



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



In the matter of:	)	
	)	
	)	ISCR Case: 17-00674
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

February 14, 2018

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to have 12 delinquent debts totaling \$21,410. She resolved three of her delinquencies to the satisfaction of the creditors and has hired a debt management firm to help her resolve the majority of her remaining debt. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

**Statement of Case**

On January 19, 2016, Applicant submitted a security clearance application (SF-86). On April 4, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865 (EO), *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*.

Applicant answered the SOR on May 1, 2017. The case was assigned to another administrative judge on June 6, 2017, and reassigned to me on July 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 7, 2017. I convened the hearing as scheduled on September 25, 2017. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on her own behalf, and presented Applicant Exhibits (AE) A through D. DOHA received the transcript of the hearing (Tr.) on October 4, 2017. The record was left open for the receipt of additional evidence. On November 13, 2017, AE E through AE K were submitted, and received without objection. The record then closed.

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, as well as the new AG, 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 admitted to all of the allegations in SOR ¶¶ 1.a through 1.i. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. She has worked for her employer since November 2015. She served on active duty in the Air Force from January 2006 to March 2012, and achieved the rank of staff sergeant (E-5). She medically retired in March 2012. She was unemployed from July 2012 to July 2013 and from June 2015 to July 2015. She has two associate degrees. She is married, but separated from her husband in January 2013. She cannot afford the fee to file for divorce. She has two children, ages six and nine. (GE 1; Tr. 26-32, 62-64.)

Applicant attributes her debts to being forced to medically retire from the military, her periods of unemployment, and her separation from her husband. In April 2017, Applicant enrolled in a debt management plan. She is required to pay the plan \$344 monthly, which accumulates in an account until it is dispersed to a pay off a settled debt with a creditor. In that plan, she included debts totaling \$15,392. She had resolved \$2,914 of that debt, as of September 2017. (GE 1; GE 2; AE A; AE D.)

Applicant was alleged to be delinquent on a loan account in the amount of \$9,506, as stated in SOR ¶ 1.a. It has been delinquent since 2015. This debt is listed as enrolled in her debt relief program, and the status report of November 2017 reflected the company was “actively working” to negotiate this debt. Applicant intends to resolve this debt through her debt management plan. (GE 3; AE A; AE J; Tr. 36.)

Applicant was alleged to be delinquent on a medical account in the amount of \$4,688, as stated in SOR ¶ 1.b. This debt has been delinquent since 2015. Applicant was injured at a soccer game and taken to the emergency room. The creditor did not give her the proper forms to fill out when she was in the emergency room. Once she received the proper form, she submitted it and her health care insurance covered this bill. She provided documentation that shows this debt has a zero balance. (GE 3; AE C; AE E; Tr. 37-38.)

Applicant was alleged to be delinquent on a collection account in the amount of \$900, as stated in SOR ¶ 1.c. This debt has been delinquent since 2015. It was for a personal loan. This debt was listed as “active settlement/payment plan” in her debt relief program, through which the creditor has agreed to accept six monthly payments totaling \$405. Her debt management company is dispersing the funds under this repayment agreement. This debt is being resolved. (GE 3; AE A; AE G; AE J; Tr. 39-41.)

Applicant was alleged to be delinquent on a collection account in the amount of \$794, as stated in SOR ¶ 1.d. This debt has been delinquent since 2015. It was for a payday loan. This debt is enrolled in her debt relief program, through which the company will negotiate with the creditor to resolve it through agreed payments. (GE 3; AE A; AE J; Tr. 41.)

Applicant was alleged to be delinquent on a collection account in the amount of \$786, as stated in SOR ¶ 1.e. This debt has been delinquent since 2013. It is listed as “resolved: payments pending” in her debt relief program, through which the creditor has agreed to accept five monthly payments of \$75 and one payment of \$96.80. The debt management company is dispersing the monthly payments under this agreement. It is being resolved. (GE 3; AE A; AE F; AE J; Tr. 42.)

Applicant was alleged to be delinquent on a collection account in the amount of \$612, as stated in SOR ¶ 1.f. It has been delinquent since 2015. This debt was listed as “active settlement/payment plan” in her debt relief program, through which the creditor has agreed to resolve this debt for \$257, over five months. The debt management company is dispersing the monthly payments under this agreement. It is being resolved. (GE 3; AE A; AE H; AE J; Tr. 42.)

Applicant was alleged to be delinquent on a charged-off credit card account in the amount of \$560, as stated in SOR ¶ 1.g. This credit card debt had been delinquent since 2015. It is listed as “payments completed” in her debt relief program. It was settled for \$295.48. It is resolved. (GE 3; AE A; AE I; Tr. 43.)

Applicant was alleged to be delinquent on a collection account in the amount of \$518, as stated in SOR ¶ 1.h. This debt has been delinquent since 2015. It was for an unreturned cable box. Applicant testified she has now returned the cable box, and was awaiting a final receipt. (GE 3; Tr. 44-45.)

Applicant was alleged to be delinquent on a charged-off retail store credit card in the amount of \$457, as stated in SOR ¶ 1.i. This debt is listed as “enrolled” in her debt relief program. The debt management company will negotiate with the creditor and then it will be resolved through payment. (GE 3; AE A; Tr. 45-46.)

Applicant was alleged to be delinquent on a charged-off account in the amount of \$2,378, as stated in SOR ¶ 1.j. This is a credit card for which Applicant co-signed with her husband. She was unable to add this to her debt management plan since it was a joint debt. She is attempting to follow up with him on this debt. (Tr. 46-48.)

Applicant was alleged to be delinquent on two debts to a former state of residence, in the amounts of \$116 and \$95, as stated in SOR ¶¶ 1.k and 1.l. These debts were for a driver’s license renewal and vehicle registration fees that she incurred after she moved out of state. She resolved these debts as documented in a receipt from a collection agent for this state debt. (GE 4; AE K; Tr. 48-49.)

Applicant closely monitors her financial situation. She does not overspend. (Tr. 49.) She now has a small amount of savings set aside for emergencies. (Tr. 51-52.) Her debt management company provided her financial counseling. She completed financial courses on-line because she wanted to understand what she was doing wrong with her finances. (Tr. 52-53.)

Applicant is considered trustworthy by those that know her. A friend of ten years indicated that Applicant is “a highly professional, trustworthy individual.” (AE B.) Her program manager indicated she is “completely reliable with privacy, classified information, rules and regulations.” (AE B.) Her coworker finds she has a “great work ethic and has exhibited admirable integrity.” (AE B.)

## **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 EO 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 *also* 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was delinquent on 12 debts totaling \$21,410. These debts became delinquent beginning in 2013. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four 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; and

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

The 12 SOR-alleged debts were accumulated between 2013 and 2015. In the past three years, Applicant has not accumulated new delinquent debts. The evidence establishes mitigation under AG ¶ 20(a), as the circumstances that contributed to her financial delinquencies are unlikely to recur and do not cast doubt on her current trustworthiness.

Applicant's financial delinquencies were caused by circumstances beyond her control. She had several periods of unemployment and separated from her husband. Applicant has acted to responsibly manage the debts since obtaining her present employment, by enrolling in and complying with an effective debt management program while incurring no additional delinquencies. This establishes further mitigation under AG ¶ 20(b).

Applicant participated in financial and credit counseling, and there are clear indications that her financial delinquencies are coming under control. Further, Applicant initiated a good-faith effort to resolve the alleged debts through the debt management company, albeit after receiving the SOR. She paid three debts, and has been making payments to resolve the others to the debt management company since April 2017. Applicant's budget can accommodate her agreed payments to repay the outstanding delinquent debts. AG ¶¶ 20(c) and 20(d) apply.

### **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 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. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>1</sup>

Applicant provided sufficient evidence to demonstrate a plan to resolve her outstanding delinquent debts within the standard defined in the above case. The likelihood that financial problems will recur, or Applicant will stop making payments on the plans she has initiated, is minimal based on her efforts to date and her knowledge that similar problems could jeopardize her employment. The potential for pressure, coercion, or duress is eliminated by Applicant's efforts to resolve her debt. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She met her burden to mitigate the security concerns arising under the guideline for financial considerations.

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<sup>1</sup>ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).



### **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: FOR APPLICANT

Subparagraphs 1.a through 1.i: 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 national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein  
Administrative Judge