



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



In the matter of:

ISCR Case: 16-02412

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

October 20, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant owes more than \$25,000 in unresolved consumer and medical debt. Resulting security concerns under financial considerations were not mitigated. She did not intentionally fail to disclose her delinquent debt on her security clearance application (e-QIP), and as a result no valid security concerns arose under personal conduct. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On September 29, 2015, Applicant submitted an e-QIP. (Item 3.) On October 5, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations; and Guideline E, Personal Conduct. (Item 1.) The action was taken under Executive Order 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*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on October 24, 2016, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On November 14, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on November 14, 2016, and received by her on November 21, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period she was afforded. Items 1 through 6 are admitted into the record.

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> 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 in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, 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 promulgated in SEAD 4.

### **Findings of Fact**

Applicant is 46 years old and married. She left high school prior to graduation due to an injury. She reported three adult children and two minor children. She also has three step-children. She has worked for her current employer since January 2015. She worked full time for another employer from June 2000 to January 2015, and reported no unemployment. (Item 3; Item 5.)

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a through 1.n, with some explanations, and denied the allegations in SOR ¶¶ 2.a and 2.b. (Item 2.) Her delinquent debts are documented in a record credit bureau report from November 2015. (Item 4.)

SOR ¶ 1.a alleged Applicant was indebted on a judgment filed against her in March 2012 in the amount of \$2,582. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 2.) Applicant asserted that her wages were being garnished to resolve this debt. (Item 3.) An incident history report also reflects the wage garnishment but does not specify the creditor. (Item 6.) Without additional information about the creditor, the payments made on this debt, and the cause for its delinquency,

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

the record does not support a finding that Applicant is acting in good faith with respect to this debt or that it is resolved.

SOR ¶ 1.b alleged Applicant was indebted on a judgment filed against her in March 2011 in the amount of \$13,016. She claimed that this debt is the same debt as the debt referenced in SOR ¶ 1.c. However, while both debts relate to an automobile loan, the account numbers do not match. As of Applicant's November 2015 credit report, this debt remained delinquent. It is unresolved. (Item 4 at 3.)

SOR ¶ 1.c alleged Applicant was indebted on a charged-off auto loan in the amount of \$11,288. As of Applicant's November 2015 credit report, this debt remained delinquent. It was charged off in March 2010. However, Applicant presented a letter from this creditor that shows this debt was paid in full as of October 2016. It is resolved. (Item 3; Item 4 at 2.)

SOR ¶ 1.d alleged Applicant was indebted on a collection account in the amount of \$6,835. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 9.) Applicant claimed to be making payments on this debt, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.e alleged Applicant was indebted on a medical debt in the amount of \$1,071. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 9.) Applicant claimed to be making payments on this debt, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.f alleged Applicant was indebted on a collection account in the amount of \$681. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 10.) Applicant claimed to be making payments on this debt, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.g alleged Applicant was indebted on a medical debt in the amount of \$399. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 10.) Applicant claimed to be making payments on this debt, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.h alleged Applicant was indebted on a medical debt in the amount of \$395. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 10.) Applicant claimed to be making payments on this debt, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.i alleged Applicant was indebted on a medical debt in the amount of \$313. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 10.) Applicant claimed to have paid this debt in full, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.j alleged Applicant was indebted on a medical debt in the amount of \$160. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 10.) Applicant claimed to have paid this debt in full, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.k alleged Applicant was indebted on a medical debt in the amount of \$63. Applicant admitted this debt, but claimed to have contacted this creditor and "they show no balance of \$63 on record." (Item 3.) This debt is not identified on her November 2015 credit report. (Item 5.) There is no documentation to support this allegation, other than her qualified admission. (Item 3.) This debt is resolved in Applicant's favor.

SOR ¶ 1.l alleged Applicant was indebted on a medical debt in the amount of \$129. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 11.) Applicant claimed to have paid this debt in full, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.m alleged Applicant was indebted on a medical debt in the amount of \$96. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 11.) Applicant claimed to have paid this debt in full, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

SOR ¶ 1.n alleged Applicant was indebted on a medical debt in the amount of \$83. As of Applicant's November 2015 credit report, this debt remained delinquent. (Item 4 at 11.) Applicant claimed to have paid this debt in full, but produced no documentation to substantiate her claim. This debt is unresolved. (Item 3.)

The SOR, in ¶¶ 2.a and 2.b, also alleged that Applicant failed to disclose her delinquent judgments and collection accounts in Section 26 of her e-QIP. While her e-QIP omits any disclosure of financial delinquencies, she reported difficulties with the computer system while completing her e-QIP. She "thought that she listed some known financial accounts," which she promptly and voluntarily disclosed to an investigator while participating in her security clearance interview. I find no willful omission. (Item 5.)

Applicant did not document any financial counseling or provide budget information from which to predict her future solvency. She offered no evidence to support findings concerning her character or trustworthiness, the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent adjudicative guidelines. In addition to

brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (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 was alleged to be delinquent on 14 accounts. She was unable or unwilling to document resolution of 12 of her alleged delinquencies. SOR ¶ 1.k was not supported by the record evidence and was found in Applicant's favor. She presented documentation that she resolved ¶ 1.c. Her financial issues date back to 2010, and continue to date. She has not documented that she has payment arrangements with her remaining 12 creditors or otherwise resolved these debts, despite full employment since 2000. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant continues to owe more than \$25,000 for debts that became delinquent beginning in 2012.<sup>2</sup> She claimed, but did not document, that she had resolved numerous other debts or was making payments on them. Her bare averments do not meet the required burden of proof. She offered no reasonable basis to conclude that such problems will not recur, so mitigation was not established under AG ¶ 20(a).

Applicant neither asserted nor documented that her delinquent debts arose from conditions that were beyond her control, or that she acted responsibly under the circumstances on her remaining 12 debts, as required for mitigation under AG ¶ 20(b). She did resolve ¶ 1.c in good faith. She also failed to provide evidence of financial counseling or efforts to resolve the debts that could establish mitigation under the provisions of AG ¶¶ 20(c) or 20(d).

### **Guideline E, Personal Conduct**

The concern under this guideline 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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with

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<sup>2</sup> She resolved the 2010 judgment.

medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of her e-QIP, the following disqualifying condition could apply:

AG ¶ 16 (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.

Applicant denied intentionally falsifying her e-QIP. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>3</sup> An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.<sup>4</sup>

In this case, Applicant reported difficulties using the electronic e-QIP system. She has no high school diploma or expertise in computers. Her claims that she thought she has identified at least some of her debts on the e-QIP are credible given the challenges she faced inputting information into the e-QIP system. Further, she voluntarily disclosed her omitted delinquencies to the investigator when being interviewed. I find Applicant had no intent to falsify her e-QIP. AG ¶ 16 (a) does not apply in this instance.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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

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<sup>3</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

<sup>4</sup> ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).



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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for her choices. She continues to owe more than \$25,000 in delinquent debt that she has accumulated since 2012. The potential for pressure, exploitation, or duress from her financial situation remains undiminished. However, she did not intentionally omit her delinquencies or judgments from her e-QIP. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1. j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l through 1. n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 national security eligibility and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein  
Administrative Judge