



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



In the matter of:

ISCR Case No. 17-03406

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

09/10/2018

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 18, 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. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017 (AG).

Applicant answered the SOR initially on November 9, 2017, and followed-up by sending the DOD CAF more documents on November 20, 2017. She 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 February 24, 2018. The evidence included in the FORM is identified as Items 3-6 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on March 9, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to any of the Government's evidence. She submitted one document, which was admitted as exhibit (AE) A. Items 3-6 are also admitted. The case was assigned to me on July 25, 2018.

### **Findings of Fact**

Applicant admitted all the allegations in the SOR with explanations. Her admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 31 years old. She has worked for a federal contractor since July 2014. She married in March 2018 and she has no children. She served on active duty in the Air Force from 2005 to 2012. She separated with a general discharge under honorable conditions. She is a high school graduate and has taken some college courses.<sup>1</sup>

The SOR alleged Applicant abused her government travel card while in the Air Force; failed to file her federal and state (in her case the District of Columbia (DC)) income tax returns for years 2013-2016; owed delinquent federal income tax for tax year 2016 in the amount of \$6,964; and owed on 17 delinquent repossession, charged-off, collection accounts, or judgments in the total amount of approximately \$37,309. The allegations are supported by credit reports from December 2015 and September 2017, Applicant's statement to a defense investigator in October 2017, and Applicant's SOR admissions.<sup>2</sup>

In Applicant's SOR answer, she explained that the reason for her financial difficulties stemmed from living beyond her means and providing financial assistance to her family. She also claimed that she was told by a financial advisor in 2015 not to pay her charged-off accounts because they would fall off her credit report. She followed that advice.<sup>3</sup>

The status of the SOR allegations is as follows:

**Government Credit Card Abuse (SOR ¶ 1.a).** Applicant admitted abusing her credit card. She used it because she needed to pay her and her mother's rent after she

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<sup>1</sup> Item 3.

<sup>2</sup> Items 2, 4-6.

<sup>3</sup> Item 2.

deployed. She was punished by her commander under Article 15 of the UCMJ. She claimed this incident had little bearing on her discharge from the Air Force a year later.<sup>4</sup>

**Failing to File Federal and DC Income Tax Returns for 2013-2016 (SOR ¶ 1.b).** Applicant admitted failing to file all these income tax returns. She claimed she filed her 2016 federal tax return, but she failed to supply documentation supporting her filing of any federal or DC tax return for those years. Her federal and DC tax returns for years 2013-2016 are unresolved.<sup>5</sup>

**Delinquent Federal Income Tax Debt for 2016-\$6,964 (SOR ¶ 1.c).** Applicant admitted owing this debt. She claimed that she set up a payment plan to resolve this debt. Her supporting document shows an attempt to set up a payment plan to pay her DC tax liability (not alleged in the SOR), but there is no supporting documentation showing she made any payments under that plan. There is no other documentation showing payment or a payment plan for her federal tax debt. This debt is unresolved.<sup>6</sup>

**Remaining Delinquent SOR Accounts (SOR ¶¶ 1.d-1.t).** Applicant admitted all these debts. She failed to provide documentation showing that she contacted the creditors to set up payment plans, or made payments toward any of these accounts, except for SOR ¶ 1.p, a student-loan account. She documented the establishment of a payment plan in August 2017, however, she failed to document any payments under the plan. She also claimed she reached a payment agreement with the creditor of SOR ¶ 1.h, but she failed to provide supporting documentation of such an agreement. These debts are unresolved.<sup>7</sup>

Applicant submitted two character letters in support of her receiving a clearance. One was from a retired lieutenant general who worked with Applicant. The general found Applicant to be highly intelligent, enthusiastic, and professional. She recommended Applicant for a clearance. The second letter is from Applicant's supervisor who has known her for eight years. This supervisor described Applicant as bright, dedicated, and self-directed.<sup>8</sup>

## **Policies**

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

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<sup>4</sup> Item 2.

<sup>5</sup> Items 2, 5.

<sup>6</sup> Items 2, 5.

<sup>7</sup> Items 2, 5.

<sup>8</sup> Item 2.

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 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, 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 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 an 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has delinquent debts that remain unpaid. She failed to file her 2013-2016 federal and DC income tax returns or pay her 2016 federal tax debt. She also abused her government-issued credit card when she was in the Air Force. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of these mitigating conditions fully apply. Applicant's debts are recent and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's financial assistance to family members may be considered a condition beyond her control, however, she failed to take responsible actions to address her resulting debts. I find AG ¶ 20(b) partially applies. She also failed to address her SOR debts through payments or establishing payment plans. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do not apply. She failed to document plans to resolve her federal and DC tax issues. AG ¶ 20(g) does 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 guideline 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 considered Applicant's military service, and the circumstances that led to her financial difficulties. Applicant has not established a track record of financial stability.

Overall, 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.<sup>9</sup>

### **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.t:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge

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<sup>9</sup> I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.