



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-01427
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
 For Applicant: *Pro se*  
 11/05/2019

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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), and Guideline J (Criminal Conduct). Applicant has not mitigated the security concerns raised by her delinquent debts, failure to file taxes, and criminal activity. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on June 13, 2018. On July 17, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines E, F, and J. The DOD acted under Executive Order (E.O.) 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) implemented by DOD on June 8, 2017.

Applicant answered the SOR July 24, 2019, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on August 14, 2019. On August 21, 2019, a complete copy of the file of relevant material (FORM) which included Government Exhibits (GX) 1 through 11, was sent to Applicant,

who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The case was assigned to me on October 28, 2019. Applicant did not submit any documentation in response to the FORM.

### **Findings of Fact**

Under Guideline F, the SOR alleges 33 debts totaling \$64,000. The SOR also alleges failure to timely file Federal and state income tax returns from 2015 through 2018. Applicant admitted all the allegations under Guideline F, SOR 1.a-1.hh. Under Guideline J, the SOR 2.a-d alleges criminal activity from 2011 to 2018. Applicant admitted each allegation. (Item 2) Specifically, in July 2011, Applicant was charged with possession of marijuana and carrying a concealed weapon. It further alleges in January 2012, Applicant was arrested and charged with (1) reckless handling of a firearm; (2) destruction of property value greater than \$1,000 – felony; and (3) assault and battery. In June 2012, Applicant was charged with possession of marijuana; in June 2018, Applicant was arrested and charged with (1) refusal to complete a blood/breath test; (2) driving while intoxicated (DWI) 1<sup>st</sup> offense; and defective equipment. (Item 1) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 35-year-old shipfitter employed by a defense contractor since May 2018. She is single and has no children. She lives with her parents. She received a high school diploma and a journeyman certificate. She does not hold a security clearance. (Item 3)

Applicant, during her 2018-2019 investigative interview, stated that she was unaware of any information about the accounts at issue. She stated that she would follow up with the accounts by the end of the year. The debts are attributed to periods of unemployment in 2015 and all of 2012. (Item 3) Her credit reports confirm the delinquent accounts. (Items 5, 6) Applicant stated that if they are her accounts, she would start a payment plan. However, she is unaware of when the accounts will be fully resolved. Her intent is to pay all her accounts, which are mainly medical and auto loans. (Item 4)

Applicant has not taken any financial counseling. There is no information in the record concerning her income or a budget. Applicant was given an opportunity to provide additional documents or corroborate any disputes, but she failed to do so. (Item 4)

Applicant admitted that she failed to timely file her 2015 through 2018 Federal and state income tax returns. (Item 3-4) She stated that she did not have the funds to file and pay taxes due for those years, as she had other financial obligations to pay. She plans to meet with a tax preparer to resolve the tax issue, but she is not sure when she can resolve the issue. (Item 4) She is unsure of the current outstanding tax liability.

In addition to Applicant's financial problems, she has been arrested four times since July 2012, and charged with various criminal violations. (Items 2,4,7-11) She admitted each criminal violation and disclosed them on her security clearance application. (Item 2-3)

As to SOR 2.a, she was arrested in July 2011 and charged with possession of marijuana and concealed weapon. (Item 11) In her 2018 investigative interview, she explained that the final disposition was nolle prossed and she did not receive any probation. (Item 11)

As to SOR 2.b, in January 2012, Applicant was arrested for admittedly firing rounds of bullets into her then-partner's former spouse's vehicle after he intimidated her. (Item 4) She was subsequently charged with reckless handling of a firearm, destruction of property, and assault and battery. (Item 10) Applicant was found guilty and sentenced to one-year probation and 30 days suspended incarceration. (Item 4)

As to SOR 2.c, in June 2012, Applicant was charged with possession of marijuana. (Item 9) This misdemeanor was also nolle prossed.

As to SOR 2.d, in June 2018, after she completed her security clearance application, she was arrested and charged with driving while impaired<sup>1st</sup> offense (DWI) and refusal of test. She was found guilty of DWI. (Item 8) She was sentenced to, among other things, a one-year suspended incarceration and two-years-probation, which is being served through at least July 2020. (Items 2, 8) Applicant is taking alcohol-awareness classes and attending Alcoholic Anonymous (AA) classes. (Item 4) She stated that she knew what she was doing by drinking at a party and driving because she was having a good time. Her future intent is not to drink as much.

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. 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.” See 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 ¶ 2(b).

## **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. . . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The record evidence establishes three 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 file annual Federal, state, or local income tax returns or failure to pay annual Federal, state or local income tax returns as required”).

Applicant admitted and her credit reports confirm that she owes \$64,000 in delinquent debts and has not filed her Federal or state income tax returns for tax years 2015-2018. She has failed to pay or otherwise resolve these debts. She states that she intends to pay the accounts or dispute them. However, she has taken no action to responsibly dispute or address these delinquent accounts. She admitted that she will obtain a tax preparer to resolve the income tax return issues, but she is not sure when that might occur. None of the mitigating conditions apply.

### **Guideline J, Criminal Conduct**

The concern under this guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The following disqualifying conditions apply under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence . . . of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's most recent charges were for a DWI in 2018. She was found guilty and placed on probation until at least July 2020. In 2011 and 2012 she was arrested for marijuana possession and reckless handling of a firearm (felony) with destruction of property. This pattern of criminal violations since 2011 casts doubt about Applicant's reliability, trustworthiness, and good judgment. It further negates evidence of successful rehabilitation. None of the 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(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guidelines F, and J in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guidelines F, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her conduct. She provided no arguments or evidence of mitigation. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.hh: **Against Applicant**

Paragraph 2, Guideline J (Criminal Conduct) **AGAINST APPLICANT**

Subparagraphs 2.a - 2.d: **Against Applicant**

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch  
Administrative Judge