



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01242

**Appearances**

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

03/30/2018

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was granted a Chapter 7 bankruptcy discharge of approximately \$85,543 in unsecured debt in November 2014. Two defaulted student loans then totaling \$46,083 were not discharged by her bankruptcy, and she incurred new collection debt since her bankruptcy. Applicant failed to demonstrate a good-faith effort to resolve her debts. Clearance is denied.

**Statement of the Case**

On May 18, 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, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. 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.

On June 29, 2017, Applicant responded to the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 30, 2017, the Government submitted a File of Relevant Material (FORM), consisting of seven exhibits (Items 1-7). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant received the FORM on September 6, 2017. There is no indication that she responded to the FORM. On December 15, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant.

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.<sup>1</sup>

### **Evidentiary Ruling**

Department Counsel submitted as Item 4 summaries of subject interviews of Applicant conducted on August 18, 2016; November 16, 2016; and February 3, 2017. The summaries were part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summaries did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

**IMPORTANT NOTICE TO APPLICANT:** The attached summary of your Personal Subject Interview (PSI) (Item 4) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded her if she was represented by legal counsel. She was advised in ¶ E3.1.4 of the Directive that she may request a hearing. In ¶ E3.1.15, she was advised that she is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by her or proven by Department Counsel and that she has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of her opportunity to object to the admissibility of the interview summaries, to comment on the interview summaries, and to make any corrections, deletions, or updates to the information in the report. Applicant has an associate's degree. She can reasonably be held to have understood the footnote, and she did not respond to the FORM. In the absence of any objections or indication that the interview summaries contain inaccurate information, I accepted Item 4 in the record, subject to issues of relevance and materiality in light of the entire record.

### **Summary of SOR Allegations**

The SOR alleges that, as of May 18, 2017, Applicant owed two student loans in collection for \$27,691 (SOR ¶ 1.a) and \$18,225 (SOR ¶ 1.b); four medical debts in collection for \$902 (SOR ¶ 1.c), \$706 (SOR ¶ 1.d), \$326 (SOR ¶ 1.e), and \$299 (SOR ¶ 1.f); and a consumer credit debt in collection for \$201 (SOR ¶ 1.g). Additionally, Applicant allegedly filed a Chapter 7 bankruptcy that was discharged in November 2014 (SOR ¶ 1.h). (Item 1.) When Applicant answered the SOR, she admitted the allegations, which she attributed to her divorce and being a single parent. She indicated that she had paid over \$8,000 toward her defaulted student loans in the last 14 months. Applicant also related that she had no choice but to file for bankruptcy in 2014 because her ex-husband remained in the marital home after their separation, and he failed to pay the mortgage and other bills for three years. She was held responsible for the delinquent bills associated with the home after foreclosure. (Item 2.)

### **Findings of Fact**

After considering the FORM, which includes Applicant's response to the SOR as Item 2, I make the following findings of fact.

Applicant is 51 years old, and she has an associate's degree. Applicant reports that she was awarded her degree in approximately 2001, although available credit information

shows some student-loan accounts opened in April 2002. She has been employed by a defense contractor since July 2015. Applicant had previously worked for the company from February 2013 to January 2014, when she was laid off. (Items 3-5.) There is no evidence that she has ever held a DOD security clearance.

Applicant was married to her first husband from June 1990 to February 2009. Their son is age 23 and their daughter is age 19. As of March 2016, both young adults were living with Applicant. (Items 3-4.)

Applicant held full-time employment as a field service technician at the time of her separation from her first husband, although no information was presented about her income. She moved out of the marital home in October 2008. Her ex-husband stayed in the house that they had purchased jointly, and he apparently did not pay the mortgage. Applicant asserts that she asked her ex-husband to list the home for sale and he refused to do so. The bank foreclosed on the home. According to Applicant, the house was sold at an auction for the full amount owed on the loan in December 2010. (Items 2-4.)

Applicant and her second husband married in June 2011, separated in March 2012, and divorced in approximately September 2012. Applicant had employment income of \$63,205 and received child support of \$3,840 in 2012. In February 2013, Applicant began her first tenure with her current employer. Applicant earned \$57,030 in 2013. She also took an IRA distribution of \$18,404 in 2013. Applicant was laid off in January 2014 and unemployed until March 2014. She supported herself and her children with her severance package and with child-support income of \$320 per month. (Items 3-4, 7.)

Applicant worked as a contract technician from March 2014 to October 2014 at a monthly income of \$3,300 (take-home pay of \$2,453). She received \$320 per month in child support for her daughter. Her monthly expenses totaled approximately \$2,718. (Item 7.)

In July 2014, Applicant filed a no-asset Chapter 7 bankruptcy petition after receiving the required credit counseling (SOR ¶ 1.h). She listed \$11,965 in exempt personal property consisting primarily of 2013 model-year vehicle valued at \$11,465. She reported cash on hand of \$20 and \$20 in checking account deposits. Of the \$131,626 in listed unsecured nonpriority claims, approximately \$22,814 was medical or dental debt. She included two student loans of \$18,291 and \$27,792; a \$6,042 deficiency balance on a vehicle loan; an \$18,371 consumer credit debt in collection; a \$32,937 collection debt; and some smaller collection debts for utility and telecommunications services. She was granted a Chapter 7 discharge in November 2014, which did not relieve her of her legal repayment liability for her student loans. (Item 7.) Applicant asserts that she had to file for bankruptcy because when her ex-husband lost their marital home to foreclosure, the creditors owed debts associated with the home pursued her for the debts, and she was unable to pay them. (Item 2.)

In October 2014, Applicant began working as a contractor on a local military base. She lost her job when the contract ended in February 2015. She held part-time work until

she was rehired by her present employer in July 2015 for a full-time information technology manager position. She continued to also work part time nights and weekends until March or April 2016. (Items 3-4.)

On March 16, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions. She disclosed her bankruptcy filing; the mortgage delinquency on her marital home, which she indicated was resolved in December 2010 through foreclosure and sale of the property at an auction; \$23,000 in defaulted federal student loan debt that she indicated was brought current by garnishment of her wages for a year; and a \$15,000 car loan deficiency that she resolved through payments of the balance after the car was sold at an auction. (Item 3.)

As of April 30, 2016, Equifax was reporting that Applicant owed \$26,264 (SOR ¶ 1.a) and \$17,285 (SOR ¶ 1.b) in student loan collection balances. Two medical debts incurred after Applicant filed for bankruptcy were reportedly in collection for \$706 (SOR ¶ 1.d) and \$299 (SOR ¶ 1.f). (Item 6.)

Applicant was interviewed on August 18, 2016, by an authorized investigator for the Office of Personnel Management (OPM). Applicant admitted her bankruptcy filing, which she attributed to her divorce and loss of employment. On review of the accounts listed on her SF 86, Applicant indicated that her student loans had been brought into good standing by wage garnishment. She did not recognize the student-loan collection balances reported on her credit record and indicated that she would look into the accounts within the next few days. Applicant was then confronted with the unsecured claims on her bankruptcy petition. She did not recall several of the accounts. Regarding several of the medical bills, including \$13,860 owed a hospital, Applicant indicated that the bills were her ex-husband's responsibility. She stated that her ex-husband filed a joint bankruptcy petition and the debts "showed up with her name attached." (Item 4.)

On December 16, 2016, Applicant signed a release for the OPM investigator for the two delinquent student loans on her credit record. When re-interviewed by the OPM investigator in February 2017, Applicant explained that she obtained the student loans in approximately 2000. She claimed that the loans were being repaid at \$5,000 to \$6,000 per year by the government taking her income tax refunds. (Item 4.)

As of March 2017, Equifax was reporting no progress on the student loans in collection, which had updated balances of \$27,691 and \$18,225. No activity had been reported on the accounts since January 2013. Additionally, Applicant reportedly owed three medical collection debts of \$902, \$706, and \$326 (SOR ¶¶ 1.c-1.e) and a \$201 consumer collection debt from January 2016 (SOR ¶ 1.g). Applicant was \$1,284 past due on an automobile loan obtained in January 2015 for \$19,476 (not alleged). (Item 5.)

The DOD CAF issued the SOR to Applicant on May 18, 2017, because of unresolved financial delinquencies. (Item 1.) In response, Applicant indicated that the two federally-guaranteed student loans originally totaled \$18,000. She expressed "shock" at the total balance. She acknowledged that, as a single parent since 2008, she had not

previously been in a position to make timely payments. Applicant stated that she was now in position to make repayment arrangements. When she signed her answer to the SOR, Applicant added in handwriting, "I have also paid over \$8,000 in the last 14 mos." Applicant did not dispute the medical charges, but indicated that her children's father was supposed to pay them. She asserted that she would make repayment arrangements for the medical debts. Applicant did not recognize the \$201 collection debt, but stated that she would make every effort to contact the creditor and pay it. (Item 2.) As of October 2017, Applicant had not provided any documentation confirming the \$8,000 in claimed student loan payments or of any payments or payment arrangements on the other accounts in the SOR.

## **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(a), 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 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 concerns about financial considerations are set forth 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.

Applicant is not required to be debt free, but she is required to manage her finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F is broader than the possibility that an individual might knowingly compromise classified information in order to raise money to address debts. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information.

Guideline F security concerns are established by the defaulted student loans, by the debts that led her to file for bankruptcy in July 2014, and by the collection debts incurred after she received a Chapter 7 bankruptcy discharge. Although Applicant maintains that the medical collection debts were her first husband’s responsibility, the debts were listed on her April 2016 and March 2017 credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that she is not responsible for the debt or that matters in mitigation apply.

Three disqualifying conditions under AG ¶ 19 apply: (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 has the burden of establishing one or more of the following potentially mitigating conditions under AG ¶ 20:

(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 person has received or is receiving 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.

AG ¶ 20(a) is not established. She obtained her student loans more than 15 years ago, but they continue to cast doubts on her financial judgment, given the lack of demonstrated progress toward resolving them in recent years. Available credit reports show no activity on the loans since January 2013. The collection debts in SOR ¶¶ 1.c-1.g were incurred after Applicant was given a financial fresh start by her Chapter 7 bankruptcy discharge in November 2014. The delinquency in SOR ¶ 1.g was incurred despite her full-time employment since July 2015.

Applicant's divorce from her first husband is a circumstance contemplated within AG ¶ 20(b). It could mitigate some of the financial concerns that led her to file for bankruptcy relief in 2014 if she was pursued for household or medical debts for which her ex-husband had some legal responsibility. Yet Applicant presented no documentation from which I could make credible findings as to which debts included in her bankruptcy should have been paid by her ex-husband. Concerning her defaulted student loans, which survived her bankruptcy, and the collection debts in the SOR, which were incurred since her bankruptcy filing, Applicant's finances were compromised from February 2015 through June 2015 because of a lack of full-time employment. However, she has done little since then to address the delinquencies on her credit record. When contacted by the OPM investigator in February 2017, Applicant acknowledged her student loans (SOR ¶¶ 1.a-1.b). She indicated that the government was taking her income tax refunds and applying them to her



debt. Available information shows no activity on her defaulted student loans since 2013, so it had been some time since her tax refunds were seized or the income tax seizures were not reflected in her credit reports. In any event, Applicant did not meet her burden to show that payments were made to address her student loan debts in the last four years. Mitigation under AG ¶ 20(b) is undermined by the lack of any evidence on her part to contact her creditors and make repayment arrangements in recent years.

While AG ¶ 20(c) has some applicability in that Applicant has been discharged from legal repayment liability for a large share of the unsecured debts included in her Chapter 7 bankruptcy, neither AG ¶ 20(c) nor AG ¶ 20(d) applies to her defaulted student loans that were included but not discharged in her bankruptcy or the collection debts incurred since her bankruptcy discharge. Available credit information fails to substantiate her uncorroborated assertion that she paid over \$8,000 toward her defaulted student loans in the last 14 months. Applicant did not submit the documentation needed under AG ¶ 20(e) to prove that she has no legal repayment liability for the medical debts (SOR ¶¶ 1.c-1.f) that she asserts were her ex-husband's responsibility. She acknowledges that the student loans (SOR ¶¶ 1.a-1.b) are solely her responsibility. The consumer collection debt in SOR ¶ 1.g was not incurred until late 2015, well after her divorce. I have credited Applicant with mitigating SOR ¶ 1.h because her decision to file for relief under Chapter 7 of the Bankruptcy Code was reasonable and appropriate under the circumstances. There is no evidence showing any of the SOR debts have been paid.

### **Whole-Person Concept**

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

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). At the same time, Applicant has the burden of presenting evidence of relevant facts and circumstances to show why she should be granted security clearance eligibility notwithstanding the delinquent debt information on her credit record. Available credit reports show that the delinquent balances on her student loans increased from \$26,264 and \$17,285 in March 2016 to \$27,691 and \$18,225 in February 2017. No progress was shown on repaying the collection debts. It is not enough in mitigation to assert that her ex-husband should have paid the medical debts or that student loan payments have been made, whether voluntarily or by interception of tax refunds, without some corroboration of those payments.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009,

citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

### **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, Financial Considerations:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge