



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04515
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

08/13/2015

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges she is delinquent on 4 judgment and 14 collection accounts totaling approximately \$40,000. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on October 10, 2014, the DoD issued a Statement of Reasons detailing security concerns. On February 3, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel

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<sup>1</sup> Executive Order 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 (AG) effective within the DoD on September 1, 2006.

submitted the Government's case in a File of Relevant Material (FORM), dated May 20, 2015. The FORM contained four attachments (Items). On June 10, 2015, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due July 10, 2015. No material was received. On August 3, 2015, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, she denied owing an \$18,294 collection account (SOR 1.k) and asserted other collection accounts had been paid. She neither admitted nor denied two collection accounts. She admits owing the remaining delinquent SOR accounts, including the four unpaid judgments. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 44-year-old data administrator who has worked for a defense contractor since October 2013 and seeks to obtain a security clearance. From August 1992 through June 1996, she served honorably in the U.S. Army and then in the U.S. Army Reserve from January 2000 through September 2001. Applicant provided no information about her current duty performance nor did she provide any character reference letters.

In May 2007, Applicant and her husband separated and, in October 2008, they divorced. They have three children ages 17, 19, and 21. (Item 3) Between the dates of their separation and divorce, Applicant was not receiving child support. During this period, she used credit cards "to keep afloat." (Item 2) Child support started in October 2008, the same month she became unemployed. Her e-QIP lists five periods of unemployment: March 2004 through May 2007; October 2008 through April 2009; October 2011 through June 2012; October 2012 through March 2013; and, August 2013 through October 2013.

Applicant asserted six collection accounts were paid in January and February 2014. These delinquent accounts totaled \$1,657. In February 2015, she asserts she paid two collection accounts totaling \$244 and made arrangements to pay one collection account (SOR 1.i, \$1,195). That account was to be paid by March 2015. (Item 2) She provided no documentation as to payment of any debt or repayment agreement. She asserts the collection account in SOR 1.g (\$6,427) and the judgment in SOR 1.c (\$6,452) are the same obligation. The FORM informed Applicant that she could submit documentation in rebuttal, extenuation, mitigation, or explanation, but no documentation was received.

Applicant asserts the \$18,294 collection account (SOR 1.k) is not her debt. (Item 2) She stated after talking to the collection agency, she was informed the original creditor is not the creditor listed on the credit report. She never had an account with the creditor provided by the collection agency over the telephone. It was recommended by

the collection agency that Applicant file a police report and send a copy of the report to the collection agency. (Item 2) Applicant has provided no documentation showing she did this.

Applicant considered filing for bankruptcy protection, but chose not to. She indicates the majority of the SOR debts are her obligations, which she intends to pay. In Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), she listed the majority of the SOR debts. Her January 2014 e-QIP, indicates that in addition to the unpaid judgments and numerous unpaid collection accounts, she had numerous accounts that were in good standing and listed as "paid as agreed" (Item 4) Those paid-as-agreed accounts included numerous student loan accounts, payments at various times for three cars, and other consumer accounts. It also indicates a \$262 judgment was satisfied in November 2010. The credit report also indicates a February 2009 foreclosure on her home. (Item 4)

Applicant's four judgments totaling in excess of \$17,000 were entered against her between September 2008 and January 2011. She provided information about problems with the apartment that resulted in the \$3,900 judgment (SOR 1.a) The problems included her landlord failing to provide parking permits that resulted in her vehicle being towed on numerous occasions and his failing to provide a working refrigerator for a number of months. She also indicates the \$1,300 security deposit should have been applied to any amount she owed. It was incumbent on Applicant to bring these matters to the court's attention at the time of the court proceeding that resulted in the judgment. At this time, the judgment has been rendered and she is obliged to pay it.

### **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 disqualifying conditions and mitigating conditions, which must 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 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 national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed.

Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owes more than \$17,000 on four unpaid judgments and has more than \$27,000 in delinquent consumer debt. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

None of the mitigating factors for financial considerations are established. Applicant's financial difficulties are both recent and multiple. She has been employed with her current employer since October 2013. In October 2014, she was made aware of the Government's concerns about her delinquent debt when she received the SOR. She acknowledged the majority of her debts, but indicated some had been paid, and that two debts were the same obligation. She denied one large debt, and neither admitted nor denied two other collection accounts totaling approximately \$800. She provided no documentation showing payment on any of her debts or payment arrangement.

Applicant asserted she paid \$1,657 on six delinquent accounts in 2014 and paid \$244 on two delinquent accounts in 2015. Accepting that the payments were made, this indicates approximately \$1,900 has been paid in the past year and a half. She has not made significant progress in reducing her delinquent debts since her employment in October 2013. Applicant provided no evidence she has received credit or financial counseling or that she is meeting her current financial obligations. She has not demonstrated that her financial problems are under control or that she has a plan to bring them under control.

AG ¶ 20(a) partially applies, but does not mitigate the financial concern. Her numerous delinquent debts remain unpaid and are therefore considered recent. There is nothing in the record supporting that the debts were incurred under unusual circumstances, other than her assertion that between May 2007 and October 2008 she needed to use credit cards for living expenses because she was not receiving child support for her three children. Her lack of child support ended more than six years ago. She has been employed since October 2013. The four judgments entered against her between September 2008 and January 2011 remain unpaid. Failing to pay the debts casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) has application, but does not mitigate the security concern. In 2007 she separated from her husband and was divorced in 2008. Between March 2004 and October 2013, she had five periods of unemployment. These are events beyond her control. However, for AG ¶ 20(b) to mitigate the financial security concern there must be events beyond one's control and the person must have acted responsibly. Applicant asserted she paid \$244 in 2015 and intended to pay approximately \$1,200 more before March 2015, but did never prove it. With such small amounts being applied to her delinquent accounts she fails to show she has acted responsibly.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. Additionally, there is no clear showing that the majority of her delinquent financial obligations are being addressed. Even though Applicant failed to provide documentation, I will apply the mitigating condition listed in AG ¶ 20(d) to the six debts she paid in January and February 2014 and the two debts paid in February 2015. I do not apply it to the \$1,195 collection account (SOR 1.l) because payment was to occur after her SOR answer and it is uncertain that payment was actually made. She provided no documentation that payment was actually made.

Although Applicant disputes the debt in SOR 1.k (\$18,294), AG ¶ 20(e) does not apply. For the mitigating condition to apply Applicant must not only deny the obligation, but must also provide documentation supporting her claim. She asserts she was told the original debt was not the obligation listed on her credit report, but was a creditor for which she asserted she never had an account. She was informed to file a police report and send a copy to the collection agency. There is no evidence this was ever done.

## 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. Applicant honorably served in the U.S. Army and U.S. Army Reserve. Her credit report lists numerous accounts that she "paid as agreed" including her student loans, car payments, and numerous consumer accounts. However, she failed to document any payment on the SOR delinquent accounts. She has been aware of the Government's concern about her delinquent debts since her October 2014 SOR. Since receiving the SOR, she paid \$244 on two delinquent collection accounts and asserted she made arrangement to pay another collection account. There is no documentation indicating that Applicant has had recent contact her creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances and facts that would mitigate the financial considerations security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. By relying solely on her paragraphs of explanation in her response to the SOR, she failed to mitigate the financial considerations security concerns.

An individual is not required to be debt free, or required to have resolved all past-due debts simultaneously or even resolve the delinquent debts in the SOR first. Individuals seeking a security clearance must establish that they are managing their finances in a manner expected of those granted access to the nation's secrets. Notwithstanding the presence of some favorable evidence, Applicant failed to meet her burden of persuasion. Consequently, the record evidence leaves doubts about

Applicant's present eligibility for access to classified information. Applicant has not mitigated the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her security worthiness.

### **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
Subparagraphs 1.h – 1.j:	For Applicant
Subparagraphs 1.k – 1.m:	Against Applicant
Subparagraphs 1.n – 1.q:	For Applicant
Subparagraphs 1.n – 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	For 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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge