



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



In the matter of: )  
)  
) ISCR Case No. 18-01487  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

04/23/2019

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant mitigated security concerns arising under Guideline F (Financial Considerations). Due to circumstances beyond her control, she suffered from events that adversely affected her finances. Resolution of debts through bankruptcy is a legally authorized means for resolving delinquent debt. In October 2018, the bankruptcy court discharged Applicant's delinquent debts under Chapter 7 of the Bankruptcy Code. All of the debts alleged in the SOR are now resolved. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 24, 2017, Applicant submitted a security clearance application (SCA). On June 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On July 6, 2018, Applicant provided a response to the SOR, and she requested a hearing. On October 29, 2018, the case was assigned to me. On December 31, 2018,

the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 16, 2019. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 12-19; Government Exhibit (GE) 1-6; Applicant Exhibit (AE) A). On January 25, 2019, DOHA received the hearing transcript.

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

In Applicant's SOR response, she admitted the debts alleged in SOR ¶¶ 1.a through 1.n, but she also noted that all of these accounts were included in her Chapter 7 bankruptcy she filed in July 2018. Her admissions are accepted as findings of fact.

Applicant is 42 years old. She married in 1995 and divorced in 1999. She married a second time in 2006 and was divorced in 2010. She has two children, ages 21 and 24 years old. In 1990, she earned an office automation certification, and in 2013, she earned an associate's degree. She has been employed as a project assistant with her federal contractor employer since March 2017. Her annual net (take-home) pay is approximately \$27,000. She does not currently possess a DOD security clearance. (Tr. 6-7, 11, 20-21, 24; GE 3)

### **Financial Considerations**

Applicant attributed her financial complications to a failed business, periods of unemployment and underemployment, and unexpected medical issues without medical insurance. In April 2014, Applicant opened a tanning salon business. She purchased the tanning equipment and operated the business out of her home. Her business was not producing much income, and Applicant eventually closed the business in May 2016. She was unemployed until November 2016, when she was hired by a temp agency. During the period of her self-employment, she did not have medical insurance. Her boyfriend, at the time, was paying the majority of her bills. After their relationship ended, Applicant's grandmother provided her with financial assistance. (Tr. 22-24, 47-52)

The SOR alleged 14 delinquent debts totaling \$28,559, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a deficiency balance of \$3,949. This debt resulted from a vehicle voluntarily surrendered by Applicant in 2016. This debt was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 25-26; GE 5, GE 6; AE A)

SOR ¶ 1.b alleges a charged-off debt owed to a creditor for \$407. Applicant obtained a small loan from a "Pay Day" type of office with a high interest rate. This debt

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<sup>1</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 26-27; GE 5, GE 6; AE A)

SOR ¶ 1.c alleges a debt placed for collection for \$1,279. This account was for Applicant's and her son's cell phone service. She was unable to pay this account during her period of unemployment. This debt was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 27-28; GE 5, GE 6; AE A)

SOR ¶ 1.d alleges a debt owed to an apartment complex for \$958. Applicant was unemployed and her grandmother paid her rent for several months. The debt was the result of her leaving one month prior to the lease ending. This debt was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 29-30; GE 5, GE 6; AE A)

SOR ¶¶ 1.e and 1.h allege two debts owed to the same creditor for a combined total of \$1,269. Applicant had cable and internet service at two different locations. She closed the cable contract early, but tried to maintain her internet service for employment searches. She claimed to have turned-in her cable equipment, but believes some of the delinquent amount is for improper equipment charges. These debts were discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 30-32, 34-36)

SOR ¶ 1.g alleges a debt placed for collection for \$648. This is for unpaid college tuition while Applicant was attending school to earn a bachelor's degree. She attempted to set-up monthly payment arrangements, but the creditor wanted the account paid in full. This debt was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 33; GE 5, GE 6; AE A)

SOR ¶¶ 1.f, 1.i, 1.j, 1.k, and 1.m allege unpaid medical accounts in the total amount of \$16,571. Applicant experienced medical issues during a period of time she did not have medical insurance. In 2014, she was diagnosed with walking pneumonia, which she had for nearly three months. In 2016, she was hospitalized for a few days with acute pelvic inflammation. She filled out a form with the hospital to have her medical debts reduced, or possibly eliminated, due to her low income, but she was denied. Applicant has medical insurance with her current employer. These debts were discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 36-40, 43-45, 68; GE 1, GE 5, GE 6; AE A)

SOR ¶ 1.l alleges a debt owed to a landlord in the amount of \$2,860. Applicant stayed at her friend's home, but she was unable to pay full rent. Applicant set-up a monthly repayment plan with her friend and continued to pay until her bankruptcy attorney advised her to stop. This debt was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 41-43; GE 1, GE 6; AE A)

SOR ¶ 1.n alleges a debt placed for collection in the amount of \$618. Applicant received another "Pay Day" loan, which she was unable to pay. This debt was discharged in Applicant's Chapter 7 bankruptcy in October 2018. (Tr. 46; GE 4, GE 6; AE A)

Applicant was required to take financial counseling after she filed for Chapter 7 bankruptcy protection. She learned from counseling that she needed to reduce her

spending habits, which she has implemented in her current budget. She also intends to go back to college next semester in an effort to earn a bachelor's degree. Her employer offers tuition reimbursement. She currently has outstanding student loans totaling approximately \$65,000. The student loans will go into deferment while she is enrolled in college. It is her intention to repay all of her student loans. She has filed all Federal and state income tax returns. (Tr. 55- 60, 64)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations.

The SOR alleged 14 delinquent debts totaling \$28,559. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Four financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>2</sup> 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts resulted from her failed business, periods of unemployment and underemployment, and from serious medical issues that required medical treatment when she did carry medical insurance. These circumstances are largely beyond her control. Her bankruptcy attorney recommended that she seek a fresh financial start through bankruptcy. Resolution of debts through bankruptcy is a legally authorized means for resolving delinquent debt. The U.S. Bankruptcy Court website states:

A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision: "[I]t gives to the honest but unfortunate debtor ... a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from ever taking any action against the debtor to collect those debts.

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<sup>2</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

On October 25, 2018, the bankruptcy court discharged Applicant's nonpriority unsecured debts under Chapter 7 of the Bankruptcy Code. As part of the bankruptcy process, she received financial counseling and generated a new budget. Applicant has resolved all of the delinquent debts alleged in the SOR. Although not cited in the SOR, Applicant intends to pay her outstanding student loans. She plans to enroll in college next semester, which will put her student loans in deferment status. (AE A)

All of Applicant's accounts alleged in the SOR are resolved and there are clear indications that her finances are under control. Now that she has a fresh start, future financial problems are unlikely to recur. AG ¶¶ 20(a), 20(b), and 20(c) are established, and financial considerations security concerns are mitigated.

### **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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 42-year-old project assistant employed by a government contractor for over two years now. She intends to continue her college education until she earns a bachelor's degree. Applicant's failed business in 2016, medical issues while not carrying medical insurance, and periods of unemployment and underemployment are circumstances beyond Applicant's control that adversely affected her finances. On October 25, 2018, the bankruptcy court discharged all of her delinquent nonpriority unsecured debts under Chapter 7 of the Bankruptcy Code.

Resolution of debts through bankruptcy is a legally authorized means for resolving delinquent debt. Applicant's actions show financial responsibility and good judgment and she has established her reliability, trustworthiness, and ability to protect classified information. Future financial problems are unlikely to recur. Applicant's financial considerations security concerns are mitigated.

### **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
Subparagraphs 1.a through 1.n:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Pamela C. Benson  
Administrative Judge