



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-02146  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*  
01/17/2020

**Decision**

MARINE, Gina L., 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 October 2, 2018. On August 14, 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 (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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on September 10, 2019, and requested a decision on the written record without a hearing. On October 16, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 6. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. She received the FORM on October 22, 2019, and did not respond. Items 1 and 2 are the pleadings in the case. I

admitted Items 3 through 6 into evidence. Applicant's SOR answer included 11 attachments that I admitted into evidence as Applicant Exhibits (AE) A through K. The case was assigned to me on January 3, 2020.

### **Procedural Matters**

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), her SCA (Item 3), and the summary of her security clearance interview (Item 4). Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of her right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if she did not raise any objection to Item 4 in her response to the FORM, or if she did not respond to the FORM, she could be considered to have waived any such objection, and that Item 4 could be considered as evidence in her case. Applicant received the FORM, including a copy of Item 4, but neither responded to the FORM nor otherwise objected to Item 4.

### **Findings of Fact**

Applicant, age 34, married her second husband in November 2017. She divorced her first husband of three years in December 2016. She has one minor child with her first husband, and two stepchildren with her second husband (one minor and one adult). She earned a bachelor's degree in 2008 and master's degree in 2011, from the same university. She attended a different university from 2014 through 2016, without earning a degree. She has been employed by the same defense contractor since 2010, during which time she has been promoted five times, most recently in April 2016. She was initially employed as an administrative assistant and now works as a program director. She is seeking to upgrade the DOD security clearance granted to her in August 2018.

On her October 2018 SCA, Applicant reported approximately \$120,000 of delinquent federal student-loan debt. She explained that she fell behind with her monthly loan payments following the separation from her first husband. She separated on an unspecified date due to his adultery and abusive actions against her and their infant child. She incurred substantial expenses to set up a new life for her and her child. She has not received any financial support from her first husband, and he has never paid his \$725 monthly child support obligation. As of September 2019, he was approximately \$20,000 in arrears. The record did not specify her income and expense history from before, during, or after the separation. (Item 2 at 3; Item 3 at 42-43)

Applicant has been in contact with her student-loan lenders at various times prior to and since her 2016 divorce. She has made requests for forbearance, deferment, and repayment plans, and also "made payments when [she] could." While some of her requests were granted, others were not because the lenders considered only her income and not her monthly obligations. In June 2012 and December 2013, her forbearance requests were approved by one of her lenders. That same lender approved deferments in September 2014 and December 2014. Between February 2013 and July 2014, she scheduled four unspecified payments for unspecified student-loan accounts.

Between May 2015 and June 2018, she sent ten payments totaling \$1,343 for unspecified student-loan accounts. In about 2017, at least one of her income tax refunds (of an unspecified amount) was applied towards one of her unspecified student loans. In October 2018, she requested an income-driven repayment plan, which was approved as of August 2019. There is no evidence in the record of any payments made since June 2018. (AE G, H; Item 2; Item 3 at 43; Item 4 at 7; Items 5, 6)

The August 2019 SOR alleged four student-loan debts totaling \$288,526, including the federal student-loan debt reported on Applicant's SCA, which was in collection status with a \$126,126 balance (SOR ¶ 1.a). The three other alleged debts included: 1) a collection account with a \$54,272 balance (SOR ¶ 1.b) (while not specified in the record, this account appears to be likely related to the eight private-loans she borrowed between January and August 2009 with a major commercial bank, which initially totaled \$38,197); 2) a collection account with a balance of \$42,306 for a \$24,000 loan she borrowed in November 2005 (SOR ¶ 1.c); and 3) another federal student-loan account in collection status with a balance of \$65,822 (SOR ¶ 1.e). The SOR also alleged a \$102 consumer debt (SOR ¶ 1.d), which Applicant had resolved before the issuance of the SOR. Each of the alleged SOR debts were established by the credit reports. (AE I; Items 1, 2; Item 5 at 1-2; Item 6 at 4, 9-11, 13, 18)

In her September 2019 SOR answer, Applicant admitted that the four student-loan accounts alleged in the SOR had not yet been resolved, but denied them as alleged in the SOR, apparently based on a concern that the amounts claimed to be owed may be incorrect. However, she asserted that she fully intends to repay them once she receives "complete and accurate proof of debt." Three of the accounts (SOR ¶¶ 1.a, 1.c and 1.d) were combined and placed for collection with one agency, and the fourth account (SOR ¶ 1.b) was placed for collection with another agency. In August 2019, she sent certified letters to those two agencies to dispute the debts in order to require the agencies to affirm the legitimacy of the debts and the accuracy of the amounts that are claimed to be owed. Although the letters had been received by the agencies, she had not received any response from them as of the date of her SOR answer. However, she received information from her credit monitoring service that two credit bureaus removed the collection account for the debt alleged in SOR ¶ 1.b from Applicant's credit report. One of the agencies noted that the removal was due to: 1) an incorrect balance or past due amount, and 2) the contract related to the collection account having been cancelled. (AE K; Item 2)

Applicant is a valued employee who has earned high praise and recognition for her contributions. Her duties as program manager require that she maintain a security clearance. She has not had any financial counseling. (AE A-F; Item 2; Item 4 at 4)

### **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." (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

## Analysis

### Guideline F: Financial Considerations

The security concern under Guideline F (Financial Considerations) is set out in AG ¶ 18, as follows:

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 . . . .

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

Applicant's delinquent debts, which were corroborated by the credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable mitigating conditions under this guideline are fully established:

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(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.

I find the allegation concerning the \$102 consumer debt (SOR ¶ 1.d) that Applicant resolved before the issuance of the SOR in her favor. However, Applicant has neither resolved her substantial delinquent student-loan debts, including federal loans, nor established a specific plan to address them. She also did not proffer sufficient evidence to demonstrate that the amounts alleged in the SOR, as corroborated by the credit reports, are incorrect. The fact that the debt alleged in SOR ¶ 1.b was removed from her credit report does not absolve her from repaying it given that she has not established a legitimate basis to dispute it. Moreover, the credit bureau agency's rationale for its removal appeared related to the collection account but not necessarily the underlying debt.

Applicant did not establish that her financial situation largely resulted from circumstances beyond her control or that she acted responsibly to address her delinquent loans. She has been steadily employed full time since 2010. Her loan forbearance history suggests that she had problems making her student-loan payments prior to her 2016 divorce. Moreover, the record contains insufficient detail and documentation concerning her relevant income and expense history.

While Applicant is credited with initiating efforts at various times prior to and since her 2016 divorce to request forbearance, deferment, and repayment plans, she only corroborated ten payments totaling \$1,343 for her student loans between 2015 and 2018. She has not received any financial counseling, nor demonstrated that she has a handle on her student loans. While she is on the right track by establishing an income-driven repayment plan as of August 2019 for at least one of the loans, there is no evidence that she made any payments or is able to follow through with the plan. She has also not resolved any of the other alleged loans, nor established a meaningful track record of voluntary payments to suggest that she is able to follow through with her promise to resolve them once she is confident about the accuracy of amounts claimed to be owed. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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, and I have considered the factors in AG ¶ 2(d). 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 Applicant has not mitigated security concerns raised by her failure to resolve her substantial federal and other student-loan debts. Accordingly, Applicant 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**

Formal findings 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:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge