



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01378  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

03/30/2018  
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**Decision**  
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BENSON, Pamela C., Administrative Judge:

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

**Statement of the Case**

On January 16, 2016, Applicant submitted a security clearance application (SCA). On June 29, 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, and Guideline E (Personal Conduct). (Items 1, 3) The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 17, 2017. She admitted all of the SOR financial allegations under Guideline F. She also admitted the single SOR allegation under Guideline E, but she denied that she deliberately falsified the SCA. She requested that her case be decided by an administrative judge on the written record in lieu of a hearing.

On August 27, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on August 31, 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 his receipt of the FORM. Applicant responded to the FORM on September 7, 2017, and she disagreed with the opening statement as well as the Government's argument cited in the FORM. Applicant cited mitigating conditions under Guidelines F and E, and argued why these pertained to her situation. In addition, Applicant submitted a credit report dated September 7, 2017, and credit reporting agency disputes, which I admitted as Applicant's Exhibits (AE) A and B. She did not object to Items 1 through 6, which I admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 14, 2018.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 51 years old. She has been employed full time as an acquisition specialist for a Federal contractor since December 2015. She had periods of unemployment in between 2006-2015. Most of her jobs ended due to being laid off, and other employment ended after she resigned. She has never married and does not have any children. She is requesting national security eligibility.<sup>1</sup>

The SOR alleges an unpaid judgment and six delinquent accounts totaling approximately \$15,000. (SOR ¶¶ 1.a-1.g). Applicant stated that her financial problems stem from periods of unemployment for about the full year of 2011, and underemployment from December 2011 to October 2012. Applicant provided copies of her state unemployment benefits she received in 2011. Applicant's debts became delinquent during the approximate 2011-2012 time period. She was employed by a Federal contractor for over a year after this time period (10/2012-12/2013). She was then unemployed for about two months (12/2013-1/2014), before she was employed by a Federal contractor for over a year-and-a-half (1/2014-8/2015). She claimed that she had previously contacted all of her creditors to provide them information about her unemployment status, but she did not provide any corroborating documentation with her Answer. She claimed that after contacting all of her creditors to disclose her unemployment status, all of her creditors reported that they would close her accounts.

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<sup>1</sup> Item 3.

Applicant did not follow up with her creditors to ensure the accounts were closed due to the stress she experienced from her financial hardship.<sup>2</sup>

In May 2017, when she discovered that her interim security clearance had been revoked, she was advised to obtain a copy of her credit report. In June 2017, she discovered on her current credit report that not one creditor had reported her unemployed status or had closed the account, as previously promised. Applicant provided evidence of her contact with a credit reporting agency to dispute her accounts on June 15, 2017, the same month her SOR was issued. She claimed that once she disputed her delinquent accounts by reporting her unemployment status, her credit report updated her overdue accounts to reflect "DELINQUENCY DUE TO EXTENDED UNEMPLOYMENT." (Items 1 and 2)

SOR ¶ 2.a. alleges that Applicant falsified her SCA by omitting relevant and material information under the financial section. Applicant denied that she intentionally falsified information on the SCA based on her belief that her accounts had been closed.<sup>3</sup>

In her response to the FORM, Applicant listed that she is currently unable to repay the delinquent debts and continue to maintain her current living conditions. She denied deliberate falsification to the SCA financial questions based on her mistaken belief that the questions asked her to go back five years, and she miscalculated the time periods.

### **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

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<sup>2</sup> Item 2.

<sup>3</sup> Items 2, 3.

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 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; and
- (c) a history of not meeting financial obligations.

Applicant has approximately \$15,000 of delinquent debt that is unpaid and unresolved. The above disqualifying conditions apply.

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 stated in her FORM response that she is unable to repay the delinquent debts and maintain her current living conditions. She is currently experiencing financial hardship. The continuing pattern of her inability to repay her creditors, despite being employed full-time since December 2015, and her failure to make any effort to repay even the smallest delinquent debt, cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is some evidence that Applicant's financial problems were beyond her control, since she was laid off by more than one employer over the years. In order to receive the full application of the mitigating condition, however, Applicant must show that she acted reasonably under the circumstances. After Applicant's debts became delinquent, she was later employed for long periods of time. There is no evidence that she attempted any repayment of any of her debts during the periods of her employment. There is insufficient evidence provided by Applicant to show she acted responsibly under the circumstances in dealing with her creditors. Hence, AG ¶ 20(b) does not apply.

There is no evidence Applicant received financial counseling. There is no evidence that Applicant has initiated and is adhering to a good-faith effort to repay overdue creditors. Applicant's claim that she incurred debt during a period of unemployment or underemployment is not a legitimate reason to dispute her debts. She acknowledged the debts as hers, but she does not plan to pay these debts despite being fully employed. AG ¶¶ 20(c), (d) and (e) do not apply.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or ward fiduciary responsibilities.

The SOR did allege that she failed to report a judgment and her unpaid delinquent debts from the last seven years when she completed her SCA in January 2016. This information was relevant and material for her security clearance investigation. She provided conflicting explanations why her omission was not intentional. She was aware of her debts and claimed she had miscalculated the dates. Applicant's explanation of using five years instead of the seven-year requirement, does

not make sense when every single question begins; “**In the past seven (7) years,**...” Her explanation is not credible, and her omission was deliberate. AG ¶ 16(a) applies.

AG ¶¶ 17(a) and (c) set forth below are potentially mitigating conditions that may apply to the conduct alleged under Guideline E:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant stated in her SOR Answer that she did not disclose her delinquent debts, or judgment, on the SCA because she had previously contacted her creditors who in turn told her they would close the accounts. In her response to the FORM, Applicant claimed that she thought she was to go back five years and she made a miscalculation. Under either scenario, Applicant did not make prompt, or good-faith efforts to correct her omission before being confronted with the facts, and her deliberate omission casts doubt on her reliability, trustworthiness and good judgment. AG ¶¶ 17(a) and (c) do not 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 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 Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. An applicant is not required to be debt-free, but is required to manage her finances in such a way as to meet her financial obligations.

Applicant has been unable or unwilling to satisfy her financial obligations for several years due to loss of employment and underemployment. Nonetheless, there is no showing by Applicant of any effort to pay, legitimately dispute, or otherwise resolve any of the financial security concerns. She has decided it is better to keep her present bills current rather than pay past-due bills. These actions are not a good-faith effort to resolve indebtedness or pay overdue creditors. While keeping her present debts current is commendable, it does not mitigate the security concerns for her indebtedness. Applicant has not provided a financial plan to resolve delinquent accounts with her creditors. All of her delinquent debts remain unpaid or unaddressed. Applicant failed to show that she acted reasonably, with prudence, honesty, and an adherence to a duty or obligation by her failure to resolve her debts, and when she deliberately omitted her adverse financial information on the SCA.

Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

### **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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 security to grant Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge