this card on hold while she was refinancing her mortgage loan and the account became three months past-due. She stated it was current as of November 2012. She told the investigator that the debts in SOR ¶¶ 1.e and 1.g, she forgot to make payments for one or two months, but they were also current as of November 2012. The investigator also confronted her with a debt to another creditor that was past-due in the amount of \$1,717. She told the investigator that she got behind on this account because other bills took priority. She made a settlement offer with the creditor and paid \$700 to settle that account.<sup>6</sup>

In Applicant's answer to the SOR, she denied ¶ 1.b stating, "I was not aware of a delinquent [credit] card. I have a [credit] account with a balance of \$12,500 but it isn't delinquent and I am an authorized user not individual account."<sup>7</sup> Her response to SOR ¶ 1.d was "I deny this account, seems to be a duplicate of item b."<sup>8</sup> These are the same accounts she was confronted with by the investigator in 2012, which she acknowledged were past-due. Credit reports from November 2012 and January 2015 show that the accounts are solely in Applicant's name, and she is not only an authorized user. They also show the accounts are not duplicates and are delinquent. In Applicant's response to the FORM, she provided copies of an IRS form with a heading: "Changes to your 2014 tax return." It is dated October 17, 2016. She highlighted on the document "cancellation of debt" for the debts in SOR ¶¶ 1.b and 1.d. The accounts reflect her social security number, although the form is under a different social security number, likely her husband's, if they filed jointly. The total amount canceled was \$6,607.<sup>9</sup>

In Applicant's answer to the SOR, she denied ¶¶ 1.i and 1.j. For SOR ¶ 1.i, she stated, "I deny this account. I have [account] credit card with a balance of \$10,936 with

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<sup>4</sup> Item 4; AE B, C, D.

<sup>5</sup> Item 4.

<sup>6</sup> Item 4.

<sup>7</sup> Item 1.

<sup>8</sup> Item 1.

<sup>9</sup> Items 1, 4.

no missed payments.”<sup>10</sup> For SOR ¶ 1.j she stated, “I deny this account, I was not aware of this delinquent account. Seems to be a duplicate of item i.”<sup>11</sup> These are the same accounts she was confronted with by the investigator in 2012, which she acknowledged were past due. Credit reports from November 2012 and January 2015 show that the accounts are solely in Applicant’s name and she is not only an authorized user. They also show the accounts are not duplicates and are delinquent.<sup>12</sup>

In her answer, Applicant denied the debt in SOR ¶ 1.c indicating it had been sold to the collection company in SOR ¶ 1.e. She stated she had a payment plan with the collection company and the balance owed was \$3,525, the same amount as alleged in SOR ¶ 1.e. She said she was unaware the original creditor had reported the account in default.<sup>13</sup> Applicant provided a document from September 2016 from a law firm representing the creditor in SOR ¶ 1.c reflecting a balance owed of \$6,898 and an offer to settle the account with different payment options. A handwritten star is next to one of the options. There is no document verifying that Applicant made any payments with the creditor. The options in the payment plan provide for a settlement amount of \$4,829, paid in two payments due on September 2016 and October 2016, or a monthly plan of \$63.88 for the balance of the debt.<sup>14</sup> In her FORM response referring to SOR ¶ 1.c, Applicant stated: “This account was sold to a collection company and I have a payment plan with them, with a balance of \$3,525. Wasn’t aware that [creditor] was reporting the default.”<sup>15</sup> The debts in SOR ¶¶ 1.c and 1.e are different accounts. Applicant has not provided proof that she accepted the settlement offer and is making payments on the debt in SOR ¶ 1.c. She also has not provided proof that she has a payment plan for the debt in SOR ¶ 1.e and is making payments.

In Applicant’s answer to the SOR, she denied the debt in SOR ¶ 1.g. She wrote: “I wasn’t aware of this creditor at the time but I have called them and settled the account. This company bought the account from [the creditor in SOR 1.h.]”<sup>16</sup> Applicant provided a copy of a June 2016 settlement offer from the creditor for the debt in SOR ¶ 1.g. There is insufficient evidence to conclude it is the same account as the debt in SOR ¶ 1.h. Applicant previously admitted to the investigator in 2012 that the debt in SOR ¶ 1.g was past due and she intended to pay it by November 2012. In handwriting next to option 2 on the letter is the word “paid.” In her FORM response, she stated that she was

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<sup>10</sup> Item 1.

<sup>11</sup> Item 1.

<sup>12</sup> Items 1, 4.

<sup>13</sup> Item 1.

<sup>14</sup> AE E.

<sup>15</sup> AE B,

<sup>16</sup> Item 1.

making monthly payments and estimated the debt would be settled in January 2017. She did not provide documentary proof to show she had initiated the payments.<sup>17</sup>

Applicant denied the debts in SOR ¶ 1.f (collection by law firm-\$2,102) and ¶ 1.m (past due-\$238), which are reflected on her January 2015 credit report. Applicant did not provide documentary evidence of her dispute or any action she has taken to resolve these debts. She stated in her answer to the SOR that the debts are not on a 2016 credit report, but failed to provide that document to corroborate her statements or evidence they are paid.<sup>18</sup>

Applicant admitted the garnishment alleged in SOR ¶ 1.l for a judgment. She explained that she had cosigned a car loan for her sister. Her sister defaulted on the loan. Applicant became aware of the problem and contacted her sister to repay the loan. Applicant contacted the creditor and discussed payment. She also discussed with her sister paying the negotiated settlement amount. Applicant received a garnishment notice for a judgment. She again contacted her sister who had filed bankruptcy, so the creditor was seeking payment from Applicant. Applicant stated that in the state where she works, the law prevents garnishment except for taxes and child support. Applicant contacted the creditor in 2012 and reached a settlement with the creditor that she stated she paid, and the garnishment was dismissed.<sup>19</sup> Applicant stated in her FORM response that she did not disclose this information on her 2015 SCA because:

I was under the impression, the garnishment/judgment has been settled, dismissed and removed from my credit report, it seemed it never became an official garnishment since it was released from my payroll and the judgment removed. That is why I answered the question as I did in February 2015 and July 2016.<sup>20</sup>

Applicant provided a copy of the settlement agreement with the creditor from 2012. Although it does not show that the settlement amount was paid, the judgment is not reflected on Applicant's 2012 or 2015 credit reports.<sup>21</sup> Applicant did not disclose the judgment on her 2015 SCA as required.<sup>22</sup> I found her explanation for not disclosing the information credible.

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<sup>17</sup> Items 1, 4, 6, ; AE B, I.

<sup>18</sup> Items 1, 7.

<sup>19</sup> Item 1.

<sup>20</sup> AE F.

<sup>21</sup> Items 4, 5, 6, 7; AE H.

<sup>22</sup> Item 3.

Section 26 of the 2015 SCA asked Applicant to provide information about her financial record regarding delinquencies involving routine accounts. Specifically it asked:

Other than previously listed, have any of the following happened? In the past seven (7) years you... had bills or debts turned over to a collection agency?; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?; have been over 120 days delinquent on any debt not previously entered?; are currently over 120 days delinquent on any debt?

Applicant responded “no” to all of the questions. In Applicant’s August 2, 2016 SOR answer to ¶ 2.a, she said:

[S]ome of the accounts on my credit report are delinquent, but I wasn’t aware the creditors where (sic) reporting against me, since I was making payments. Several of the accounts described in section 1, I deny because I wasn’t aware of them on my credit report nor are they true accounts.<sup>23</sup>

In her FORM response, she stated that “I was thinking of delinquencies at the moment and only those I was aware of and not what the question was actually asking ‘in the past seven years.’ I didn’t pull my credit report, and several accounts listed I wasn’t aware of their reporting.”<sup>24</sup>

As detailed above, Applicant was interviewed by a government investigator in 2012 and confronted with many of the delinquent debts that are alleged in the 2016 SOR. She acknowledged they were delinquent or past due and she was unable to pay them because she was refinancing her house; had purchased household goods; and the interest rates were high; or she forgot about them. Applicant’s explanations for not disclosing other debts are not credible. Payment plans she provided were dated after the SOR, and she failed to provide proof that she is making payments on the plans. The debts in SOR ¶¶ 1.b and 1.d were never paid, but were eventually cancelled by the creditor, and she received an IRS notice confirming that. I find that she deliberately failed to disclose delinquent and past due debts.

Applicant provided documents from October 2016 showing that she has contacted a financial counseling service and that it would be contacting her to begin a credit review and advised her to obtain a copy of her credit report. She stated that she was working on a budget and will continue to work on items listed in her credit report.<sup>25</sup>

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<sup>23</sup> Item 1.

