



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



In the matter of: )  
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)  
) ISCR Case No. 18-01219  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2019

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**Decision**

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LYNCH, Noreen 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 submitted a security clearance application on May 16, 2017. On October 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

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 December 4, 2018. Applicant received the FORM on December 12, 2018. The Government's evidence, included in the FORM and identified

as Items 1 through 6, is admitted without objection. Applicant responded to the FORM with a packet of documents, which was marked as Item A, and admitted into the record without objection. The case was assigned to me on March 12, 2019. Based on my review of the documentary evidence, I find that Applicant has mitigated the financial concerns.

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

Applicant is a 49-year-old employee for a federal contractor. She is separated from her husband who she married in 2011, and she has two adult children. (Item 2) She obtained her general education degree (GED) in 1990. She obtained an undergraduate degree in 2010. She has never held a security clearance. She has been employed with her current employer since June 2017.

### **Financial**

The SOR alleges in 1.a-1.m, 13 delinquent accounts including student loans totaling \$53,781, medical collection or charged-off accounts, and consumer accounts for a grand total of approximately \$60,382. (Item 1) Applicant admitted debts listed on the SOR with the exception of 1.k-1.m, and provided explanations. She also denied one account (1.f) that had been paid, and the Government withdrew the allegation. (Items 1, 2) Her credit reports confirm the remaining delinquent debts. (Items 5, 6)

Applicant attributes her delinquent debts to her husband who is now incarcerated and his inability to work due to mental illness. She also was unemployed from May 2016 to June 2017, approximately 13 months. (Item 4) In addition she had a child who required surgery. She and her husband have been separated and she has a two-year protective order in place that forbids any contact other than from attorney to attorney. Applicant plans to divorce him. With her response to FORM, she included a Marital Separation and Property Agreement. This court document requires Applicant's husband to pay three medical debts which were the result of injuries Applicant sustained from her husband's violent behavior. (AE A)

Applicant explained that she purchased a home in 2008, but the property was in her name only. Her husband disappeared frequently and did not contribute to home or living expenses. She managed to stay current with the mortgage after some difficulty. He also assaulted Applicant and was often violent. Applicant stressed that he also incurred bills that he did not pay, and Applicant was left with the accounts including medical and a cell phone account. Applicant submitted a social security statement that shows that her husband has not had any income for the majority of his life. (Item 2)

As to SOR allegations 1.a to 1.e, and 1.g,( student loans), Applicant stated that she had some student loans under NELNET that are in good standing. She submitted documentation with her response to FORM that a forbearance ended in March 2019;

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

and the six student loans are now rehabilitated; and she is not past due on any balance. She submitted receipts from November, December, and January. She submitted her payment of \$289.38, which is her new monthly payment on the consolidated student loans. (AE A)

As to SOR 1.h., Applicant provided documentation that she researched the account and has paid the phone account. (AE A). Applicant made two payments of \$405.52. The account is satisfied in full. Her husband was responsible for the charges, and the property agreement provides that he reimburse her for her payments to address the phone amount.

As to SOR 1.i, 1.j, and 1.k, three medical accounts totaling approximately \$2,200, Applicant paid \$300 to date. The medical bills are for the hospitalization that occurred when her husband dislocated her finger. He is to pay the medical debts according to the property separation agreement, but she had decided to make payments as she doubts that he will. She provided documentation of her payments. (AE A) As to 1.k, she disputed the account, and it has been removed from her credit report. She provided documentation that she paid the account in 1.l for lab work.

As to SOR 1.m, Applicant disputed the account in the amount of \$2,911, as it is her husband's account. However, despite the fact that he is to pay according to the marital property agreement, she has set up a payment arrangement of \$55 a month automatically deducted from her account. She provided a receipt and documentation to prove her claim. (AE A)

During her investigative interview in 2017, Applicant candidly stated that she was behind on her mortgage payments due to unemployment and surgery. She also spoke of her payment plan for state taxes. However, she is now current with her mortgage. She has paid non-SOR debts as reflected in her response to FORM. She had no problems when she was working in a prior job for 12 years. Applicant went to school after work to improve her job opportunities. She used money from her 401(k) to help pay bills. Her marriage in 2011 created financial hardship. She stated that she had paid several of her husband's debts. Since the assault, he is in jail. She has a protective order. She addressed her student loans and the medical debts, which were in forbearance until March 2019. (Item 4)

## **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.

Eligibility for a security clearance 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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. See *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 ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 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.

## Analysis

### Guideline F (Financial Considerations)

The concern under this guideline 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 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, and failure to pay her delinquent debts or set up any payment plans raises two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20 (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 debt.

Applicant provided documentation that her student loans are consolidated and she is making timely payments. Her other delinquent debts have been satisfied or disputed. She was unemployed for a year after having surgery. Her soon to be ex-husband assaulted her and caused the injuries which led to the medical debts. He contributed nothing to the home or living expenses. She submitted specific information about payments she has made. She provided a marital property settlement agreement. Applicant has furnished sufficient information to meet her burden. She is divorcing her husband who caused many of the financial problems. The five listed mitigating conditions apply.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

Applicant is separated from an abusive husband. He assaulted her and she suffered injuries from the assault which resulted in hospitalization. She has a protective order in place. He is now in jail. She was unemployed for one year. Circumstances beyond her control adversely affected her finances, and she acted reasonably and responsibly to address her delinquent debts. She took action and addressed her student loans and the other accounts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.m:

For Applicant:

### **Conclusion**

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

Noreen A. Lynch  
Administrative Judge