



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



In the matter of: )  
)  
) ISCR Case: 17-00487  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esquire, Department Counsel  
For Applicant: *Pro se*

December 7, 2017

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**Decision**  
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LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On February 8, 2016, Applicant submitted a security clearance application (SF-86). On March 13, 2017, Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on April 3, 2017. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 8, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by Applicant on June 16, 2017. 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 respond to the FORM on July 7, 2017. DOHA assigned the case to me on October 1, 2017. Items 1 through 6 are admitted into evidence and hereinafter are referenced as Government Exhibits 1 through 6.

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*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions 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 by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, 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.

### **Findings of Fact**

Applicant is 39 years old, and is divorced with four children. She has an Associate's degree. One of her children is autistic and another is a piano prodigy. She is employed as a Service Manager for a defense contractor. She is seeking to obtain a security clearance in connection with her employment.

The SOR alleges that Applicant has twelve delinquent debts totaling approximately \$37,000. Applicant admits each of the allegations set in the SOR with some explanations, except 1.j., and 1.m., which she denies. Credit reports of the Applicant dated February 18, 2016; and January 17, 2017, reflect each of the delinquent debts listed in the SOR. (Applicant's Exhibits 5 and 6.) Applicant has never held a security clearance before.

Applicant explained that she has worked for a defense contractor since July 2015. Prior to this employment, she was employed for 18 years working for a furniture company owned by her former in-laws. Applicant attributes her financial indebtedness to her divorce in 2012. Applicant explained that her ex-husband's parents bought her out of her portion of the house, which was \$12,000. With that money, Applicant put a down payment on another house in January 2013, and used credit cards to purchase what was needed to furnish the house to care for her four children. She also financed carpet installation and paid to finish an additional bedroom with new credit cards. At that time she had good credit. For a period she worked two jobs while getting her associates degree. She was terminated from her position at the furniture store in June 2015 due to tensions over divorcing their son. After she was let go, Applicant consulted with a credit counseling service about her finances. She continued to struggle

financially, and decided to meet with a Bankruptcy lawyer. She gave him a deposit with the intention of filing for Bankruptcy. She never filed because most of her debt was about to hit the three year statute of limitations and be discharged, as she believed that paying it would not help, as the negative reporting for missed payments was already on her credit report. Applicant decided that it was best to let her debts be charged off by the creditors because her delinquencies had already damaged her credit. Over the past two years she has working to rebuild her credit. Since being hired by her current employer she has improved her credit over 200 points and is looking ahead to a more responsible financial future. (Applicant's Answer to SOR.) The following delinquent debts are listed in the SOR. All of them remain owing, except two.

1.a. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$21,772. The account has not been paid.

1.b. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$3,768. The account has not been paid.

1.c. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$3,374. The account has not been paid.

1.d. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$2,801. The account has not been paid.

1.e. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$1,581. The account has not been paid.

1.f. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$1,405. The account has not been paid.

1.g. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$1,131. The account has not been paid.

1.h. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$876. Applicant claimed that she has made payments toward the debt when she could. There is no documentation in the record to support the payments. The account has not been paid off.

1.i. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$421. The account remains owing.

1.j. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$269. Applicant stated that the account has been paid in full and provided supporting documentation. (See Government Exhibit 2 and attachment.) This allegation is found for Applicant.

1.k. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$174. Applicant states that the account has been paid in full and provided supporting documentation. (See Government Exhibit 2 and attachment.) This allegation is found for the Applicant.

1.l. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$105. Applicant claimed that she is making payments toward the debt. There is no documentation in the record to support the payments. The account has not been paid off.

1.m. Applicant failed to pay her 2014 Federal taxes as required. Applicant stated that she has set up a payment plan that she is following, and that the balance owed to the federal government is scheduled to be paid off in February of this year. There is no documentation in the record to support that the debt has been paid off.

In summation, Applicant provided an additional document to show that her Mobile account was paid in full, an account that is not alleged as delinquent in the SOR. Applicant attributes her financial problems to her lack of income stemming from her divorce, and the related expenses, and the fact that she was termination from employment at her former in-laws furniture store.

In her response to the FORM, Applicant states that since she was hired by her current employer in July 2015, she has tried to get her life and finances back on track. She states that she has received raises at work and has been trusted with more responsibility at work. She further states that her credit score and financial situation is constantly improving. She states that she continues to work toward correcting the mistakes of the past. She did not provide any additional documentation to support the fact that she has paid any of the debts listed in the SOR.

Letters of recommendation from a coworker and from her fiancé indicate that in their opinion, Applicant is highly professional and trustworthy. She is a hard worker, a good mother, and considered to be an upstanding citizen, who is respectful of privacy, sensitive information, and rules and regulations. (Applicant's Response to FORM.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (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. 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* EO 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 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.

AG ¶ 19 describes five 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;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has not paid her delinquent debts. Since her divorce, she purchased a house, and made significant improvements, namely installing new carpeting and adding another bedroom. This was obviously not an inexpensive venture. She also purchased things for her four children that they needed. For the most part, she has been unable to pay her delinquent debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several 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, 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;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

It is recognized that circumstances beyond her control, namely, her divorce and a period of unexpected unemployment, adversely affected her finances. However, AG ¶ 20(b) does not provide full mitigation here. Since receiving the SOR, Applicant has paid off two small debts, and states that she is making payments toward another small debt. She has ignored the other debts, and intentionally allowed them to be charged-off. She states that she consulted with a Bankruptcy attorney at some point, and had planned on filing bankruptcy to discharge her excessive indebtedness. She failed to follow through with this plan. Instead she chose to ignore her old debts, waiting for them to be charged-off by the creditor. She has not demonstrated that she has acted responsibly under her circumstances. Furthermore, there is no clear indication that her financial problems are being resolved or are under control, or that she has initiated a good-faith effort to repay or otherwise resolve her debts. There is nothing in the record to show that she has done anything effectively to resolve the majority of her debt. Only two have been paid off, and the remaining delinquent debts set forth in the SOR remain delinquent. The record fails to establish any mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(g).

### **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 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 eligibility for a security clearance 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 has struggled financially due to a divorce and unemployment. Her situation is sympathetic and largely out of her control. However, since July 2015, she has been working for her current employer and has failed to demonstrate that she has taken reasonable and effective action to resolve the financial issues in the SOR. Her financial problems continue as there is no evidence that they have been resolved. Overall, the record evidence leaves me with serious doubts as to Applicant's judgment, eligibility, and suitability for a security clearance. She has not met 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
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	For Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l:	Against Applicant
Subparagraphs 1.m:	Against 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.

Darlene Lokey Anderson  
Administrative Judge