<sup>24</sup> AE B.

<sup>25</sup> AE L.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching 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 national security eligibility 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. Likewise, 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. Directive ¶ E3.1.15 states that an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to 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.

Section 7 of EO 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).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline 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. 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous unresolved delinquent debts dating from at least 2012, which she has been unable or unwilling to resolve. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(d) the individual initiated and is adhering to 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.

Applicant acknowledged many of the delinquent or past due debts alleged in the SOR during her 2012 background interview. Other debts became delinquent subsequent to her interview. Most of the delinquent debts are unresolved. She did not provide a reasonable explanation for her failure to pay her debts. There is insufficient evidence to conclude that her financial problems happened under unique circumstances or are unlikely to recur. Her conduct casts doubt on her current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires that the conditions that resulted in the financial problem were largely beyond Applicant's control. Applicant did not provide sufficient evidence to apply this mitigating condition. If there were conditions beyond her control, she failed to provide sufficient evidence that she acted responsibly under the circumstances. She has been aware of the financial security concerns since her 2012 background interview. Many of the debts that were addressed during that interview were subsequently alleged in the 2016 SOR. AG ¶ 20(b) does not apply.

There is evidence that Applicant has enrolled with credit counselors. There is minimal evidence that her financial problems are being resolved or are under control because she failed to provide documentary evidence that she has paid, or is paying most of her delinquent debts. AG ¶ 20(c) partially applies.

Applicant provided sufficient evidence that the wage garnishment from a judgment as alleged in SOR ¶ 1.i was resolved in 2012. AG ¶ 20(d) applies to this debt. Applicant provided a copy of her mortgage loan modification agreement from 2015, but did not provide evidence that her payments are current. She provided some evidence that creditors offered to settle certain debts through payment plans, but she did not provide evidence that she made the payments and resolved or is resolving the debts. After disputing the debts in SOR ¶¶ 1.b and 1.d, she provided IRS documents to show that these two debts were canceled and resulted in tax consequences for tax year 2014.

Cancellation of a debt does not constitute a good-faith effort to repay or otherwise resolve a debt. AG ¶ 20(d) does not apply except as noted above.

Applicant disputed many of the debts alleged in the SOR, stating she was unaware of them; they were duplicates; or that she had current credit cards with the creditors. Some of these debts she was confronted with in 2012, and she admitted she owed. Applicant did not provide documented proof to substantiate the basis of her disputes or reliable evidence of actions she has taken to resolve the issues. The exhibits she provided were incomplete. AG ¶ 20(e) 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I find that Applicant was aware she had delinquent or past due debts when she completed her 2015 SCA, and she deliberately failed to disclose them. During her 2012 background interview with a government investigator, she was confronted with many of the debts alleged in the SOR. She acknowledged they were delinquent or past due, and asserted that she was resolving them. I did not find her explanations for failing to disclose the derogatory information credible. The above disqualifying condition applies to SOR ¶ 2.a.

Applicant provided an explanation for her failure to disclose a judgment entered against her. The information she provided regarding the garnishment and her subsequent resolution of the judgment was credible. I find she did not deliberately omit this information from her 2015 SCA. SOR ¶ 2(b) is found in her favor.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

The evidence does not support the application of AG ¶ 17(a). There is insufficient evidence to conclude that Applicant made a prompt, good-faith effort to correct her omissions before being confronted by an investigator. AG ¶ 17(c) does not apply because deliberately failing to disclose information on a SCA, and swearing to its accuracy is not a minor offense. During Applicant's 2012 background interview, she was made aware that there were security concerns regarding her finances. When she completed her 2015 SCA, she failed to disclose any derogatory information about her finances. In her answer to the SOR, she denied some of the delinquent debts, even though she had admitted during the prior interview that she owed them and they were past-due or delinquent. I find Applicant's omissions are serious and cast doubt on her reliability, trustworthiness, and good judgment.

### **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 the 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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 41 years old and served in the military four years. She has worked for her employer since 2001 and is a senior manager. Applicant has delinquent debts that remain unresolved. She deliberately failed to disclose her delinquencies on her 2015 SCA. Many of these debts had been brought to her attention during a 2012 background interview for a previous security clearance. The record evidence leaves me with serious 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 security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

### **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
Subparagraphs 1.a-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge