



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



In the matter of: )  
)  
) ISCR Case No. 17-01127  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

03/06/2018

**Decision**

BENSON, Pamela, C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 2, 2016. On May 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. 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 September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued on or after that date.<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.

On June 16, 2017, Applicant responded to the SOR, and she requested a hearing before an administrative judge (Answer). She also attached a payment history of her car loan covering the period of October 2016 through June 2017. She disputed the car loan debt with this creditor claiming that she had paid the delinquent balance of this account before it was referred for collection. She also attached a request to the Social Security Administration (SSA) for a waiver of overpayment of benefits for herself and two disabled sons.

On October 5, 2017, the case was assigned to me. On November 20, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for December 5, 2017.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence, which were admitted without objection. Applicant testified, and offered exhibits AE A through J into evidence. AE A through J were entered into evidence without objection.

I granted Applicant's request to leave the record open until December 31, 2017. DOHA received the hearing transcript (Tr.) on December 13, 2017. Applicant submitted post-hearing documents (AE K-N), which were admitted without objection. The record closed on January 23, 2018.

### **Procedural Ruling**

Near the conclusion of the hearing and based on the evidence, Department Counsel moved to amend the allegation in SOR ¶ 1.ff to read as follows:

You failed to file your Federal and state income tax returns for the tax years 2011 through 2016.

Applicant understood the amendment and did not object. The record remained open after the hearing in order to give Applicant adequate time in which to submit additional evidence pertinent to this amendment. (Tr. 38-39, 50-51)

### **Findings of Fact**

Applicant admitted all allegations in her Answer to the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact:

Applicant is 49 years. She was married in 2007 and divorced in December 2017. She is the mother of two sons, ages 10 and 17. Both sons are special needs children. She completed two years of higher education and received certification in network engineering. She has been employed by a federal contractor since April 2016 as a project scheduler. Her current annual salary is \$72,500, and she receives approximately \$480 monthly for child support and \$632 monthly from SSA for her disabled sons. She

had two previous periods of unemployment. From November 2012 to February 2013, she received disability income, and from April 2007 to June 2011, she chose to stay at home and take care of her young son who required medical care. She currently possesses a secret security clearance. (Tr. 30; 32-33; 35-36; 65)

The SOR alleges 31 delinquent accounts, to include SSA disability benefits that were overpaid in the amount of \$35,712, unpaid utilities, a deficiency balance for a car, unpaid educational loans, unpaid consumer debt and delinquent Federal and state income taxes. Twelve of the 31 delinquent accounts were for unpaid medical services. The SOR also alleges that Applicant failed to file Federal and state income tax returns for tax years 2011 through 2016. The total amount of debt alleged in the SOR is approximately \$69,500.

Applicant stated that her financial issues developed due to a separation from her spouse and a pending divorce this past year. Applicant testified that her ex-husband did not pay her child support or accept responsibility for debts they incurred together. They were separated in 2015. She also has incurred high medical costs associated with her sons' conditions, and after she was diagnosed with colon cancer in 2011. She testified that she is returning to the doctor to see if her cancer has returned. She sought financial counseling after receiving the SOR and established a budget. (Answer, Tr. 34, 37-39, 52; AE C, AE K)

Applicant testified that she set up a payment plan with SSA (SOR ¶ 1.a) in August 2017 to make monthly payments of \$10. She sent a \$10 payment in August 2017, and a \$20 payment in November 2017. She stated that she paid \$20 in November to cover the missed payments of September and October. She admitted that as of the date of the hearing, she had not paid her \$10 November payment to SSA. (Tr. 39-40; AE J)

Applicant claimed that she was current with her car payments (SOR ¶ 1.b). After the hearing, Applicant submitted AE M, which is a continuation of her car payment history covering payments made from November 2016 to November 2017. The payment history listed a current balance of \$15,400.37. (Answer; Tr. 40-42)

For the debts alleged in SOR ¶¶ 1.c through 1.f, Applicant stated she had reached a settlement agreement with the creditors, but has not made any payments. She claimed to have paid \$200 toward the debt cited in SOR ¶ 1.g, but did not provide supporting documentation. She did admit, however, that there is an outstanding balance owed for that debt. (Tr. 39-43, AE C)

Applicant testified that she had reached a settlement agreement with the creditor of the debt cited in SOR ¶ 1.h, but she has not made a payment on that account. She provided documentation that she settled the debt cited in SOR ¶ 1.i. She testified that she had paid all of the debts cited in SOR ¶¶ 1.j through 1.z, but she only had documented proof of the debt paid in SOR ¶ 1.s. After the hearing, she submitted AE O, which showed she had paid three medical accounts in the amount of \$88.53, but she

did not indicate the specific SOR allegations these medical accounts included. (Tr. 43-44, AE C, AE E, AE J, AE O)

Applicant stated that the debt alleged in SOR ¶ 1.aa has not been paid. She is disputing the debt alleged in SOR ¶ 1.bb. She said that she most likely owes approximately \$300 to this creditor, which she has not paid in years. She believes her ex-husband has continued using the utility service and owes the remaining balance of the account. As of the date of the hearing, the account had not been resolved and there was no documentation provided showing the pending dispute or proof that her ex-husband had in fact continued using the utility service. Applicant stated she sent an e-mail to the president of the company to show that she was attempting to discuss a dispute of this account. As of the date of the hearing, she had not been able to talk to the president of the company or dispute the debt. Applicant admitted that the debts alleged in SOR ¶¶ 1.cc and 1.dd have not been paid. The debt alleged in SOR ¶ 1.ee was disputed and removed from her credit report. (Tr. 25-26, 46-47; AE H)

Applicant testified that she had not filed her state and Federal income tax returns from 2011 through 2016. This adverse tax information was not disclosed in her 2016 SCA. As of the date of the hearing, she had not sought assistance from a tax specialist, nor did she know the amount of unpaid taxes she owed for her unfiled Federal and state income tax returns for tax years 2011, 2012, 2013, 2015 and 2016. After the hearing, Applicant submitted AE M, which is a contract with a tax relief program. Under the contract, the client agrees to pay the tax relief program a \$495.00 non-refundable deposit plus make payments for future services rendered. The contract showed that Applicant signed the contract on December 7, 2017. (GE 1; Tr. 47-51)

Applicant stated that she entered into a repayment plan with the IRS for the Federal 2014 tax debt alleged in SOR ¶ 1.gg. She made her first \$50 payment last month. She claimed that she had entered into a repayment plan with the state tax authority for unpaid 2014 taxes (SOR ¶ 1.hh), and made her first \$50 payment last month. She did not provide documentation of her repayment agreements or tax payments. (Tr. 47-50; AE M)

The most recent credit report, obtained by Department Counsel approximately two weeks before the hearing, showed at least nine new delinquent accounts. The accounts included eight medical accounts and one “check guarantee” account. The combined balance of the nine new delinquent accounts totaled approximately \$2,612.<sup>2</sup> (GE 5)

Applicant provided two character reference letters detailing her dedicated work ethic and positive effect in the work environment. Both individuals were aware of her financial difficulties, and highly recommend her for continued employment. (AE A, B)

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<sup>2</sup> The SOR does not allege these delinquent debts. Hence, this derogatory information will not be considered in the analysis of the disqualifying conditions. It may be considered in my analysis of mitigating conditions and the whole-person concept, and in evaluating Applicant’s credibility.

Applicant's financial counselor provided a document showing the breakdown of the debts and listed the projected date Applicant would be able to resolve the debt. The SSA debt paid at \$10 per month would continue throughout Applicant's lifetime, and would take nearly 300 years to pay this debt in full. (SOR ¶ 1.a) There are several accounts reflecting future payments to take place in 2018. (SOR ¶¶ 1.c -1.h, 1.w, 1.aa, 1.cc, and 1.dd.) The Federal tax debt for tax year 2014 will take six years to pay in full, and the 2014 state tax debt will take one full year to resolve. (SOR ¶¶ 1.gg and 1.hh; AE C, AE O) There was no supporting documentation to show that Applicant had paid the debts, as indicated, for SOR ¶¶ 1.j – 1.r, 1.t – 1.v, and 1.x - 1.z.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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(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 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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file or fraudulently filing annual Federal, state, or local income returns or failure to pay annual Federal, state, or local income tax as required.

Applicant experienced financial difficulty beginning in 2015 when she and her husband separated. Applicant also accumulated substantial financial indebtedness, including overpaid benefits from the SSA and unresolved delinquent Federal and state income taxes for 2014. She has not filed Federal or state income tax returns for years

2011 to 2016. 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.

Applicant has numerous debts that remain unresolved. She failed to file her Federal and state income tax returns for tax years covering 2011 to 2016. Her most recent credit report shows that her financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant's separation and subsequent divorce, which resulted in the loss of income, and unexpected costly medical issues, were events beyond her control. For the full application of AG ¶ 20(b), Applicant must show that she has acted responsibly under the circumstances. Insufficient evidence was provided to show she has paid or resolved the majority of the debts cited in the SOR. In addition, Applicant knew she had a legal obligation to file Federal and state income tax returns, but she has not yet filed the income tax returns covering six consecutive years. The full mitigation of AG ¶ 20(b) does not apply.

Applicant has participated in financial counseling. It appears that this financial counseling is on-going. There is some evidence to show that she has made a good-faith effort to repay a few overdue creditors or otherwise set-up payment plans with delinquent creditors. (SOR ¶¶ 1.a, 1.b, 1.i, 1.s, 1.w, 1.ee, 1.gg and 1.hh.) Her unresolved debt, however, is substantial, and the payment plan she set-up with SSA shows she has only made two payments. She has been unable to make the \$10 payments on time and is already delinquent with this plan. In addition, Applicant allegedly set-up a repayment plan with the IRS and state tax authority, but she has made only one payment. There is no history of systematic payments to these creditors. Her most recent credit report shows that she is accruing new debt. Her financial problems are not under control. AG ¶¶ 20(c) applies, and AG 20(d) does not apply, except to those SOR allegations previously mentioned.

Applicant disputes a utility service account that she believes her ex-husband has continued to use. She acknowledged that some of the unpaid debt is hers, but she does not feel that she should be responsible for the entire debt. Applicant did not provide sufficient evidence to show she disputed the legitimacy of the delinquent debt alleged or provided documented proof to substantiate the basis of her dispute or evidence of actions to resolve the issues. Insufficient evidence was provided to apply AG ¶ 20(e) to SOR ¶ 1.bb.

### **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.



Applicant is 49 years old and had financial setbacks following a separation and divorce from her ex-husband, and unexpected costly medical issues. She has been aware that her finances, unpaid taxes, and unfiled Federal and state tax returns were a security concern when she completed her SCA in May 2016. She has been continuously employed by the federal contractor since April 2016, however, based on her budget, her financial situation is precarious. She made a conditional promise to pay many of her delinquent debts in the future. She has provided evidence that she has fully resolved five of the listed 31 delinquent accounts.<sup>3</sup> Her most recent credit report showed she has developed new debt. Although her unexpected medical costs and loss of income associated with a recent divorce has presented a difficult financial hurdle for her, Applicant failed to demonstrate that she is responsibly managing her finances.

Applicant has not mitigated the security concerns raised by her failure to timely file Federal and state income tax returns for tax years 2011 to 2016. Whether or not Applicant could afford to pay her taxes, she was required to timely file the returns. Absent evidence of a compelling reason for not filing them, Applicant's failure to timely file income tax returns and pay her tax debt reveals a deficiency in her judgment, reliability, and trustworthiness, which is required of persons handling classified or sensitive information. 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 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: (are there any you can grant?)

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c -1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j -1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t -1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraphs 1.x -1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant
Subparagraphs 1.ff-1.hh:	Against Applicant

<sup>3</sup> Applicant provided post-hearing documentation showing that three medical accounts were paid (AE O). She did not identify the SOR debt allegations with her paid receipt. I was only able to match one paid medical account (SOR ¶ 1.w) by matching the account number in AE O to GE 4. I was unable to verify the other two paid medical account in the SOR.

## **Conclusion**

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

Pamela C. Benson  
Administrative Judge