



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



In the matter of: )  
)  
) ISCR Case No. 16-04040  
)  
Applicant for Security Clearance )

**Appearances**

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

11/02/2017

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**Decision**

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KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On February 6, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on May 30, 2017. Applicant received the FORM on June 8, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and she provided no response to the FORM. The Government's evidence, identified as Items 1 through 6, is admitted into evidence without objection. The case was assigned to me on October 23, 2017.

## Findings of Fact<sup>1</sup>

Applicant is 49 years old. She obtained a bachelor's degree in 1991 and a master's degree in 2005. Applicant has been employed as a quality engineer by a federal contractor since September 2000. She reported no military service and she was never married. Applicant reported a previous security clearance from 2007.

Applicant reported delinquent debts including student loans in section 26 of her security clearance application (SCA).<sup>2</sup> The total amount that she owed for the student loans was \$57,541. She explained that she had been making automatic payments from her checking account to Sallie Mae in the amount of \$250 per pay period. Then the amount increased to \$331, and increased again to \$481. "I neglected to increase the amount being paid from my checking account. I was injured requiring two surgeries . . . I was not able to obtain agreement with Sallie Mae that I thought I could manage."<sup>3</sup> Applicant claims that she made three payments of \$331 followed by two payments of \$481. Unbeknownst to Applicant, the student loans were transferred to another creditor, TG, for collections. In June 2014, she received notification from her employer that her wages were being garnished to pay off her defaulted student loans. TG had been sending her letters that she never opened. Applicant produced no documentary evidence of her previous payments to Sallie Mae.

In her September 2016 clearance interview, Applicant elaborated that she somehow injured her foot in 2011. While in recovery from that injury, she fell again and further injured her right leg, which was braced for the next six months. She had surgery in 2012, followed by 12 weeks of medical leave. She required a second surgery in June 2013, followed by eight weeks of medical leave. She also suffered from adult-onset asthma. She had residual nerve damage and pain from the surgeries. She had reduced wages each time she was on medical leave or short-term disability. Applicant was overwhelmed and "unable to deal with everything."<sup>4</sup> She couldn't keep up with her finances. She needed to make nine consecutive payments to TG on her delinquent student loans in order to have the garnishment order removed. In March 2015, she spoke to a bankruptcy attorney but decided not to file a petition.

In her April 2017 Answer to the SOR, Applicant stated that steps were being taken to resolve her delinquent debts. She provided no details or documentary evidence that she had even signed the agreement with TG to start the nine consecutive payments to have the garnishment order removed. Applicant stated that she had another minor surgery in January 2016, and more medical issues in 2017. She claims that SOR ¶¶ 1.f

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's April 27, 2015 Security Clearance Application (SCA). (Item 3) and Personal Subject Interview conducted on September 15, 2016. (Item 4)

<sup>2</sup> Item 3.

<sup>3</sup> Item 3, p. 24.

<sup>4</sup> Item 4, p. 6.

(medical debt), 1.h (Medicredit), and 1.j (medical debt) have been paid off. Applicant also claimed that she disputed the delinquencies at SOR ¶¶ 1.g, 1.i, and 1.k as they were supposedly reported in error. However, she provided no substantiation for any of the aforementioned assertions. She has not reached out to her creditors and she has not had financial counseling. She provided no information about her current budget. She had taken no actions to resolve the specific financial issues in the SOR between her clearance interview in September 2016 and her Answer in April 2017.

Applicant admitted 8 of the 11 delinquent debts alleged in the SOR totaling \$48,218. The delinquent student loans, which she admitted to, account for \$37,298 of that amount. In her Answer, Applicant repeatedly stated “I admit this is a valid debt. Repayment options will be pursued as soon as my current medical obligations are met.” It is unclear when that will happen.

### **Policies**

This 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 former adjudicative guidelines (AGs) effective on September 1, 2006. However, new AGs were promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017, and this decision is based on the new AGs.<sup>5</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative determination that the individual is an acceptable security risk. This is 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

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<sup>5</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. 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 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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's delinquent debts alleged in the SOR are confirmed by her credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>6</sup> Applicant has not met that burden. None of the delinquent debts have been adequately addressed.

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 . . . , and the individual acted responsibly under the circumstances;
- (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 endured medical problems resulting in multiple periods of short-term disability and reduced wages. Arguably, these conditions were beyond her control. She has produced no relevant or responsive documentation, either with her Answer to the SOR, or in response to the FORM. She has not demonstrated that she acted

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<sup>6</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. Applicant's credit reports and SOR list 11 delinquent debts totaling \$48,218. Applicant did not provide enough details with documentary corroboration about what she did to address her SOR debts. She did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor (2) correspondence to or from the creditors to establish maintenance of contact;<sup>7</sup> (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because she did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was necessary to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 3) Aside from Applicant's uncorroborated statements, there is no documentary evidence that she paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. She did not describe financial counseling or provide a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM informed Applicant that she had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 2)

### **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

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<sup>7</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Notably, Applicant has gone through multiple surgeries and ongoing pain. She claims to have made some earlier efforts to pay her student loans. Most important, Applicant has not addressed the specific allegations in the SOR. She hasn't met her burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. She has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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
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Subparagraphs 1.a through 1.k:	Against Applicant
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### **Conclusion**

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

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Robert J. Kilmartin  
Administrative Judge