



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



In the matter of: )  
)  
) ISCR Case No. 17-03378  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey DeAngelis, Esq., Department Counsel  
For Applicant: *Pro se*

06/21/2019

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**Decision**

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CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions, also known as a Security Clearance Application (SCA), on January 17, 2017. On October 19, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on April 17, 2018, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on June 12, 2018, scheduling a hearing for July 11, 2018. After communication

with Applicant, the hearing was rescheduled and held on June 5, 2019. Government's Exhibits (GE) 1 through 4 were admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 35-year-old medical service provider for a government contractor, employed since December 2016. She also operates a part-time business since 2014, and teaches college classes since 2009. She earned two associate's degrees in 2011 and 2016. She married in 2000 and has four children. She has never held a security clearance.

The SOR alleges under Guideline F that Applicant filed Chapter 7 bankruptcy in March 2017. Applicant admitted the allegation, and provided a statement explaining the circumstances for the bankruptcy.

Applicant had medical problems from a high-risk pregnancy in 2012, resulting in medical debts, mandated bed rest, and a loss of her full-time employment. Even though her husband continued to work full time, the loss of her income had a substantial impact on the family budget. She applied for government assistance, but was denied. She resorted to using a loan and credit cards to meet monthly expenses until the child was born and she could return to work. She returned to work part time but they were unable to meet their debt obligations incurred while she was unemployed. Applicant completed a financial management course and filed Chapter 7 bankruptcy in March 2017. In December 2017, the court ordered a discharge of about \$48,000 in debts. Applicant retained her student loans and has been paying on time with no delinquencies.

Applicant and her husband are currently working, and have a net monthly remainder of \$200 to \$300 per month, and savings of about \$2,000. They are current with all of their financial obligations and maintain a budget. They financially assist her grandparents on occasion because they help with childcare, and she returns profits back into her business. Applicant completed a more comprehensive financial counseling course at her local college before she completed the bankruptcy court required counseling.

### **Law and Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies

these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG para. 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see, AG para. 1(d).

## Analysis

### Financial Considerations

The security concern under this guideline is set out in AG para. 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. . . .

The relevant disqualifying conditions under AG para. 19 include: (a) inability to satisfy debts. Applicant's admission and the documentary evidence supporting the SOR allegation are sufficient to establish the above disqualifying condition.

The following mitigating conditions under AG para. 20 are potentially relevant:

(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's financial problems occurred after a high-risk pregnancy resulting in her loss of her job and a significantly reduced family income. Applicant had to borrow to meet financial obligations while she was on bed rest, and fell behind on debts until her child was born and she could return to work. She resorted to Chapter 7 bankruptcy, fulfilled all of the court's requirements, and successfully discharged her debts. Since 2017, she and

her husband are working, they have sufficient income to meet all of their financial obligations, and there has been no recurrence of financial distress or unpaid debts.

Applicant is now on solid financial footing. Her family income from her three jobs and her husband's income are more than sufficient for her to meet all of their financial responsibilities. Appellant has shown a track record of responsible financial decisions and there is sufficient evidence to determine that she is living within her means. I find that Applicant acted responsibly under the circumstances to address her debts with the only means at her disposal given her difficult financial condition. Her financial condition no longer casts doubt on her current reliability, trustworthiness, and good judgment. AG paras. 20(a), (b), and (c) apply.

### **Whole-Person Concept**

Under AG paras. 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 para. 2(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG para. 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant has undergone significant financial stress through no fault of her own, but acted responsibly under the circumstances. She allocated resources within her means to address debts as she could. I am convinced that a similar financial event is unlikely to recur and that Applicant is financially stable. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance eligibility is granted.

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Gregg A. Cervi  
Administrative Judge