



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



In the matter of:

ISCR Case No. 20-01383

Applicant for Security Clearance

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

March 31, 2021

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant's testimony, national security eligibility for access to classified information is denied.

**Statement of the Case**

On July 22, 2019, Applicant filed a security clearance application (SCA). The Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on September 22, 2020, detailing national security concerns under Guideline F (Financial Considerations). The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the Department of Defense on June 8, 2017.

Applicant responded to the two SOR allegations in writing in an undated answer in which she admitted the two alleged debts (Answer). She requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On January 21, 2021, the case was assigned to me. DOHA issued a Notice of Hearing on February 16, 2021, scheduling the hearing for March 9, 2021.

I convened the hearing as scheduled. Department Counsel presented five proposed exhibits, marked as Government Exhibits (GE) 1 through 5. I marked Department Counsel's exhibit list as Hearing Exhibit I. In the absence of any objections, I admitted the Government's exhibits into the record. (Tr. at 8-13.)

Applicant offered no documentary evidence at the hearing. She also declined my offer of additional time to submit exhibits after the hearing. The record closed at the conclusion of the hearing on March 9, 2021. DOHA received the hearing transcript (Tr.) on March 16, 2021. (Tr. at 38-39.)

### **Findings of Fact**

Applicant's personal information is extracted from her SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, including Applicant's admissions in her Answer to both of the SOR allegations, her testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 61 years old. She has two adult children, ages 33 and 23. She was married for 21 years and divorced in 2006. She lives with her youngest child, who is a student and works part time. Applicant has a high school diploma and has taken some college courses in nursing. (Tr. at 15-16, 21.)

Applicant works as a senior administrative associate for a DoD contractor. She has worked for this contractor for about 35 years. She presently earns about \$50,000 per year. She is a first-time applicant for a security clearance. She works in the training department of her employer. The company's Project Management was obliged to have one employee at her location obtain a security clearance to process security clearance training classes. Applicant was requested to apply. She reluctantly agreed and submitted her SCA knowing that she had two unresolved financial delinquencies. (Tr. at 17-19, 25.)

In October 2017, Applicant defaulted on the payment of two credit cards with a combined indebtedness of about \$38,000. She received and continues to receive spousal support of \$303 per month. In 2017 and for a period before then, her expenses exceeded her income, which caused her to accumulate this credit-card debt. She got to a point where the cost of paying the debts exceeded her ability to pay the monthly payments. She only has these two credit cards and one store charge card. At the same time as her default on the credit cards, she was diagnosed with cancer, resulting in some medical expenses that were not fully covered by her employer-provided medical insurance. Her treatment ended in December 2017, and she has been cancer-free for over three years.

She has ongoing medical expenses, however, to monitor her condition. (Tr. at 23-29, 35-36.)

Applicant wanted to address her two outstanding debts by filing for bankruptcy. She received advice that a bankruptcy filing would not be disqualifying for a security clearance, so she proceeded to begin the process with a bankruptcy attorney. She paid the necessary legal fees and filled out the paperwork, but then stopped due to her cancer diagnosis. She restarted the process three months ago, but nothing happened and she must start over again. (Tr. at 20-21, 23-25, 32-34.)

At the hearing, Applicant explained that since her divorce in 2006, she has struggled to maintain a household as a single mother on a limited income and with only modest help from her former husband. Paying her rent and other necessities required her to go into debt on her credit cards. At the hearing, she was unable to explain in detail what expenses she incurred. She has never prepared a budget, except in connection with her bankruptcy preparation. She has never sought financial assistance to help her manage her finances and debts. In 2010, she moved out of an expensive apartment and has lived in a less expensive apartment since 2011. She owns a car, but does not have a car loan. Repairing her car and insuring it has been expensive. She is planning to prepare her 2020 tax return soon, which is a necessary step prior to filing for bankruptcy. She expects to owe \$3,000 to \$4,000 in taxes for 2020. She intends to pay her tax liability out of her 401k account, which has a balance of about \$170,000. (Tr. at 24-28, 33-35, 37-38.)

**SOR ¶ 1.a, Bank A Credit-Card Debt Charged Off in the Amount of \$22,642.** Applicant opened this account in November 2013. Her last payment was made in September 2017. The debt has been charged off. Applicant has made no payments since 2017. **This debt is not resolved.** (GE 4 at 2; GE 5 at 2.)

**SOR ¶ 1.b, Bank B Credit-Card Debt Charged Off in the Amount of \$15,256.** Applicant opened this account in September 2003. Her last payment was made in September 2017. The debt has been charged off. Applicant has made no payments since 2017. (GE 4 at 2; GE 5 at 4.) **This debt is not resolved.**

Applicant has a long and loyal history working for her employer. She loves her work. She has bravely defeated cancer and has been cancer free for the past three years. (Tr. at 17, 19, 23, 29.)

### **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 security concern under this guideline 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. . . . 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.

Applicant's admissions in her SOR Answer and testimony and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

AG ¶ 19(a) inability to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of them have possible applicability to the facts of this case:

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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has only two debts, but they are current and continue to cast doubt on her current reliability, trustworthiness, and good judgment. She suffered a setback with her cancer diagnosis, and incurred expenses as a result, because not all of them were covered by insurance. This was a circumstance beyond her control, so the first prong of AG ¶ 20(b) applies. However, she has not since acted responsibly by addressing her debts. She has not received any meaningful credit counseling and has not made any good-faith efforts to resolve her debts. Instead she has made less than a fully committed effort to discharge her debts in bankruptcy, a recent and ongoing process. None of the above mitigating conditions have been fully established.

In light of the record as a whole, Applicant failed to carry her burden to establish mitigation of the security concerns raised by her delinquent debts.

### **Whole-Person Analysis**

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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

(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 applied the adjudicative factors in AG ¶ 2(d). After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her indebtedness.

### **Formal Findings**

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:

Against Applicant

## **Conclusion**

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

John Bayard Glendon  
Administrative Judge