



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



In the matter of:

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ISCR Case No. 17-00774

Applicant for Security Clearance

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

07/02/2018

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern generated by her delinquent debts. Clearance is denied.

**Statement of the Case**

On April 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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* (AG) effective within the DOD on September 1, 2006.

In an undated response, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.c. She requested a hearing, whereupon the case was assigned to me on December 4, 2017. On March 12, 2018, the Defense Office of Hearings

and Appeals issued a notice of hearing, scheduling Applicant's case for March 28, 2018. The hearing was held as scheduled. I received two Government exhibits (GE 1 – GE 2) and 15 Applicant's exhibits (AE A - AE O). Also, I took administrative notice, at Department Counsel's request, of the discovery letter mailed to Applicant on May 25, 2017. The transcript (Tr.) was received on April 10, 2018.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

### **Findings of Fact**

Applicant is a 32-year-old single woman with two children, ages eight and one. She is a high school graduate and has been working as a security specialist since 2007. She has held a security clearance since that time. (Tr. 12-13) She has worked for her current employer since 2015. (Tr. 13)

In June 2013, Applicant purchased a car. (GE 2 at 2) At that time she earned an \$85,000 per year salary. She made the monthly car payments timely for the next six months. Then, in June 2014, her employer terminated her employment. (Tr. 15) Although Applicant obtained another job within a month, it was \$40,000 less than her previous salary. (Tr. 15) Consequently, Applicant continued to look for a job with a salary in the pay range to which she was accustomed.

Applicant subsequently found a higher-paying job; however, it was still \$25,000 less than the job that she lost in June 2014. (Tr. 15) Applicant was laid off from this new job after about four months. (Tr. 15) By then, she had begun to fall behind on her car note and her other bills. Unable to afford continued car payments, she voluntarily surrendered it to the dealer. (Tr. 15) The dealer sold it, leaving a deficiency of approximately \$8,700, owed to the credit union that financed the deal, which remains outstanding, as alleged in SOR subparagraph 1.a. (Tr. 15)

The car note deficiency totals approximately half of the amount of Applicant's delinquent debts, as alleged in the remainder of the SOR. Initially in 2015, Applicant considered filing for bankruptcy protection. (Tr. 41) Unable to afford the \$1,300 retainer fee, she decided to forego filing bankruptcy until she had saved the money. In 2017, she contacted the attorney and told him she was going to attempt to satisfy the debts rather than discharge them through the bankruptcy process. (Tr. 43) In February 2018, she negotiated a payment plan to satisfy the deficiency owed to the credit union that financed the automobile that was voluntarily repossessed. Per the agreement, the credit union also included another debt that Applicant owed, as alleged in subparagraph 1.d, totaling \$944. Under the plan, Applicant was to begin paying \$50 per month for the first six months of the

agreement. Then, the bank would renegotiate the payment amount. (AE B) Applicant made her first payment, as agreed, on February 21, 2018. (AE C)

The debt alleged in subparagraph 1.b, totaling \$4,462, constitutes delinquent rent payments. Per an agreement with the creditor, Applicant is to satisfy the debt with \$50 monthly payments for six months, after which the creditor would renegotiate the payment terms. (AE D) The first payment was due on March 22, 2018. The record contains no evidence that Applicant made this payment. Applicant had negotiated a payment plan with this creditor approximately five months earlier, in October 2017. (AE A) There is no record evidence that she had made any payments between October 2017 and March 2018.

Applicant initially denied the debt alleged in subparagraph 1.c, totaling \$1,461. Research confirmed that it was a loan she used to finance the purchase of tires for her car. (Tr. 37) She has yet to make payment arrangements.

Subparagraphs 1.e and 1.g are medical debts, totaling \$872. Applicant contends that she paid them, but provided no documentary proof. (Tr. 41)

The debt alleged in subparagraph 1.f, totaling \$520, is a phone bill. Applicant has not contacted this creditor yet. (Tr. 41)

In February 2017, Applicant contacted a credit repair agency. (Tr. 43) Dissatisfied with their services, she retained another credit repair agency in August 2017. (Tr. 44) They are helping her resolve the SOR debts. Applicant has approximately \$20,000 invested in a retirement account. (Tr. 47) She has a minimal amount of after-expense disposable income. (Tr. 48)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>1</sup>

## **Analysis**

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

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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

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<sup>1</sup> The factors under AG ¶ 2(a) are as follows:

(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 or 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.

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's ongoing financial problems trigger the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c) "a history of not meeting financial obligations." The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began after she was laid off from her job in June 2014. Although she was subsequently unemployed for less than a month, she has yet to earn a salary as high as the one she was earning before the layoff. I conclude her financial problems were caused by circumstances beyond her control.

Applicant retained a credit repair agency to help identify debts and develop payment plans. Although she has developed some payment plans, she has only made two documented debt payments a \$25 payment to the creditor that holds the automobile deficiency, and a \$50 payment to a credit union. Similarly, she contends that she has paid the medical bills alleged in subparagraphs 1.e and 1.g, but provided no concrete documentary evidence. Under these circumstances, she has not met her burden to establish that any of the remaining mitigating conditions apply.

### **Whole-Person Concept**

Applicant has made some efforts to resolve her financial problems. Moreover, her inability to make any significant progress at debt reduction stems from a lack of available disposable income. However, she failed to document the marginal progress that she contends that she has made. Under these circumstances, she has not met her burden of proving that her financial problems are no longer a security concern.

### **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.g:

Against Applicant

**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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge