



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



In the matter of:

ISCR Case No. 16-01749

Applicant for Security Clearance

**Appearances**

For Government: Aubrey M. De Angelis, Department Counsel  
For Applicant: *Pro se*

September 6, 2018

**Decision on Remand**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On August 21, 2018, the DOHA Appeal Board remanded the Administrative Judge's decision dated April 30, 2018, that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On Appeal, Applicant challenges the Judge's finding that she falsified her e-QIP. While Applicant responded, "NO," to the questions in Section 26 of the e-QIP that asked whether she experienced certain financial problems, she stated in the Additional Commends section of the document, the following remark:

SF-Section 26 Financial Records: In process of working payment arrangements with Student Loans and other miscellaneous accounts due to hardship; due to delay in wage check occurring between November-December 2014. Replacement/delayed checks arrived same day 1/3/15.

The Appeal Board found that, “Applicant put the government on notice that she had some delinquent debts. The Judge made no findings of fact about the quote. Consequently, the decision does not reflect that the Judge considered an important aspect of the case. This is harmful error that warrants correction.”

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant’s national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

Applicant is 55 years old and divorced with five children. Applicant took University courses on line from 2004 through 2009, and received a bachelor’s degree in Health Administration in 2004 and a master’s degree in Psychology in 2009. She is employed by a defense contractor as a Patient Safety Specialist. She is seeking to obtain a security clearance in connection with her employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR identified eighteen allegations under this guideline, nine concerning delinquent student loans totaling approximately \$77,469; and nine delinquent accounts owed to private creditors that have been charged off or placed for collection totaling approximately \$8,678. Applicant admitted the debts in part, and denied them in part. (Government Exhibit 3.)

Credit Reports of the Applicant dated May 30, 2015; April 29, 2016; and June 27, 2017, confirm each of the debts listed in the SOR. (Government Exhibits 5, 6, and 7.) Applicant divorced her most recent husband in 2001. She claims that she experienced financial delinquencies in 2010 due to the fact that she was attending college and also helping her children with their finances. In her response to the FORM, she indicates that it was during this time that she was recovering from a history of domestic violence and child abuse from her ex-husband. She was undergoing related counseling involving her and her children. She received no financial support from her children’s

father and she was trying to financially support her children on welfare, as she had no insurance from their father. Applicant was confronted with unexpected car repair expenses that were unsuccessful, and she suffered a work injury. She was also unemployed from September 2006 through December 2006; and from July 2007 through March 2008, when she was looking for employment. All of these things contributed to her financial difficulties. As a result, Applicant became delinquentlly indebted to each of the creditors listed in the SOR.

Allegations 1.a., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., and 1.p., are Applicant's delinquent student loan accounts. These delinquent student loan accounts were placed for collection in the approximate amounts of \$25,170; \$14,253; \$8,460; \$7,606; \$6,766; \$5,918; \$3,975; \$3,630; and \$1,691, respectively.

Allegations 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.o., 1.q. and 1.r., are Applicant's delinquent debts owed to other creditors. These delinquent accounts were owed to creditors in the approximate amounts of \$1,965; \$1,416; \$1,023; \$893; \$121; \$66; \$3,069; \$71, and \$54, respectively.

Applicant claims that her student loans set forth in allegations 1.a., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., and 1.p., became delinquent as a result of a delay in renewing her forbearance period. Applicant opened the loans between 2004 and 2007 with a total original loan balance of \$44,938. The record does not show if she ever made any regular monthly payments toward the loans. It does show that she made minimal payments of \$5.00 per month on the account, which was placed in a trust required prior to being eligible for the loan rehabilitation program. Since then her balance on her student loan accounts continues to grow. Applicant applied for and was granted a forbearance again in March 2017, as she was unable to make the slated payment amount at that time of \$884 monthly. Her most recent credit report indicates that her student loans are again deferred through March 2018, as she was unable to make the slated monthly payment amount of \$976.09. Applicant now owes approximately \$77,469 in student loan debt. Although the loans were opened over ten years ago, she now owes about \$30,000 more on the loans than her original principal balance, and they have become delinquent in recent years. In her response to the FORM, Applicant states that she will set up monthly automatic deductions from her bank account to pay her student loans. (Applicant's Response to the FORM.)

Applicant states that since receiving the SOR in this matter, she has paid off most of her delinquent debts owed to creditors discussed below. In order to do so, she opened a new loan in the amount of \$10,000 and used the money to pay the debts set forth below. A concern here is that there is no evidence in the record to show that she can afford to make the monthly payments to repay this loan when it becomes due. (Applicant's Answer to SOR and Response to the FORM.)

1.b. Applicant made a payment of \$250 toward this medical bill (non-insurance) in December 2016. She indicates that she will make additional payments until the debt is paid in full. Her most recent credit reports shows the payment of \$250 and nothing

more, and that she owes \$1,715. Applicant claims that the debt has now been paid in full. (Applicant's Answer to SOR and Applicant's Response to the FORM.)

1.c. Applicant paid this old auto policy debt in full in December 2016, although she believes that she should not have paid it. Her credit report continues to say that she owes \$71. She states that she is investigating the matter. (Applicant's Answer to SOR and Response to the FORM.)

1.d. Applicant paid the debt in full, for cell phones she purchased for her children. She states that she made payment arrangements with the creditor and then became delinquent on the account because she could not keep up the costs without her children's father's financial support. (Applicant's Answer to SOR and Response to the FORM.)

1.e. Applicant paid the debt of \$456.59 to Credit One Bank, after receipt of the SOR. (Applicant's Answer to SOR and Response to the FORM.)

1.f. Applicant paid the debt off on April 8, 2016, after receipt of the SOR. (Applicant's Answer to SOR and Response to the FORM.)

1.g. Applicant finally admits this \$66 medical debt, as it may be a Kaiser Permanente Services account, but does not indicate whether she has paid it or not. (Applicant's Answer to SOR and Response to the FORM.)

1.o. Applicant states that the account was paid off and closed on March 28, 2016, according to a letter from Check N' Go. (Applicant's Answer to SOR and Response to the FORM.)

1.q. Applicant states that she was unaware that there was a balance due from this prior auto insurance policy and agreed to pay the amount due. She did not provide any evidence to show that she has resolved the account. To remove this from her credit report, she has agreed to pay the creditor \$71 on December 19, 2016. (Applicant's Answer to SOR and Response to the FORM.)

1.r. Applicant states that she was unaware that there was a balance due from a prior auto insurance policy and has agreed to pay the amount due. She did not provide any evidence to show that she has resolved the debt. To remove this from her credit report, she has agreed to pay creditor \$54 on December 19, 2016. (Applicant's Answer to SOR and Response to the FORM.)

## **Guideline E – Personal Conduct**

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about her reliability, trustworthiness and ability to protect classified information.

Applicant completed an e-QIP dated May 5, 2015. Section 26 asked about her Financial Record, specifically, "Delinquency Involving Routine Accounts Other Than Previously Listed." The question asked, "In the past 7 years, have you had bills or debts turned over to a collection agency?" It also asked, "In the past seven years have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" Applicant responded, "NO," to both questions. (Government Exhibit 4.) These were false answers. Applicant failed to list any of the delinquent debts set forth in allegations 1. a., through 1. r., of the SOR. Under the Additional Comments section Applicant does acknowledge that she is in the process of working out payment arrangements with Student Loans and other miscellaneous accounts due to hardship: due to delay in wage check occurring between November-December 2014. Replacement/delayed checks arrived same day 1/3/15.

It is noted that Applicant acknowledged that she was working on student loan debt and other miscellaneous accounts under the Additional Comments section. However, the questions in Section 26 asked her if she had any delinquent debt, and she responded with, "NO," to both questions. Applicant is tasked with the responsibility of answering every question on the security clearance application, truthfully. In Section 26, regarding Delinquency Involving Routine Accounts Other Than Previously Listed, she did not answer the questions truthfully. Her, "No," responses to both questions under Section 26 here, were false answers. In fact, simply because she noted in another section of the application that she has had some financial difficulties does not relieve her of her obligation to truthfully answer other questions on the application. Section 26 asked her about delinquent debts, which she never admitted to. In fact, she should have answered, "Yes," to both questions under Section 26, by acknowledging that she had delinquent debt. The information she provided under the Additional Comments section does not say that her debts were delinquent. Under the circumstances, Applicant's credibility remains in question, and it is found that she has not demonstrated sufficient reliability, nor trustworthiness to access the national secrets.

Applicant states that her student loans were in forbearance at the time she certified the e-QIP; and that certain debts that were opened under her name or that she was a co-signer on became her responsibility because her children's father did not pay them; and that she learned about other delinquent accounts after she received the SOR. She also says that she has learned that it would have been valuable to run a credit report prior to failing out the e-QIP instead of relying on her memory or recall. Applicant claims that there was no intentional misrepresentation or attempt at circumventing the issue or not acknowledging the accounts. Her argument does not hold merit.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. Under Directive ¶ 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 clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

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

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

Applicant's states that her most recent student loan debt forbearance expired in March 2018. She now owes \$77,000. She took out a loan for \$10,000 to pay her other creditors. It appears that Applicant has resolved a number of her delinquent debts, but only by borrowing from "Peter to pay Paul." Her debt is not resolved, it is just transferred from one loan to another loan. Given her circumstances, Applicant has probably done the best she could. However, at this time, there is insufficient information in the record to conclude that she is financially stable or that she can afford her lifestyle, or that she has the financial resources available to handle her financial obligations now that she is no longer in forbearance status. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under 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;

(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;

(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.

There were obviously some circumstances beyond the Applicant's control that contributed to her financial difficulties. Her periods of unemployment, her children's father's failure to provide financial assistance for the children, the normal expenses of providing for five children, as well as car repair expenses, and the like. Applicant makes it clear that she is currently still responsible for her children's support and welfare. In addition, Applicant has promised to pay her student loans that are now due and owing, as her forbearance has expired. Now what? There is nothing in the record to show that she can afford to make the monthly payments of \$976.09, or that she can afford to have them automatically deducted out of her paycheck. Without this evidence, it cannot be said that she is financially stable or that she has made a good faith effort to resolve her indebtedness.

## **Guideline E- Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

It is found that Applicant deliberately falsified her e-QIP in response to questions regarding her delinquent debts. She should have answered, "Yes," to both questions



concerning her delinquent debts in response to Section 26 of the e-QIP. Instead, she answered, "NO," to both questions and then added comments regarding student loans and debts that she is working on, never once mentioning that the debts were delinquent. She did not answer the questions truthfully. This clearly shows that she knew about her delinquent debts, and did not disclose them in response to specific questions on the e-QIP. The Government relies on one's responses to the questions on the e-QIP to determine one's trustworthiness. If the answers are not truthful, the Government is misled. Applicant knew or should have known about the extent of her financial indebtedness. There are no applicable conditions that could be mitigating under AG ¶ 17.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

### **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.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant

Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant:
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant:
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	For Applicant:
Subparagraph 1.r.:	For Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 1.a.:	Against Applicant
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### **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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge