



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



In the matter of:  [Redacted]  Applicant for Security Clearance	) ) ) ) )	ISCR Case No. 19-02749
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**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2021

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**Decision**

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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 20, 2018. On November 21, 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 on December 23, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 29, 2020, and the case was assigned to me on February 11, 2020. On March 11, 2020,

the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 2, 2020. On March 18, 2020, the hearing was cancelled because of the COVID-19 pandemic.

On April 19, 2021, I notified Applicant that her hearing was rescheduled to be conducted by video teleconference on May 18, 2021. The email notifying Applicant of the new hearing date is attached to the record as Hearing Exhibit (HX) I. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. (The table of contents for the transcript erroneously reflects that Applicant submitted Applicant's Exhibits (AX) A through DD at the hearing.) I kept the record open until June 8, 2021, to enable her to submit documentary evidence. She timely submitted AX A through D, which were admitted without objection. DOHA received the transcript (Tr.) on May 28, 2021.

### **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 41-year-old pipefitter employed by a defense contractor since December 2017. She graduated from high school in June 1988 and worked in several private-sector jobs until she was hired by her current employer. She has never held a security clearance.

Applicant married in August 2016 and separated in February 2018. She has four children, ages 18, 16, 12, and 8, all of whom live with her. She testified that she is entitled to receive court-ordered child support payments of about \$500 per month, but she actually receives only about \$300 per month. (Tr. 34.)

The SOR alleges 21 delinquent debts totaling about \$165,000, including a judgment for a \$11,101 deficiency on a repossessed automobile and a garnishment to enforce the judgment (SOR ¶ 1.a); payments on a mortgage loan that are two months past due for \$1,607, with a total loan balance of \$36,215 (SOR ¶ 1.b); two delinquent student loans, one placed for collection of \$45,205 (SOR ¶ 1.c) and the other past due for \$4,679, with a total balance of \$66,355 (SOR ¶ 1.k); 14 delinquent medical bills for amounts between \$110 and \$1,210 (SOR ¶¶ 1.e-1.j, 1.l, 1.m, 1.o, 1.p, and 1.r-1.u); a utility bill placed for collection of \$702 (SOR ¶ 1.n); and a cellphone bill placed for collection of \$533 (SOR ¶ 1.p). The delinquent debts are reflected in court records and credit reports from August 2018 and August 2019. (GX 2-5.)

In addition to the debts alleged in the SOR, the credit reports from August 2018 and August 2019 reflect four delinquent medical debts totaling about \$300, and court records reflect a judgment for about \$10,000, entered on January 15, 2020, for furniture purchased under a rent-to-own contract two or three years ago. (GX 4; GX 5; GX 8; Tr. 26.)

Applicant was interviewed by a security investigator in April 2019 and confronted with several of her delinquent debts. She attributed many of the medical debts to care she received at a time that she did not have medical insurance. She admitted that the debts were unresolved, and she promised to contact the creditors and collection companies and make payment arrangements. (GX 6.)

Applicant filed a petition for Chapter 13 bankruptcy on January 13, 2020. The petition specifically listed the creditors alleged in SOR ¶¶ 1.a 1.b, 1.k, and 1.q, as well as numerous medical providers or their collection agents. Her payment plan was approved in March 2020 and provided for payments of \$457 for 6 months, then \$844 for 41 months, and then \$895 for 13 months. If she completes the plan, she will have paid a total of \$49,981. (GX 7 at 61.) The plan includes past-due payments on Applicant's home mortgage, but requires her to continue making the monthly mortgage payments. Applicant has been making the required payments to the bankruptcy trustee by garnishment of her pay since February 2020. (AX D.) When Applicant failed to make the mortgage loan payment for December 2020, the mortgage lender filed a notice of default and requested relief from the automatic stay of foreclosure. (GX 7 at 75-76.)

Applicant testified that her bankruptcy payment plan includes a \$10,000 judgment entered on January 15, 2015, for furniture purchased under a rent-to-own contract. (Tr. 26; GX 8.) However, the furniture vendor was not specifically listed among the creditors to be paid under her payment plan.

Applicant testified that the repossession deficiency alleged in SOR ¶ 1.a was incurred after she co-signed a loan for a "close friend," but they broke up, her friend took the vehicle, and he stopped making payments. Applicant was unable to make the payments, resulting in the repossession. (Tr. 14-15, 22-23.)

Applicant testified that she had contacted her home-mortgage lender and was attempting to modify her payment plan to include the judgment for furniture and the monthly mortgage payments, but the modification had not been completed as of the date of the hearing. (Tr. 24-26, 32.)

Applicant testified that she incurred numerous medical debts because she suffered from an autoimmune disorder that required frequent medical intervention, and the full cost of treatment was not covered by insurance. She was not aware that her medical bills had been referred for collection until around November 2019, when she obtained copies of her credit reports in order to prepare her bankruptcy petition. (Tr. 17-19.)

Applicant testified that she attended college, seeking to obtain a bachelor's degree in homeland security. The record does not reflect when or for how long she attended college. She dropped out because she was unable to handle working full time, taking care of her four children, and attending classes. When she dropped out, she was required to start making payments on her student loans, which amounted to about \$300 per month. She applied for and obtained several hardship deferments.

The credit report from August 2018 reflects a student loan that was more than 120 days past due for \$4,679, with a balance of \$66,355. (GX 4 at 3.) This debt is alleged in SOR ¶ 1.k. The credit report from August 2019 reflects a student loan assigned to the government for collection of \$45,205. This debt is alleged in SOR ¶ 1.c. Applicant testified that she notified the student loan servicer that she had filed a bankruptcy petition and was telephonically informed that no payments would be due on the student loans for five years, which is the length of the payment plan for her bankruptcy. (Tr. 20-21.) Applicant's bankruptcy petition lists a debt to the Department of Education for \$84,610. (GX 7 at 32 and 34.) She submitted copies of entries on a May 2021 credit report reflecting that the two student loans were included in her bankruptcy petition and were closed. (AX A and B.) She did not submit any information regarding the applicability of the COVID-19 deferment to her student loans.

Applicant earns \$23.31 an hour and normally works a 40-hour week. Her gross income for 2019 was \$46,853. (GX 7 at 42.) However, she was unable to work from March 3 to July 27, 2020, because of her autoimmune problems and COVID-19 work restrictions, and she earned only about \$26,000 for 2020. (Tr. 27-28.) Her bankruptcy petition reflected that she had about \$5,583 in her 401(k) retirement account. (GX 7 at 20.) She testified that she borrowed money from her 401(k) account and payments on the loan were being deducted from her paycheck. (Tr. 29.) Her bankruptcy petition reflects child-support arrearages totaling about \$18,996. (GX 7 at 17.)

The debts listed in Applicant's bankruptcy petition are not the result of extravagant spending. She lives modestly in a home described in the bankruptcy petition as a manufactured or mobile home, on which the monthly payments are \$793. She drives a 13-year-old economy car, on which the monthly payments are \$387. (GX 7 at 13, 64.)

### **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:

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 evidence submitted at the hearing 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").

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; and

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

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

AG ¶ 20(b) is established. Applicant encountered several conditions largely beyond her control: the failure of the co-signer on an automobile loan to make the payments on an automobile even though he retained possession of it; a debilitating medical condition; inadequate medical insurance; the impact of COVID-19 on her ability to work full time; and the failure of the father (or fathers) of her children to comply with court orders to pay child support. She acted responsibly by obtaining legal advice, filing a Chapter 13 bankruptcy petition, and complying with her Chapter 13 payment plan. When she missed two mortgage loan payments, she acted responsibly by contacting the

creditor and consulting with her lawyer in an effort to add the mortgage loan payments to her Chapter 13 payment plan. I have noted that the Chapter 13 payments to the trustee have been collected by garnishment. Payment by involuntary garnishment, “is not the same as, or similar to, a good-faith initiation of repayment by the debtor.” ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). However, in this case, Applicant initiated the Chapter 13 bankruptcy, agreed to the payment plan, and appears to have agreed to garnishment as the method of insuring timely payments to the trustee.

AG ¶¶ 20(c) and 20(d) are established. Applicant completed the financial counseling required by the bankruptcy court and has adhered to her payment plan since February 2020. At the time of the hearing, Applicant still had some unresolved issues in her financial plan, *i.e.*, the student loans, the past-due mortgage payments, and the judgment for furniture. If Applicant completes her payment plan, she will have avoided paying the full amounts of some of the debts that she owes her creditors. The degree to which a Chapter 13 bankruptcy plan makes an applicant's creditors whole is a factor that an administrative judge is entitled to consider when evaluating whether an applicant is acting reasonably to rectify his or her financial difficulties. ISCR Case No. 09-03764 (App. Bd. Apr. 1, 2010) In this case, Applicant's creditors agreed to the payment plan when it was established.

The delinquent furniture bill and past-due mortgage loan payments are yet to be resolved. However, the adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In this case, Applicant has developed a reasonable plan for repayment, accompanied by “concomitant conduct” that demonstrates a serious intent to effectuate the plan. ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017).

### **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 and applied the adjudicative factors in AG ¶ 2(d). Applicant was sincere, candid, and credible at the hearing. She has acted responsibly under difficult circumstances. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant 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.u:

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