



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01250
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

11/30/2018

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**Decision**

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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 21, 2018, 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.

Department Counsel submitted the Government's file of relevant material (FORM) on August 15, 2018. Applicant received the FORM on August 28, 2018, 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 response to the FORM with attached documents including: a payment agreement with the comptroller of state A; an installment agreement with the Internal Revenue Service (IRS); an enrollment with [Blank] Debt Relief; an IRS FORM 1099C; and several letters of correspondence with her numerous creditors or their collection agents. The Government's evidence, identified as Items 1 through 13, is admitted into evidence without objection. The case was assigned to me on November 14, 2018.

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

Applicant is 56 years old. She graduated from high school in 1980 and attended college briefly but did not obtain her associate's degree. Applicant has been employed as an administrative assistant or intelligence analyst by a federal contractor since March 2005. She reports no military service and she never married. She has three grown sons. She reported a period of unemployment from February 2014 to July 2014 after she was laid off by her employer of nine years. She received three months of severance pay. Applicant had previous security clearances from the Department of Energy and DOD since 1992.

Applicant reported financial problems in section 26 of her security clearance application (SCA).<sup>2</sup> These included a tax lien by state A in the amount of \$3,405; a federal tax lien in the amount of \$12,524; and two Chapter 7 bankruptcy petitions filed in 1994 and 2003. She stated that she did not pay state taxes in 2007 due to a mistake made by her income tax return preparer. She claims that she entered into a payment plan in late 2013 of \$120 a month to the Internal Revenue Service (IRS) for taxes owed for tax years (TY) 2010-2013. However, she lost her job in early 2014 and was unable to make payments in accordance with the agreement. Applicant also disclosed delinquent student loans with a balance owed of \$15,468, and several automobiles that were repossessed, as well as delinquent cable television and cell phone debts. Applicant repeatedly stated that she was overwhelmed by these debts.

Applicant admitted to all of the delinquent debts alleged in the SOR as well as the two tax liens and two bankruptcy cases in her answer to the SOR on July 28, 2018. She attached a chart showing the status of each of her financial delinquencies. The chart reflects that SOR ¶¶ 1.a, 1.b, 1.e, 1.f, and 1.g are in a payment plan. However, she produced no documentary evidence to show that she followed through and actually made payments pursuant to any repayment arrangement. The chart also reflects that SOR ¶¶ 1.c, 1.d, 1.i, 1.m, 1.o, 1.y, and 1.z are enrolled in a debt relief program. The agreement with [redacted] Debt Relief was attached to her response to the FORM, and shows that Applicant enrolled in the program on September 10, 2018. She agreed to make regular deposits of \$160 for a period of 24-28 months. No evidence of a continuous stream of payments pursuant to this agreement has been provided as she enrolled just recently.

In her personal subject interview (PSI) on October 20, 2017, Applicant explained that she was chronically behind on her rent payments and other debts and she felt overwhelmed by these debts and failed to pay state income taxes in 2007 and federal

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's May 11, 2015 Security Clearance Application (SCA) (Item 3), or his personal subject interview (PSI) on October 20, 2017. (Item 4)

<sup>2</sup> Item 3.

income taxes in TY 2010–2013. At that time, the balance owed to the IRS was \$12,524, and she claimed to be paying \$120 per month to the IRS. The judgment in the amount of \$1,714 at SOR ¶ 1.k resulted from an automobile accident, which occurred when her boyfriend drove Applicant's vehicle in June 2011. She claimed to be making payments of \$100 a month on that judgment, but produced no documentary evidence. Applicant stated her plan for the pay day loan judgment entered in 2013 at SOR ¶ 1.j in the amount of \$342, which was to be entered into a repayment plan that is not yet in place.

In her PSI, Applicant stated that her student loan delinquencies at SOR ¶¶ 1.r and 1.s started in October 2012 and claims she has been paying \$5 per month to NELNET on a \$16,591 balance owed. She opened these loans in 2003-2004. The debt charged off in the amount of \$7,385 at SOR ¶ 1.n was a loan for an automobile that Applicant obtained in 2009. She had mechanical difficulties with this vehicle and she abandoned it at the repair shop. The credit-card debt placed for collection in the amount of \$348 at SOR ¶ 1.p was for a revolving credit account opened in 2008. The debt in the amount of \$176 placed for collection at SOR ¶ 1.q was for a cable-television account opened in 2010. No evidence of payments on these delinquent debts was provided.

The charged-off debt in the amount of \$8,673 at SOR ¶ 1.c and the debt placed for collection in the amount of \$ 6,609 at SOR ¶ 1.d were also for automobile loans. She could not afford the payments on these vehicles when she lost her job in 2014. Applicant stated in her PSI that she had previous automobiles repossessed when she did not make payments in 1996, 1997, and 2002.

SOR ¶¶ 1.t, 1.u, 1.v, 1.w and 1.x were all debts placed for collection by the District of Columbia government because Applicant did not pay the fines for her numerous traffic violations. She still has not produced evidence of payments on these delinquencies totaling \$650. Her only explanation was that she was overwhelmed by debt.

In Applicant's response to the FORM, she attached documentary evidence that she had established a repayment plan with the comptroller of state A in which she would pay \$103 a month for a period of 36 months with the first payment due in January 2018. Again, no evidence was produced that she actually complied with the terms of this plan. The balance owed to state A was still \$3,402. Similarly, she provided an installment agreement entered into with the IRS in September 2015 requiring payments of \$150 a month and a balance of \$15,607. No evidence of actual payments has been provided. She enrolled in [redacted] Debt Relief program on September 10, 2018, and is supposed to make deposits of \$160 for 24–48 months to be meted out to her numerous creditors.

Applicant provided documentary evidence of a \$75 payment by check to the medical creditors in SOR ¶¶ 1.g and 1.i against a balance remaining of \$687. She also made a payment of \$60 to the creditor at SOR ¶ 1.h on September 18, 2018 against a balance remaining of \$434. Applicant provided a 2015 IRS Form 1099-C showing that the debt charged off in the amount of \$7,385 at SOR ¶ 1.n was cancelled. There was no

indication that she paid income taxes on this cancelled debt. The debt in the amount of \$348 placed for collection in SOR ¶ 1.p was settled in full with a payment of \$156 made on January 25, 2018. The balance owed on the judgment at SOR ¶ 1.y is now up to \$1,110. Applicant provided evidence of her request made on September 14, 2018, to the creditor in SOR ¶ 1.z for itemized records supporting the judgment lawfully obtained against her in the amount of \$3,083. However, she provided no evidence of good faith efforts to resolve this or any of the four judgments against her alleged in the SOR.

Applicant provided evidence that she received financial counseling by [redacted] Debt Relief and an earlier debt relief company. She provided no budget showing income against expenses, or other documentation to show progress on her delinquent debts. Most of her delinquent debts are more than six years old including federal income taxes owed from TY 2010-2013, state income taxes owed from 2007, and student loans obtained in 2004-'05. (Item 12) She has had financial problems over several decades, going back to her first bankruptcy petition in 1994. (Item 13) She professed her intentions to repay the tax deficiency and other debts when she entered into a repayment plan in 2011, but failed to make the payments as scheduled. She was aware that her financial problems were a concern to the government when she completed her 2015 SCA and in her PSI in October 2017. She produced no documentary evidence that she has followed through on any repayment plans.

### **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 Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

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. 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;
- (c) a history of not meeting financial obligations; 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'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), 19(c) and 19(d), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>3</sup> Applicant has not met that burden.

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;
- (c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as 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;

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<sup>3</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).

(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; 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.

Applicant endured a five month period of unemployment four years ago, and a downturn in the economy. Arguably, these conditions were beyond her control. Yet, her financial irresponsibility predates the period of unemployment. Despite her knowledge at least three years ago that these delinquencies might affect her eligibility for a security clearance when she completed her SCA, and reinforcing her intention to make payment arrangements in her PSI, she has done little to resolve these delinquencies. She has produced no relevant or responsive documentation either with her Answer to the SOR, or in response to the FORM, showing a continuous stream of payments made to tax authorities or her multitude of creditors. 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 report and her answer to the SOR reflect the delinquent debts. Applicant did not provide enough details with documentary corroboration about what she did to address her SOR debts. She did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;<sup>4</sup> (3) credible debt disputes indicating she did not believe he was responsible for the debts and why he 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 important for her to provide corroborating or supporting documentation of resolution of the debts in

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<sup>4</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or his] control, the Judge could still consider whether Applicant has since acted in a reasonable 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.

the SOR. (FORM at 4) Aside from Applicant's uncorroborated statements, there is scant documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. She did not provide her budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems, except that she was overwhelmed, 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 4)

### **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 those guidelines. Notably, Applicant has gone through a brief period of unemployment and an unexpected loss of household income. She has been employed most of her adult life, with the exception of the five month period of unemployment in 2014. Most importantly, Applicant has not addressed the specific allegations in the SOR. Instead, she has made hollow promises of her intent to repay her delinquent debts. She has not met her burden of production.

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-m:	Against Applicant
Subparagraphs 1.n-1.p:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.q -1.bb:	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