



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



In the matter of:

ISCR Case No. 16-03574

Applicant for Security Clearance

**Appearances**

For Government: Mary Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2017

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns related to two job terminations and delinquent debts. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility for access to classified information is granted.

**History of Case**

On January 22, 2016, Applicant submitted a security clearance application (SF 86). On March 24, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on April 13, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals

(DOHA) assigned the case to me on May 8, 2017. DOHA issued a Notice of Hearing on May 23, 2017, setting the hearing for June 29, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified, and offered Exhibits (AE) A through D into evidence. All exhibits were admitted without objection.<sup>1</sup> I left the record open until August 8, 2017, to permit possible submission of additional evidence. No additional exhibits were submitted. DOHA received the hearing transcript (Tr.) on July 10, 2017.

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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated in Appendix A of SEAD 4. I considered the previous AG guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

### **Findings of Fact**

Applicant is 26 years old and recently married. She graduated from high school in 2008. She has earned 16 hours of college credit. She has an eight-year-old son from a previous marriage. She began her current position with a defense contractor in January 2016. She has been promoted since starting it, and received certificates of appreciation for her work. Prior to this job, she worked at a large retail store, a state correctional department, and a liquor store. She is a volunteer for local community and youth organizations. Her employer is aware of this proceeding and the underlying security concerns. (Tr. 20-15; AE A.)

### **Personal Conduct**

Paragraph 1 of the SOR alleged that Applicant's termination from two places of employment raised security concerns under this guideline.

From June 2009 to March 2013, Applicant worked as a correctional officer for a state correctional institution. She was 18 years old when she started this position. In November 2009, she received a written reprimand for improperly completing an inmate count form and placed on probation until June 2010. Applicant's performance evaluations for June 2010 to June 2011, and June 2011 to June 2012 rated her as "meets standards." (GE 3.)

---

<sup>1</sup>Department Counsel offered Hearing Exhibit 1, as demonstrative evidence. It is a summary of the Government's Exhibits. Applicant had no objection. (Tr. 17.)

In March 2013, Applicant was terminated from her correctional position for engaging in conversation with a newly arrived inmate. Applicant had informed her supervisor that she knew the inmate from high school and that he had dated her sister. She did not disclose the fact that the inmate knew Applicant's son's father and babysat for her son once. Additionally, her sister, who has the same initials as Applicant, sent the inmate some money, and the warden believed Applicant sent the money, which she strongly denies. These infractions were against the institution's employment policies. (Tr. 26-30; GE 2, GE 3.)

In September 2013, Applicant began working for a liquor store. In February 2014, she was terminated for theft after her boyfriend walked into the store while she was working and left with a bottle of alcohol that he had not purchased. His behavior was recorded on a video. Applicant had not seen him steal the alcohol, but when confronted about 30 minutes after the incident with the video she paid for the alcohol. Her boyfriend's cousin, who was working with Applicant at the time, observed what had happened and promptly reported it to the store's manager. Applicant did not know she was in trouble until several days later, when she learned she was responsible for his behavior according to the company's policy. She broke up with her boyfriend soon after this incident. (Tr. 32-37; GE 4.)

Applicant disclosed both terminations in her 2016 SF 86. (GE 1.)

### Financial Considerations

Based on credit bureau reports from February and October 2016, Paragraph 2 of the SOR alleged 18 debts that became delinquent between 2009 and 2015, and totaled \$7,081. (GE 5, GE 6.)

Thirteen of those debts were unpaid medical bills. They totaled \$3,837 and related to Applicant's surgeries and her son's medical issues. Applicant contacted the creditors for several accounts and learned that some debts listed on the SOR were duplicate debts. In June 2017, she paid the creditor \$1,800 and resolved the medical debts alleged in SOR ¶¶ 1.c, 1.d, 1.g, 1.h, 1.i, 1.j, 1.k, 1.m, 1.n, 1.o, and 1.p. (Tr. 43-49; AE C.)

Applicant denied owing her former landlord the \$1,807 debt alleged in SOR ¶ 1.a. In accordance with her lease, she gave him 30 days' notice of her intention to move. He claimed that she owed him three months of rent at \$425 a month plus late fees. He has kept her security deposit. Applicant does not intend to pay the debt and thinks it will become a civil case. She disputed it with a credit reporting company. (Tr. 51-53, 59; AE B.)

Applicant is unfamiliar with the \$860 medical debt alleged in SOR ¶ 1.b and has had difficulty locating the correct creditor. She is not familiar with the hospital or physicians referenced in the CBR. She will pay the debt if it is found to be her debt. She disputed it with the CBR. (Tr. 54; 59; AE B.)

The \$487 delinquent debt alleged in SOR ¶ 1.e is owed to a cell phone company for an outstanding bill from 2009. Applicant's former boyfriend used her phone and did not pay the bill. The debt recently fell off of her CBR. She may pay it. (Tr. 61-62.)

In October 2016, Applicant established a payment plan for the \$360 delinquent loan alleged in SOR ¶ 1.f. As of this hearing date, the balance was \$134. (Tr. 56-56, 59; AE C.)

The \$258 delinquent debt alleged in SOR ¶ 1.i is owed for a personal bank loan that became delinquent in 2010. Applicant called the creditor and tried to pay the debt at a local branch office. The bank would not accept the payment and insisted that she had to make the payment at the branch office where she obtained the loan, which was located in another city. She does not use checks and could not send one. Although she realized the debt has been removed from her credit report, she may call the bank and ask if it accepts money orders, in which she will obtain one. She understands that it is her debt. (Tr. 62-66.)

Applicant is unfamiliar with the \$347 medical debt alleged in SOR ¶ 1.q, but thinks it may have been resolved. She said it is not on her June 2017 CBR. (Tr. 77-79; AE B.)

The \$347 delinquent debt alleged in SOR ¶ 1.r is owed to a cable company for equipment Applicant did not return when she hurriedly moved away from her former boyfriend. She intends to pay it. (Tr.69.)

Applicant explained that she was unable to pay all of her debts in 2009 and in subsequent years because she had several surgeries and could not afford to pay necessary medical bills and other bills. In addition, her son's father was abusive and she moved away from him, incurring additional costs. (Tr. 66-68.) She has never received child support from him and he owes about \$26,000 in arrears. (Tr. 39, 76.)

Applicant estimated that in 2015 she earned between \$16,000 and \$20,000. In 2016, she earned \$32,000 in her new position. Her net monthly salary is erratic and can be between \$800 and \$3,000, depending on her work load. Her monthly expenses are about \$1,800, and she responsibly budgets her income and savings accordingly. Her husband contributes to the family expenses and provides medical insurance through his company. She does not have any credit cards. (Tr. 70-76, 80; AE D.)

Applicant said she is a hard worker and loves her job. She said she has changed over the years and is trying to improve her future. (Tr. 82.) Applicant's family is aware of security concerns alleged in this case. (GE 2.)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations

for each guideline, the AG 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. Directive ¶ E3.1.15 says that 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 E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to 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 or sensitive information.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

In 2013 and 2014, Applicant was terminated from positions for violating her employer's rules and regulations. Those terminations raise questions about her judgment and reliability under the above disqualifying condition.

AG ¶ 17 includes three conditions that could mitigate security concerns arising from Applicant's alleged personal conduct:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Three years have passed since Applicant's termination from the liquor store, and four years since her termination from the correctional center. She has matured over the last several years, as demonstrated by her acknowledgement of the previous issues and relationship problems in her life, current performance evaluations, and recent marriage to a man who has a job and helps support her. The evidence establishes some mitigation under AG ¶¶ 17(c) and 17(d). Applicant's family and supervisor are aware of the

underlying facts in this case, reducing her vulnerability to exploitation or duress. AG ¶ 17(e) applies.

## **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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial difficulties starting in 2009 and continuing into 2015, as documented by her admissions and the CBRs. She has been unable to fully satisfy or resolve those debts. 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 five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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;

(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 began accruing delinquent debts in 2009 when she had numerous medical issues resulting in several surgeries and had insufficient money. She has since obtained a position with an employer who is satisfied with her performance. Additionally, she recently married a man who provides financial support for her and her son. Based on these permanent changes in her personal life, there is evidence to establish some mitigation under AG ¶ 20(a), as a similar financial situation is unlikely to recur.

Applicant's financial difficulties resulted medical conditions, an abusive relationship, and her immaturity. Some of those circumstances may have been beyond her control. There is insufficient evidence documenting that she acted responsibly under the circumstances, which evidence is necessary to establish full mitigation. AG ¶ 20(b) applies minimally.

Applicant did not provide evidence that she participated in credit or financial counseling; however, she presented evidence that she has resolved most of the alleged medical debts and is resolving another debt. Her financial problems are coming under control. She established some mitigation under AG ¶ 20(c). She has resolved 11 of the 18 SOR alleged debts, is resolving 1 of them through a payment plan, and has tried to locate the correct creditor for 1 medical debt. Her actions demonstrate a good-faith effort to resolve her financial obligations. She established mitigation under AG ¶ 20(d). She has a legitimate basis for disputing a larger debt owed to her former landlord and provided evidence that she filed a dispute with a credit bureau. She also disputed a medical debt because she cannot locate the correct creditor. AG ¶ 20(e) has some application. Three debts remain unaddressed, one of which she intends to address.

### **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 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 young woman, who has experienced health issues and has made poor relationship choices in the past. As a partial consequence of her immaturity, she failed to comply with two employer's rules and regulations resulting in job terminations. Despite these problems, she has slowly been working to improve her life and finances. During the hearing, she displayed candor and maturity, and a solid commitment to her work. She further demonstrated her maturity by addressing the majority of the SOR debts. I have no doubt that she will continue to make good-faith efforts to resolve any unaddressed debt. The potential for pressure, exploitation, or duress is minimal, as her family and employer are aware of all security concerns. Overall, the evidence has eliminated the formerly legitimate doubt as to Applicant's eligibility and suitability for a security clearance. She successfully met her burden to mitigate the security concerns arising under the guidelines for personal conduct and financial considerations.

### **Formal Findings**

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

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.r:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is granted.

SHARI DAM  
Administrative Judge