



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-00031
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

06/21/2019

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**Decision**  
\_\_\_\_\_

Gregg A. Cervi, Administrative Judge

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 1, 2018. On February 11, 2019, 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 the revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on February 28, 2019, and requested a decision based on the written record. The Government's written brief with supporting documents,

known as the File of Relevant Material (FORM), was submitted by Department Counsel on March 20, 2019. The case was assigned to me on May 29, 2019.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and submitted Applicant Exhibit (AE) A. Government exhibits (GE) 1 to 8 are admitted into evidence without objection.

### **Findings of Fact**

Applicant is a 47-year-old human resources manager, employed by a defense contractor since 2012. She earned a bachelor's degree in 1999 and is working on a master's degree. She married in 2000 and has one child. She does not currently hold a security clearance.

The SOR alleges nine delinquent debts and a Chapter 13 bankruptcy, filed in 2010 and discharged in 2015. In all, the SOR alleges \$38,423 in delinquent debts, including a Federal tax lien filed in 2010 totaling \$28,805, and a student loan collection account totaling \$6,814. Applicant admitted all of the SOR allegations except for SOR para. 1.b (collection for a phone service provider) and SOR para. 1.c (collection for a cable service provider). The SOR debts are supported by substantial evidence in the record and Applicant's admissions where appropriate.

In her Answer to the SOR, Applicant noted that her spouse lost his job in 2010, and could not find similar paying work. As a result of the loss of income, Applicant claims they were unable to meet their financial obligations and were forced to file Chapter 13 bankruptcy. The bankruptcy included \$193,576 in unsecured claims, including \$21,579 in unpaid Federal income taxes and \$8,322 in state income taxes for years 2007 and 2008; and \$13,684 in unpaid state income taxes for tax years 2003, 2006, and 2007. The IRS report shows \$36,703 in Federal taxes and \$27,081 in state taxes were paid through the Chapter 13 plan. Applicant claimed that they discovered their tax liability in 2010. She said the unpaid tax liabilities resulted from her husband under withholding from his pay.

The bankruptcy was discharged in December 2015. The record shows a 2010 Federal tax lien for \$28,805 remains on Applicant's record. (SOR para. 1.e) Applicant has not provided documentary evidence that the tax lien was released, despite an opportunity to do so in response to the Government's FORM.

Applicant claimed in her Answer to the SOR, that she is "currently" disputing the debts alleged in SOR paras. 1.b and 1.c, but did not provide documentary evidence of the disputes or evidence of their current status. Applicant provided evidence that the debt alleged in SOR para. 1.d (unpaid home owners association fees) has been resolved. Applicant's credit report shows the debts listed in SOR paras. 1.f – 1.i became delinquent in 2017. She claimed the debts resulted from her involvement in an auto accident in September 2017; however, it is not clear why her auto accident injury prevented her from paying her debts. Applicant provided some evidence of payments toward debts alleged

in SOR paras. 1.g, 1.h, and 1.i made in 2018 and 2019, but the status of the debts alleged in SOR paras. 1.b, 1.c, 1.f, and 1.j is unknown. SOR para. 1.j alleges a student loan in collection, totaling \$6,814. Applicant claimed that this debt should have been consolidated with other student loan debts, but was not. She stated in her Answer to the SOR that she was investigating the account, but did not provide documentary evidence of a satisfactory resolution of the collection account.

Applicant did not submit evidence that she independently sought credit counseling to assist her with her delinquent debts, although it is presumed that she completed the credit counseling required by bankruptcy courts before filing a petition. There is no record evidence showing Applicant's current income, debts, and her ability to meet financial obligations.

### **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. 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; 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's admissions and the documentary evidence in the record supporting the SOR allegations are sufficient to establish the disqualifying conditions above.

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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's unresolved debts have been a recurring problem that have not been satisfactorily addressed. Applicant claims her husband's job loss in 2010 resulted in their Chapter 13 bankruptcy, and her auto accident in 2017 resulted in additional delinquent debts, but the record evidence does not support these contentions. Applicant is credited with resolving or showing significant progress toward resolving debts listed in SOR paras. 1.d, 1.g, 1.h, and 1.i, however, she has not shown substantial evidence that the remaining debts were or are being resolved. Of particular concern is her failure to show evidence that her IRS tax lien has been released and that her student loan collection account was consolidated with other loans, as she claimed.

In addition, the evidence shows that Applicant had Federal and state tax delinquencies that date back to 2003 and continued for several years, in contradiction to her claim of first discovering the tax liabilities in 2010 as a result of her husband's under withholding of taxes from his pay. I have insufficient evidence of Applicant's current

financial status and her ability or willingness to satisfy her financial obligations, even though she has been employed since 2012 and her Chapter 13 bankruptcy was discharged in 2015.

Applicant's long-standing unresolved delinquent debts, including a tax lien, and new delinquencies accrued after her Chapter 13 bankruptcy, raise significant doubts about her financial responsibility. She has not shown that continued financial problems are unlikely to recur. Mitigation credit is applied to the debts that were resolved, and for the financial counseling she is presumed to have had as a result of her bankruptcy filing, but no mitigating condition fully applies to the remaining unresolved debts. I have insufficient evidence that SOR paras. 1.b and 1.c were disputed in good-faith and the disputes resolved the debts, or that SOR paras. 1.f and 1.j have been resolved.

Finally, the debts included in the Chapter 13 bankruptcy were indicative of years of financial irresponsibility, despite Applicant's claim that the 2010 job loss was the source of her financial problems. I am unconvinced that the reasons for Applicant's bankruptcy have been fully disclosed or that additional financial problems were avoided after the bankruptcy. There is insufficient evidence that her financial status is under control despite the bankruptcy, and that similar problems are unlikely to recur.

### **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:

- (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. 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's remaining delinquencies remain an ongoing concern. She has not shown evidence of whole-person factors sufficient to overcome the financial concerns. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national security interests of the United States to grant her eligibility for access to classified information.

### **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:	Against Applicant
Subparagraphs 1.a – 1.c, 1.f and 1.j:	Against Applicant
Subparagraphs 1.d, 1.g., 1.h, and 1.i:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

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Gregg A. Cervi  
Administrative Judge