



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01659

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

01/26/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On May 30, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on September 14, 2017. Applicant received the FORM on September 20, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and she provided a two-page response to the FORM. The Government's evidence, identified as Items 1 through 6, is admitted into evidence without objection. The case was assigned to me on January 17, 2018.

## Findings of Fact<sup>1</sup>

Applicant is 69 years old. She obtained a bachelor's degree online in 2010 and a master's degree in 2012. Applicant has been employed by a federal contractor since February 2016. She has been married since 1984. Applicant had one adult child, and she is raising two grandchildren. Applicant served in the U.S. Navy from 1978 to 1988 and received an honorable discharge. Applicant reported a previous security clearance from 2004. She has previously worked for federal contractors and she had one period of unemployment from June 2012 to November 2012. She reports that her employer debarred her from federal-contractor service in 2008 because she reported two earlier degrees in her application for employment. It turned out that those two degrees were from an un-accredited university. When this was discovered, she lost her job. In her personal subject interview in March 2016, Applicant explained that she felt "duped" by that university.

Applicant did not report delinquent debts including student loans in section 26 of her security clearance application (SCA).<sup>2</sup> The total amount that she owes for the student loans is \$119,350. In her June 13, 2017 answer to the SOR, she admitted to the delinquent student loans at SOR ¶¶ 1.a – 1.f and 1.j – 1.n. She claimed that she consolidated all of these with one creditor and started a re-payment plan in July 2017. Applicant included attachments 1 to 4 with her answer. Attachment 3 confirmed that she owed the creditor \$119,350 and entered into an agreement in July 2017 to make monthly payments of \$141 for the delinquent student loans. This would require 852 monthly payments and 71 years for Applicant to pay off this debt. Attachments 1, 2, and 4 are June 12, 2017 credit bureau reports that she provided. Applicant denied the alleged debts in SOR ¶¶ 1.h and 1.i and attached documentary evidence showing that she paid off SOR ¶ 1.g. SOR ¶ 1.h was compromised and settled for \$1,176 (attachment 2). Applicant denied SOR ¶ 1.i because she claims it fell off her credit reports.<sup>3</sup> Yet, it was discussed in her personal subject interview and reflected in her March 2016 credit report.<sup>4</sup>

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's March 2, 2016 Security Clearance Application (SCA). (Item 3) and Personal Subject Interview conducted on March 28, 2016. (Item 5)

<sup>2</sup> Item 3.

<sup>3</sup> The Appeal Board noted in ISCR case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017):

There is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, and the absence of unsatisfied debts from an Applicant's credit report does not extenuate or mitigate and overall history of financial difficulties or constitute evidence of financial reform or rehabilitation. See, e.g., ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) and ISCR Case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004).

<sup>4</sup> Items 4 and 5.

## Policies

This 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 former adjudicative guidelines (AGs) effective on September 1, 2006. However, new AGs were promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017, and this decision is based on the new AGs.<sup>5</sup>

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the adjudicative guidelines 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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. Under 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.

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<sup>5</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

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 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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’s delinquent debts alleged in the SOR are confirmed by her credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b) and 19(c), thereby shifting the

burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>6</sup> Applicant has not met that burden. Her delinquent student loans have not been adequately addressed.

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 . . . , and the individual acted responsibly under the circumstances;
- (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 endured one short-term period of unemployment when she was debarred and she has been raising her two grandchildren. Arguably, these conditions were beyond her control. She has produced no relevant or responsive documentation, either with her Answer to the SOR, or in response to the FORM, to satisfy me that she is making consistent payments on the delinquent student loans. She has not demonstrated that she acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. Applicant's credit reports and SOR list 14 delinquent debts totaling \$124,000. Applicant did not provide enough details with documentary corroboration about what she did to address her student loans. She did not provide documentation including: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor (2) correspondence to or from the creditors to establish maintenance of contact;<sup>7</sup> (3) credible debt disputes

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<sup>6</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

<sup>7</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable

indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because she did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was necessary to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 3) Aside from Applicant's uncorroborated statements, there is no documentary evidence that she has demonstrated a consistent track record of payments on the student loans pursuant to her repayment plan. She did not describe financial counseling or provide a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM informed Applicant that she had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3)

### **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.

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manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 those guidelines. Most importantly, Applicant has not addressed the specific allegations in the SOR concerning her student loans, which make up the majority of her delinquent debts.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. She has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.e, 1.g and 1.h:	For Applicant
Subparagraphs 1.i through 1.n:	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 a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge