



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03955

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

05/14/2018

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the personal conduct security concerns, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing 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 (AG) effective within the DOD on June 8, 2017.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on March 2, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2018. I convened the hearing as scheduled on March 21, 2018. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A through D. There were no objections to any of the exhibits, and they were admitted into evidence. DOHA received the hearing transcript on March 29, 2018.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.g, 1.i, 1.j, 1.l, 1.n, and 1.p. She denied the remaining SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. She served on active duty in the military from March 2003 until October 2006 and received an honorable discharge. She served with the Army National Guard from October 2006 to January 2011 and was honorably discharged. She served in Afghanistan for 12 months before being discharged. After her discharge she was unemployed for seven months. She was married from 2003 to 2005. She has a 14-year-old child from a previous relationship. She does not have custody of the child and does not pay child support. She earned an associate's degree in 2008. She has worked for her present employer since October 2015. She also works a part-time job.<sup>2</sup>

The SOR alleges delinquent student loans (¶¶ 1.a through 1.f and 1.l) totaling approximately \$44,461. Applicant obtained these loans in 2007. She testified that she started making \$120 monthly payments in approximately 2009. She stopped the payments in 2009 and made \$20 monthly payments. She did not know when she stopped these payments. She testified that "I started paying in 2016 because I planned on going back to school and I had to get them current in order to go back."<sup>3</sup> In 2016, she made payments of \$5 a month, but could not recall how many months she made these payments, but stated she was supposed to start paying \$300 a month, but she could not afford to make the payments and stopped in November 2017. It is unknown if she made any payments. She has not restarted a payment plan. She testified the student loans are in default again.<sup>4</sup> The delinquent student loans are unresolved.

Applicant testified that none of the other debts alleged in the SOR are paid. She stated she was unaware of some of the debts, and some she wants to dispute. She stated that the medical debts alleged are for services she received in 2014. She submitted an application in 2014, presumably to the hospital that provided service, to help reduce her medical bills. She admitted that she failed to follow up on the application. She did not have medical insurance at the time. She was unable to pay the medical bills when they

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<sup>2</sup> Tr. 19-25, 54-60; GE 1.

<sup>3</sup> Tr. 28.

<sup>4</sup> Tr. 25-32.

were due. She knew she owed medical debts. She did not contact any of the medical providers to make payment arrangements. The debts are corroborated by Applicant's admissions and credit reports from November 2016 and December 2015.<sup>5</sup>

Regarding the other debts alleged in the SOR, Applicant stated she was not able to pay them because she did not have enough income. She said she disputed some of the debts, but did not have the documents or receipts to corroborate payment or her actions. She reached a settlement agreement with one creditor, but could not afford to pay it. She sought help from a debt consolidation company that was fraudulent. She works 80 hours a week so she can accumulate money to hire an attorney to help her dispute and settle her debts. She has had no financial counseling. She has some discretionary income at the end of each month after paying bills, but she needs the money for maintenance on her car and other necessities. She is living paycheck to paycheck. She earns barely over the minimum wage. She stated no one ever explained to her how credit works. She is working so she can pay her delinquent debts. She plans on paying her debts, but has not been in a position to do so.<sup>6</sup>

The SOR ¶ 2.a alleges Applicant deliberately failed to disclose on her November 2015 security clearance application that she had bills or debts turned over to a collection agency or that she had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Applicant was interviewed by a Government investigator in June 2016. The summary of interview stated that Applicant "volunteered" that she had debts that were in collection. She failed to disclose them on her security clearance application due to an unintentional oversight. Her student loans were in collection, but she could not recall when she opened her student loans, when they became past due, and the details of the collection efforts. She explained that in May 2016 she made arrangements to pay \$5 a month so she might qualify for a deferment. She could not recall any other details about the student loans. She also indicated that she was unaware that her medical debts were in collection status. Regarding all of her delinquent debts, she stated that she intended to obtain a credit report, contact the creditors, and if the debt was valid, she would make payment arrangements. Applicant testified that she did not know why she initially failed to disclose her delinquent collection accounts on her security clearance application.<sup>7</sup>

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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<sup>5</sup> Tr. 32-41; GE 2, 3, 4.

<sup>6</sup> Tr. 32-53, 60-65; AE A, B.

<sup>7</sup> Tr. 43-51.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

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

Applicant has numerous delinquent debts and student loans from at least 2010 that she has been unwilling or unable to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of Applicant's delinquent debts or student loans are resolved. Her debts are recent. AG ¶ 20(a) does not apply. Applicant had a period of unemployment in 2012, which was beyond her control. She did not have medical insurance and is underemployed, both of which are also beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. After 2010, Applicant stopped making payments on her student loans because she did not earn enough income. She did not do anything regarding her student loans until after she completed her security clearance application. She has not resolved any of the delinquent debts or made new payment arrangements for her delinquent student loans. She completed an application to have her medical debts reduced, but never followed up on it. Despite her promise during her background interview, to contact creditors and resolve debts, she did not provide evidence that she has done so. She has not acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that she has participated in financial counseling, made a good-faith effort to repay her delinquent debts and student loans, and did not provide evidence to corroborate possible disputes that she has with any of the alleged creditors. AG ¶¶ 20(c), 20(d), and 20(e) do not apply.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

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

I have considered all of the evidence and conclude that Applicant was aware that her student loans were delinquent and in collection. She deliberately omitted on her November 2015 security clearance application that her student loans were in collection. She was unaware that some of her other debts were in collection. The above disqualifying condition applies.

One mitigating condition under AG ¶ 17 is potentially applicable to the disqualifying security concerns based on the facts:

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

When Applicant was interviewed by the Government investigator, before being confronted with her delinquent debts, she disclosed that her student loans were in collection. AG ¶ 17(a) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 33-year-old veteran. She experienced a period of unemployment in 2011 after her honorable discharge from the military. She is also underemployed. She has numerous delinquent debts and student loans that are unpaid. She failed to provide sufficient evidence that she is addressing her delinquent debts. She does not have a reliable financial track record. The record evidence leaves me with questions and doubts

as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the personal conduct security concerns under Guideline E, but failed to mitigate the security concerns arising under Guideline F, 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.u:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge