



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 16-03397

Applicant for Security Clearance

**Appearances**

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

For Applicant: William F. Savarino, Esq.

04/30/2018

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial considerations security concerns.

**Statement of the Case**

On September 11, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated December 9, 2016, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on January 11, 2017. She admitted the 14 allegations of delinquent debt. Department Counsel was prepared to proceed on March 8, 2017, and I was assigned the case of September 26, 2017. DOD issued a notice of hearing on February 26, 2018, for a hearing on March 14, 2018. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4) were admitted into the record without objection. Applicant testified, and introduced 22 exhibits (AX A through V) that were admitted into the record without objection. I left the record open for Applicant to submit additional documents. Applicant timely submitted one additional document that was admitted into the record. (AX W) Department Counsel had no objection to admission of the document. (GX 5) I received the transcript of the hearing (Tr.) on March 20, 2018.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and were effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact**

After a thorough review of the record, I make the following findings of fact. Applicant is 39 years old. She received a bachelor's degree in Industrial Technology with emphasis on computer networking in 2001, and a master's degree in 2004 in information systems. She used student loans to fund her education, and she is current with payments on the student loans. She is not married and has no children. She has lived in her house since 2009, and she is current with her mortgage payments. (Tr. 17-19; GX 1, e-QIP, dated September 11, 2015)

The SOR lists, and credit reports (GX 2, dated September 28, 2016; GX 3, dated October 3, 2015; GX 4, dated March 14, 2018) confirm the following delinquent debts for Applicant; a credit card charged off for \$9,037 (SOR 1.a); a credit card account in collection for \$6,821 (SOR 1.b); a discount store credit card in collection for \$6,821 (SOR 1.c); a credit card charged off for \$4,685 (SOR 1.d); a credit card charged off for \$3,646 (SOR 1.e); a credit card in collection for \$2,195 (SOR 1.f); a store credit card charged off for \$1,303 (SOR 1.g); a store credit card charged off for \$1,159 (SOR 1.h); a credit card charged off for \$380 (SOR 1.i); a credit card in collection for \$359 (SOR 1.j); a store credit card charged off for \$2,713 (SOR 1.k); a store credit card charged off for \$2,195 (SOR 1.l); a credit account in collection for \$4,656 (SOR 1.m); and a credit card account in collection for \$2,397 (SOR 1.n). Department Counsel agreed with Applicant that SOR 1.b and 1.c are duplicate accounts; SOR 1.d and SOR 1.m are

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<sup>1</sup> I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

duplicate debts; and SOR 1.f and 1.i are duplicate debts. (Tr. 39-41, 79-80) The total amount of delinquent debt is approximately \$40,000. All of the delinquent debts were incurred prior to 2014. The latest credit report on Applicant shows that some debts are still outstanding. (Tr. 9-11, 77-78; GX 4, Credit Report, dated March 14, 2018)

Applicant has been employed by the same defense contractor since 2002. Her annual salary in 2002 was \$33,000. She served for many years as the information systems security manager. She is now a cyber analyst at a yearly salary of \$108,000. She supports DOD components by writing policies and procedure on computer use, and provides input on insider threats to the DOD clients. She was granted eligibility for access to classified information in 2002, and her access was upgraded in 2004. There have been no issues concerning her eligibility for access to classified information. (Tr. 19-23)

Applicant lives with a significant other. He provides a limited amount of funds to support household expenses. Some of the debts attributed to Applicant were items purchased for him using her credit card. She purchased her house in 2009, after fulfilling a condition of the fixed-rate mortgage that she eliminate all credit card balances. She had no credit card or other debt as of June 2009 except student loans and a mortgage. She is extremely active in a community charitable organization. (Tr. 23-27)

In addition to her full-time job with the defense contractor, Applicant also worked two part-time jobs in retail sales and property management. Her income from these jobs was approximately \$540 per month. She stated that prior to 2014, she was using credit responsibly and paid her bills on time. In 2014, she became ill and could no longer work the retail sales job. That same year, the property management job was eliminated. She lost all of her part-time income in 2014 and the flexibility to continue to pay all of her debts on time. In 2014, Applicant had additional major expenses to visit, care for, and financially help her mother who lived in a different state and was ill. With all of these issues, Applicant could no longer meet her financial obligations only from the salary from her DOD contractor. She was using credit cards to purchase necessary items like groceries and household items. (Tr. 27-33, 74-76, 80-81)

In 2014, Applicant called her creditors advising them that she was unable to make all of her required monthly payments or to pay debts on time. She sought to make payment arrangements with the creditors. Applicant also took out a loan against her 401(k) account to assist in paying her debts. She received checks from the credit union holding her 401(k) to make payments to specific creditors. She was able to bring some of her debts to a current payment status. (Tr. 33-36)

Applicant presented her current 2018 monthly budget showing a net monthly income from the DOD contractor employer of \$5,355.68, with net monthly expenses of \$5,034.27, and a disposable income remainder of \$321.41 for payments to creditors. With these payments, Applicant has a net reserve of approximately \$100 to \$150.

Applicant presented a list of debts that she pays each month from these funds. She presented documents to show that her income and expenses were similar in 2016 and 2017. Applicant also has a checking account with a reserve of approximately \$500 and her 401(k) of approximately \$116,000. This does not include any contribution to household expenses by her significant other. She is current with her taxes and has no pending legal actions against her. She attended at least two financial conferences and lectures in 2017. She does not now use credit cards and is strictly on a cash basis for expenses. (Tr. 62-74, 78-79; AX P, AX Q, and AX R, Budgets; AX U, Debts Being Paid.)

The debt at SOR 1.a. is a credit card debt that is charged off and closed. Applicant is not making payments on this account. Since the account is charged off, Applicant's plan is to contact the creditor, reopen the account, and establish a payment plan. No action has been taken yet. (Tr. 36-37, 58-59)

The debt at SOR 1.b is a warehouse retail store club credit card that Applicant opened in 2013. As noted above, SOR 1.b and 1.c are the same debt. Applicant made payments on the card until losing her part-time jobs in 2014. In 2014, she used part of her 401(k) funds to pay down the card balance. She talked to the creditor and entered a payment plan of \$30 a month. The payments will increase to \$80 in 2018. Applicant has been complying with the payments schedule. She presented documents to verify that the payments are drafted from her bank account. (Tr. 37-40, 59; AX C, Agreement and Bank Statement, dated March 7, 2017)

The debt at SOR 1.d is for a credit card. The debt is duplicated at SOR 1.m with the collection agency. Applicant contacted the collection agency to arrange to pay the debt. The collection agency agreed to monthly payments of \$25. Applicant made three payments by electronic transfer in April through June 2017. (AX L, letter, dated July 17, 2017) She made \$50 payments in March 2017 (AX N, Letter, dated March 31, 2017) and May 2017 (AX M, Letter, dated May 26, 2017). There is no indication of other payments. The debt is now being collected by a collection attorney. Applicant contacted the collection attorney in early 2018 to establish new and different payment options and plans. Applicant indicated that EJH has not contacted her to amend and reestablish the payment arrangements. She stated that she has the funds to make payments when she contacted by the collection- attorney. (Tr. 40-45, 59; AX L. Letter, dated July 17, 2017; AX O, Letter, dated March 9, 2017)

The debt at SOR 1.e is a charged off credit card account. Applicant does not have the funds to establish payment arrangements and make payments at this time. She will make payment arrangements when able by contacting the original creditor. She stated she will shortly have sufficient funds each month enabling her to make payment arrangements. (Tr. 45-46, 59-60)

The debt at SOR 1.f is Applicant's account used by her and her significant other to purchase clothes for him. Applicant is responsible for the account. The debt at SOR

1.l is the same debt listed with a collection agency. The debt at SOR 1.n is the same debt being collected by the same collection attorney that is collecting the debts at SOR 1.d and SOR 1.m. Applicant agreed with the collection agency to a payment plan of \$25 monthly until the debt is paid. AX J reflects the plan and anticipated payments under the plan. After the debt was turned over to the collection attorney, Applicant contacted them in early 2018 to establish new and different payment options and plans. However, the collection attorney has not contacted her to amend and reestablish the payment arrangements. She stated that she has the funds to make payments when she is contacted by the collection attorney. (Tr. 54-55, 46-47, 60; AX L, M, N, and O)

The debt at SOR 1.g is a department store credit card. Applicant testified that she has an agreement with the creditor for automatic payments which started in late 2016 or early 2017. She has been able to make the payments, and increased the payments to \$30 monthly in 2018. She presented documentation to establish that she made a \$30 payment on the debt in February 2018. She stated she is current with her payments. The present balance on the account is approximately \$973. (Tr. 47-48, 60; AX D, Letter, dated February 19, 2018)

The debt at SOR 1.h is a store credit card. Applicant has sent regular monthly payments of \$25 for this account since 2016. Applicant presented the monthly reminder she receives from the creditor showing a balance on the account as of February 2018 of \$700. Applicant is attempting to make the payments automatic rather than sent by her. (Tr. 48-50, 60; AX E, Letter, dated February 28, 2018; AX G, Bank Account, dated January 15, 2015)

The debt at SOR 1.i is for a credit card. Applicant presented documentation to establish that the debt has been paid and resolved. (Tr. 50-51, 60-61; AX W, Letter, dated March 26, 2018) The debt at SOR 1.j is for an electronics department store. Applicant made regular payments on this account since February 2016. She presented documentation that the debt has been paid and resolved. (Tr. 51-52, 61; AX K, Letter, dated February 18, 2016; AX F, Bank Statement, dated January 15, 2015; AX S, Letter, dated February 10, 2018; AX T, Bank Statement, dated January 10, 2017; GX 4, Credit Report, dated March 14, 2018)

The debt at SOR 1.k is for a national retail store. Applicant could not afford to make significant payments on this debt so she made a \$1 payment each month as agreed by the creditor starting in June 2016. She has increased the payment to \$10 monthly taken automatically from her bank account. (Tr. 52-54, 61; AX I, Statement, dated January 15, 2015; AX H, Statement, dated February 14, 2018)

As noted above, the debt at SOR 1.l is that same as the debt at SOR 1.f. The debt at SOR 1.m is the same as the debt at SOR 1.b. (Tr. 54-55, 61) All of the debts are being collected by the same collection attorney. The debt at SOR 1.n is also in collection by the same collection attorney. As noted above, Applicant is waiting for

information from the collection agency on a payment plan. (Tr. 56-58, 62-63; AX J, Letter, dated January 6, 2017)

Applicant presented two letters of recommendation. A government employee, who interacted with Applicant in her capacity as her employer's information technology program manager, states that she was impressed by Applicant's knowledge and experience in information systems security. She found Applicant to be a consummate professional with strong ethics and character. Applicant is dependable, reliable, honest, and trustworthy. She follows rules to the letter and her employer entrusted her with safeguarding customer and company confidential information. Applicant has never given her any indication that she is financially unreliable. She has unconditional trust and confidence in Applicant, and supports and endorses that Applicant be granted eligibility for access to classified information. (AX A, Declaration, dated April 7, 2017)

Applicant also provided a letter of recommendation from a former supervisor who served as the company security manager for special projects and for information security for 16 years. He was responsible for hiring Applicant in 2004 to be the assistant information security manager. He supervised Applicant for over 11 years. Applicant's performance was consistently rated as superior/commendable. Applicant has strong ethics and character. She is dependable, honest, trustworthy, and follows rules. He believes Applicant is financially reliable. He recommends that she be granted eligibility for access to classified information.

## **Policies**

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 must 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 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.

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 in seeking 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 as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations**

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 a person’s reliability, trustworthiness, and ability to protect classified or sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet her financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports and Applicant’s admissions reveal that Applicant has delinquent consumer bills and credit card debts. The evidence is sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

(a) inability to satisfy debts, and

(c) a history of not meeting financial obligations.

The available evidence shows an inability because of unemployment caused by illness and job loss to resolve the delinquent debts. This raises issues about Applicant's ability to meet her financial obligations. Once the Government has established an adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions 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 problems 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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant's debts are numerous and recent. The debts were incurred under normal circumstances by Applicant's use of credit cards to purchase necessary items. The debts are normal consumer and credit card debts. She initially was able to be current with payment of the debts because of her part-time employment. However, other mitigating conditions apply. Applicant was unable to continue to pay the debts because she could no longer work one part-time job for medical reasons and the other job was eliminated. She lost the income she was relying on to pay the credit card debts. She also had unanticipated expenses caring for and visiting her mother. These circumstances were beyond her control and are unlikely to recur. Applicant acted responsibly under the circumstances. She took a loan from her 401(k) to pay some of the debts. She contacted her creditors, explained to them why she was unable to make current timely payments, and sought other payment arrangements. She established payment plans to pay as much of the debts as she could under the circumstances.



Applicant acted in good faith towards her debts. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free. All that is required is that Applicant act responsibly given her circumstances. Applicant must establish that she has a reasonable plan to resolve financial problems, and that she has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. Her plan does not require paying off all debts immediately or simultaneously. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant provided adequate information on her plans to pay and resolve her delinquent debts. Applicant established that there were duplicate debts. I find that SOR 1.b and SOR 1.c are duplicate debts; SOR 1.d and SOR 1.m are duplicate debts; and SOR 1.f and 1.l are duplicate debts. Applicant provided sufficient documentation to establish that she paid and resolved the two debts at SOR 1.i and 1.j. Applicant provided significant documents to establish she is making regular payments on the debts at SOR 1.b/1.c; SOR 1.f/1.l; SOR 1.g; SOR 1.h, and SOR 1.k. She intends to take payment action on the debts at SOR 1.a, and SOR 1.e after paying other debts. She is waiting for information from the creditor to establish payment plans on the debts at SOR 1.d/1.m and SOR 1.n. She presented sufficient information to establish that she is current with both her mortgage payments and her taxes. Applicant presented evidence that she attend two different financial information programs.

Applicant has shown sufficient action to resolve her delinquent debts. Applicant provided enough details and sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is sufficient evidence to establish why Applicant was unable to make greater progress resolving her debts. There is sufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. She has shown a good-faith effort to resolve these debts. Her reasonable and responsible actions towards her finances is a strong indication that she will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated financial security concerns.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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 considered that Applicant has been eligible for access to classified information for over 16 years and that there are no reports of any security violations. I considered the recommendation of her supervisor and government contact that she is trustworthy and reliable and should be granted eligibility for access to classified information.

Applicant established that she took reasonable and responsible action to resolve her financial obligations. Applicant demonstrated appropriate management of her finances and showed a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. She has established her suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial situation.

### **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
Subparagraphs 1.a – 1.n:	For Applicant

### **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 access to classified information. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge