



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-02250  
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 Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*  
03/20/2020

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**Decision**

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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 May 29, 2018. On August 28, 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 October 16, 2019 and November 26, 2019, and requested a decision on the written record without a hearing. On January 16, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 7. 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 January 28, 2020, and timely submitted her response on February 27, 2020,

to which the Government did not object. Item 1 contains the pleadings in the case. I admitted Items 2 through 7 into evidence. Applicant's SOR answer included documents that I admitted into evidence as Applicant Exhibits (AE) A and B. The case was assigned to me on March 11, 2020.

### **Procedural Matters**

A summary of Applicant's February 2018 security clearance interview (SI) (Item 3) was included among the evidence proffered by the Government. Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 3. The Government included in the FORM a notice advising Applicant of her right to object to the admissibility of Item 3 on the ground that it was not authenticated. Applicant was also notified that if she did not raise any objection to Item 3 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 3 could be considered as evidence in her case. Applicant did not raise any objection to Item 3 in her FORM response or otherwise.

### **Findings of Fact**

Applicant, age 43, has four adult children. She divorced in February 2012 after four years of marriage, and remarried in June 2018. She served on active duty from 1994 through 1996 with the U.S. Marine Corps, and from 2003 through 2006 with the U.S. Army. She earned an associate degree in 2008 and a nurse-aid certificate in 2017. She has been employed by a military medical center since June 2018. She reported that she was granted a DOD security clearance in 2017. However, it is unclear from the record on what basis it was granted since she was not then employed by a defense contractor. (Items 1, 3)

Applicant admitted each of the 11 debts alleged in the SOR, which totaled \$64,521. She has not paid any of those debts. In her SOR answer, Applicant claimed that 1) she was in negotiations to settle the debts alleged in SOR ¶¶ 1.a, 1.i, and 1.j, and 2) the debts alleged in SOR ¶¶ 1.b through 1.h and 1.k had been removed from her credit report. She did not provide documents sufficient to corroborate either claim. Only three of the alleged debts (SOR ¶¶ 1.a through 1.c) appear on her most recent credit report. (AE A, B; Items 1, 7)

Applicant's credit reports dated June 2018 and August 2019 confirm each of the alleged debts. The debts alleged in SOR ¶¶ 1.a, 1.b, 1.e, and 1.i through 1.k are individual accounts (totaling \$39,002) and the remaining alleged debts are joint accounts (totaling \$25,519). All but one of the joint accounts was opened during the Applicant's first marriage. For reasons not specified in the record, the joint debt alleged in SOR ¶ 1.c. was opened after the divorce. (Items 6, 7)

Applicant engaged the services of a credit repair company to assist her with correcting what she described as "inaccuracies" in her credit reports. She asserted that the inaccuracies related to reporting debts for which her former spouse was solely

responsible. In letters dated January and October 2019, the company proffered that Applicant “has a responsible credit history” and that it initiated a case against “the creditors involved” in order “to prove that her credit report contains major discrepancies through no fault of her own.” Neither Applicant nor the company specified details or provided documents to corroborate their claims. There is no evidence in the record that Applicant received financial counseling from the company or elsewhere. (AE A, B; Item 2 at 13)

Applicant was not aware that her home mortgage was delinquent until her first husband petitioned for divorce in September 2011. The foreclosure alleged in SOR ¶ 1.h was finalized sometime in 2012. When confronted during her 2018 SI, Applicant asserted that she had no knowledge of the delinquent status of the accounts alleged in SOR ¶ 1.a, 1.c through 1.g, and 1.i through 1.k. She maintained that those accounts all belonged to her former spouse, who managed their finances during the marriage without consulting her or allowing her to see any records. (Item 3 at 5-6)

Applicant answered “No” to each of the questions in the financial record section of her 2018 SCA and did not otherwise disclose her foreclosure or any delinquent debts therein. Five of the six individual accounts (SOR ¶¶ 1.a, 1.b, 1.e, 1.i, and 1.j) were in delinquent status well before she completed her 2018 SCA. Applicant did not address during her SI or elsewhere in the record why she failed to report the foreclosure or her then delinquent individual accounts on her SCA. The omissions were not alleged in the SOR and will be considered only for the purpose of evaluating mitigation and the whole person concept. (Item 2 at 33-35; Item 3 at 5; Items 6, 7)

### **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))

The SOR allegations 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.

Applicant is credited with engaging the services of a company to assist her with repairing her credit. However, she did not establish that either she or the company negotiated repayment agreements, made payments pursuant to any such agreements, fully paid or otherwise resolved the debts. She failed to establish that the debts which did not appear on her recent credit report were removed because she is not responsible for repayment. The mere disappearance of debts from a credit report does not, without more, absolve her from liability. She did not establish that her debts were attributable largely to circumstances beyond her control. While her former spouse may have incurred debts for which he was solely responsible, that fact was not corroborated in the record. Nevertheless, Applicant also has substantial individual debts that remain unresolved and for which she failed to demonstrate that she acted responsibly to address. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns.

## **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 delinquent debts. The fact that Applicant did not disclose at least the foreclosure on her SCA further undercuts mitigation. 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.k:           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