



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-01121
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2019

**Decision**

FOREMAN, LeRoy F., 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 June 11, 2018. On May 3, 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 16, 2019, and the case was assigned to me on August 26, 2019. On August 27, 2019, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 24, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on October 7, 2019.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 27-year-old ship insulator employed by a defense contractor since January 2018. She graduated from high school in June 2010 and attended college from December 2010 to April 2011, but did not receive a degree. She worked at numerous non-government jobs until she was hired by her current employer. Applicant earned about \$12 per hour in her previous jobs, but her pay increased to about \$21 per hour when she began working for a defense contractor. She has never married and has no children. She has never held a security clearance.

After graduating from high school, Applicant initially lived with her mother and drove her mother's car. She moved back and forth between her mother's home and her grandmother's home because of her mother's drug problems. She moved into an apartment with a roommate in November 2011. She moved back with her grandmother in September 2017 and was living with her grandmother when she submitted her security clearance application. She was living in her own apartment when she was interviewed by a security investigator in November 2018.

Applicant incurred substantial debts when she bought furniture for her apartment and purchased a car from a private seller, which turned out to be a "lemon." She was unable to recoup any money from the seller, but she was liable for the loan she obtained to purchase the car. She was unable to pay for the furniture she purchased, and the seller garnished her pay. She was unable to pay her state income taxes of about \$755 for 2014 and about \$100 for 2016. She also owed city property taxes on her car, which she neglected to pay because she was accustomed to driving her mother's car and depending on her mother to pay the taxes. At the time of the hearing, she was driving a nine-year-old car with mileage of more than 124,000 miles, for which she owed about \$12,000.

Applicant filed a petition for Chapter 13 bankruptcy in July 2018, because her pay was being garnished by the furniture dealer, making it impossible for her to pay her current bills. (Tr. 24.) She completed the required credit counseling as soon as she filed her petition. Her Chapter 13 plan was confirmed in September 2018. The tax debts are included in the bankruptcy as priority debts that will be paid first. The plan requires Applicant to pay \$500 per month.

Applicant acknowledged at the hearing that she appeared to have decided to file the bankruptcy petition after she filed her application for a security clearance. She

explained that she had contacted a bankruptcy attorney and began the process earlier in the year, but that the petition was not filed until July 12, 2018, about a month after she applied for a security clearance. (Tr. 22.)

In March 2019, the bankruptcy trustee filed a motion to dismiss the bankruptcy because it was underfunded in light of the amounts claimed for federal, state, and local taxes and her auto loan. The payment plan was modified and confirmed in June 2019. The modified plan retained the provision for monthly \$500 payments but extended the duration of the payment plan. (GX 6.)

Applicant has been making payments since October 2018. She missed a payment in November 2018 and paid less than the full amount in December 2018 and January 2019, but she made up the shortfall by increasing the payments for February through April 2019. (AX A.) She testified that she fell behind on her payments because she was in her first year on the job and was not paid for the days when the shipyard was shut down for the holidays. (Tr. 26.)

At the time Applicant's bankruptcy plan was approved, her net monthly income was about \$3,091 and her monthly expenses were about \$2,591, leaving a net monthly remainder of \$500, the amount she is required to pay the bankruptcy trustee. (GX 6, Bankruptcy Schedule J at 34.) She received a pay raise in April 2019. (Tr. 41.) She usually works six days a week, and her pay sometimes increases when she works more overtime. If she is granted a security clearance, she will be eligible for positions of greater responsibility and increased pay. (Tr. 22, 40.)

## **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 SOR alleges that Applicant filed a Chapter 13 bankruptcy petition in July 2018, listing liabilities totaling about \$48,770 (SOR ¶ 1.a). The debts listed in the petition include a \$14,263 student loan on which payments are deferred. The SOR also alleges that Applicant owes about \$755 in state taxes for tax year 2014 and city taxes totaling about \$355 for tax years 2017 and 2018 (SOR ¶¶ 1.b and 1.c). 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. . . . 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 and the documentary evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

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(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's underemployment and her naïve purchase of a "lemon" vehicle from a private seller were conditions largely beyond her control. She has acted responsibly by filing a Chapter 13 bankruptcy petition and complying with the payment plan.

AG ¶ 20(c) is established. Applicant completed the credit counseling required by the bankruptcy court, and her financial problems are being resolved.

AG ¶ 20(d) is established. Applicant has complied with the Chapter 13 payment plan for the past year. It is well established that an applicant who waits until his or her application for a security clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. See e.g., ISCR Case No. 16-01211 (App. Bd. May 30, 2018). However, Applicant contacted a bankruptcy attorney and began preparing for her bankruptcy petition before she applied for a security clearance. Her primary motivation was to gain financial stability, regardless of whether her application for a security clearance was granted.

AG ¶ 20(g) is partially established. Applicant did not contact the federal, state, and local authorities about her tax debts. However, she included her tax debts in her Chapter 13 payment plan, and there is no evidence that the tax authorities objected to being included in her bankruptcy.

### **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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guidelines, but some warrant additional comment. Applicant has lived on her own since graduating from high school. She came to the hearing well prepared, and her testimony was candid, thorough, and credible. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that she has mitigated the security concerns raised by her delinquent debts.

### **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.c: 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 is granted.

LeRoy F. Foreman  
Administrative Judge