



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



In the matter of: )  
)  
) ISCR Case No. 18-02889  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

07/26/2019

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant contests the decision of the Department of Defense Consolidated Adjudications Facility (DOD CAF) that it was unable to find that it was clearly consistent with the national interest to grant her access to classified information. The DOD CAF alleges in its Statement of Reasons (SOR) that Applicant has a substantial number of delinquent debts, totaling over \$44,000. The record evidence supports a favorable decision. Applicant’s access to classified information is granted.

**History of the Case**

In April 2017, Applicant submitted a security clearance application (SCA) as a first-time applicant for a clearance in connection with her employment with a federal contractor. Following an investigation, the DOD CAF issued its SOR on December 12, 2018, setting forth allegations under Guideline F (Financial Considerations.) Applicant timely responded to the SOR and requested a decision based upon the administrative

record without a hearing before an administrative judge. She lives and works in the Middle East.

On March 12, 2019, Department Counsel submitted a File of Relevant Material (FORM) with six government exhibits (GE) attached. Applicant received the FORM on May 21, 2019, and submitted a response to the FORM on June 18, 2019, in which she provided several additional documents. Absent any objection, all of the parties' documentary evidence is admitted into the record. On July 9, 2019, the case was assigned to me.

### **Findings of Fact**

In her SOR response, Applicant admitted 17 of the 19 SOR allegations. I have incorporated her admissions in my findings of fact. Applicant's personal information is extracted from her SCA, FORM Item 2, unless otherwise indicated by a parenthetical citation to the record.

Applicant, 30, was born in Sudan and immigrated to the United States in 1999 with her family. She was ten years old at the time. She was naturalized as a U.S. citizen in 2005. Applicant was educated in the United States, receiving a high school diploma in 2007 and a bachelor's degree in May 2013.

Applicant struggled to find appropriate employment after her college graduation, but in July 2014 she was hired by a company in Doha, Qatar, which provides staffing to U.S. companies contracting with the U.S. Government. In March 2017, she began in-processing with a new employer in the Middle East, which sponsored her to apply for a security clearance. She submitted her SCA in April 2017.

During her unemployment and underemployment for over a year in 2013 and 2014, she defaulted on a number of student loans and other debts. The SOR lists ten student loans that have been placed for collection. The total amount of those loans is alleged and admitted by Applicant to be about \$33,000. In addition, the SOR lists nine consumer debts with a total amount of about \$11,000. The record evidence supports the conclusion that six of these consumer debts became delinquent in 2013 or early 2014 following Applicant's graduation. One of the other debts arose when Applicant's car was totaled in 2016. Two other minor debts for mobile phone service are also more recent. (FORM Item 3 at 4.)

The details and current status of the 19 debts alleged in the SOR is as follows:

**Ten Student Loans in Collection in the Total Amount of about \$33,000 (SOR ¶ 1.a -1.g, 1.i, 1.k, and 1.m.)** The U.S. Department of Education (DOE) guaranteed Applicant's ten defaulted loans and following Applicant's default, the DOE transferred the loans to a collection agency (Agency). In August 2018, she entered into a rehabilitation

program with the Agency under which she made six monthly payments of \$119 on 17 federally guaranteed student loans. She provided with her SOR response records from the Agency evidencing her monthly payments from August 2018 through January 2019. The amount of the payments was determined by her income. A separate letter from the Agency states that these payments are part of a loan rehabilitation program and that the next step will be the formal consolidation of the loans with Applicant's student loan service provider. The Agency official concludes her letter with the statement that Applicant "has taken the proper steps to move forward" and complete the consolidation process. (SOR response.)

**Auto Loan Charged Off in the Amount of \$2,942 (SOR ¶ 1.h.)** In December 2015, Applicant bought a 2013 Toyota Corolla. She paid for the car, in part, with a car loan. At that time, Applicant was living in the Middle East. She signed a power of attorney granting her sister the right to use the vehicle. In June 2016, a driver hit the Toyota resulting in a total loss of the car. The driver's insurance company paid part of the loss to the creditor, but not all, leaving a balance of \$2,942. In January 2019, Applicant's sister brought a small claims court lawsuit against the driver. The court entered a judgment in March 2019 in favor of the defendant for unexplained reasons. Government Exhibit 6, which is a February 2019 credit report, reflects that Applicant remains liable for the balance of the car loan in the amount alleged in the SOR, *i.e.*, \$2,942. Applicant's FORM response includes a June 2019 letter from the collection agency handling the account evidencing that she has agreed to make two payments of \$1,177.50 by July 24, 2019, to settle this debt. (SOR response; FORM response; GE 6 at 6)

**Delinquent Loan Owed to a Bank Charged Off in the Amount of \$2,463 (SOR ¶ 1.j)** In November 2012, Applicant borrowed funds from a bank to help with her college expenses. She defaulted on the loan in September 2013. Due to the age of the debt, it is no longer enforceable under the applicable state law. The debt remains on her February 2019 credit report. (GE 6 at 7.)

**Other Non-Enforceable Charged-Off Debts (SOR ¶¶ 1. o, 1.p, 1.r.)** These three debts alleged in the SOR are owed to a department store (\$698), a second department store (\$398), and a bank and its collection agency (\$979). In her SOR response, Applicant wrote that she opened these accounts in 2013, but was unable to pay them due to her employment difficulties. In her SCA, Applicant listed the bank debt and wrote that this debt became delinquent in May 2015 when she was experiencing financial hardship. She believes that these debts are no longer enforceable due to the passage of time. The two department store debts remain on her February 2019 credit report. Applicant provided with her FORM response a March 2019 letter from one of the department stores confirming that the store is "no longer attempting to collect the remaining balance on this account." (FORM response; SOR response; GE 6 at 6, 7.)

**Bank Credit-Card Account in Collection in the Amount of \$1,538 (SOR ¶ 1.I.)** Applicant opened this account in January 2011. Her last payment was made in December

2013, during her period of post-graduation unemployment and underemployment. In January 2019, she negotiated a settlement payment of \$615.59 to be paid on the same date. She documented the settlement proposal, however, she did not document her payment. (FORM response; GE 4 at 14.)

**Bank Credit-Card Account in Collection in the Amount of \$1,025 (SOR ¶ 1.n.)**

Applicant opened this account in February 2008. Her last payment was made in January 2014. With her FORM Response, she provided a letter from the bank, dated February 5, 2019, informing her that her account was closed with a zero balance. (GE 4 at 3; FORM response.)

**Mobile Telephone Provider Account in Collection in the Amount of \$435 (SOR ¶ 1.q.)** This account was referred to a collection account in April 2016. With her SOR response, Applicant provided an October 2018 letter from the collection agency offering to settle this debt for \$225. The February 2019 credit report in the record reflects a zero balance for this account. (SOR response; GE 6 at 1.)

**Mobile Telephone Provider Account in Collection in the Amount of \$623 (SOR ¶ 1.s.)** This account was referred to a collection agency in April 2017. With her FORM response, she provided a May 2019 letter from the collection agency reflecting its receipt of payments in January 2019 or earlier in the total amount of \$230.66 in settlement of this debt. (FORM response; GE 4 at 5.)

### **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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 security 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 in her SOR Answer and response to the FORM and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

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 issue.

The debts of Applicant that are of primary importance from a security standpoint are the ten student loan debts alleged in the SOR. All of these debts became delinquent a number of years ago after Applicant graduated from college and was unable to find appropriate employment. Six of the nine consumer debts also arose during this period for the same reason. Though these 16 debts continued unaddressed for several years, Applicant's situation of being unable to pay her student loans and other college-era debts occurred some time ago and under circumstances that were unusual. The fact that four debts are now unenforceable due to a state statute of limitations and that she has made no efforts to resolve these debts with payments is a concern. For the most part, however, she has addressed her debts in a responsible manner making it unlikely that this behavior of a then-young college graduate will recur and these debts do not cast doubt upon her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is partially established.

The same analysis applies under AG ¶ 20(b). The delinquent debts arose during a period of unemployment and underemployment. Applicant began to pursue the rehabilitation of her student loans before the issuance of the SOR and is now about to have them consolidated and can begin paying them on a regular monthly basis. Also, the debt arising from the damage to her car was beyond her control, and she took responsible steps to address her remaining obligation to the lender. She has also paid four of her eight other delinquent consumer debts. She did not address the remaining four debts because she believed that they were considered resolved due to their unenforceability. Overall, she has acted responsibly under the circumstances. AG ¶ 20(b) is partially established, most significantly with respect to her student loans, as to which she began the six-month rehabilitation process before the issuance of the SOR.

AG ¶ 20(c) is not established. Applicant has provided no evidence that she has received any credit counseling. All of her debt resolution actions have been taken on her own initiative.

AG ¶ 20(d) is established with respect to her student loans she has rehabilitated and are now to be consolidated and paid in the ordinary course under a payment schedule. Also, this mitigating condition has been established with respect to the two credit card accounts and the two mobile phone accounts, which Applicant has resolved. She has initiated and is adhering to a good-faith effort to repay her creditors with valid, enforceable debts. There is no requirements that all of an applicant's debts be paid.

AG ¶ 20(e) is partially established. Applicant disputes the current enforceability of the four old debts alleged in SOR ¶¶ 1.j, 1.o, 1.p, and 1.r. With respect to the debt alleged in SOR ¶ 1.o, she provided confirmation from the creditor that it was no longer pursuing collection of the debt. This mitigating condition is not fully established, however, because the fact that debts may no longer be enforceable is not considered mitigation of the

concerns raised by the fact that Applicant allowed the debts to remain delinquent for an extended period of time. Also, a statute of limitations is not a bar that prevents a debtor from paying unenforceable debts.

### **Whole-Person Analysis**

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 and applying the adjudicative factors in AG ¶ 2(d). These factors are: (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.

I have given consideration to the fact that Applicant was 24 years old at the time she graduated from college and experienced employment difficulties for over a year, resulting in most of the debts alleged in the SOR becoming delinquent in 2013 and 2014. I have also considered her circumstances and personal history as an immigrant as a reason explaining her unemployment and underemployment at that time. The fact that the best position she could find after a year or so of searching required her to work in the Middle East, away from her family and friends, demonstrates the difficulties she experienced following her college graduation and the aggressive steps she took to find employment that could pay her living expenses and now her old debts. Based upon the multiple steps she has taken to resolve her debts, I also conclude that it is unlikely she will default on her student loans or again become delinquent on her debts. She has shown significant maturity by her efforts to resolve her debts while living outside the United States.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her financial considerations.

### **Formal Findings**

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.s: For Applicant



## **Conclusion**

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

John Bayard Glendon  
Administrative Judge