



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-02884
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

08/25/2021

**Decision**

FOREMAN, LeRoy F., 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 on January 8, 2019. On June 29, 2020, the Defense Intelligence and Security Agency Consolidated Adjudications Facility (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 in an undated document, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 22, 2020. Scheduling of the hearing was delayed because of restrictions imposed by the

Department of Defense in response to the COVID-19 pandemic. The case was assigned to me on May 9, 2021. On June 9, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 14, 2021. I convened the hearing as scheduled. Applicant waived the 15-day notice required by Directive ¶ E3.1.8. (Tr. 44-45.) Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on June 24, 2021.

I kept the record open until June 30, 2021, to enable Applicant to submit documentary evidence. At her request, I extended the deadline until July 12, 2021. She timely submitted Applicant Exhibits (AX) A through J, but AX D through J were illegible. I extended the deadline until August 10, 2021, to enable her to submit legible copies of AX D through J. On August 10, she sent me an email explaining a medical debt, but she did not send legible copies of her exhibits. On August 11, I reminded her that her exhibits were illegible, and I extended the deadline for submitting legible copies to August 13. She did not respond to my August 11 email. The email correspondence regarding the illegible exhibits is included in the record as a Hearing Exhibit. AX A through C were admitted without objection. I did not admit the illegible copies of AX D through J.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.c, 1.f, and 1.k-1.s. She denied the allegations in SOR ¶¶ 1.d, 1.e, and 1.g-1.j. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 29-year-old pipefitter employed by a defense contractor since April 2018. She married in January 2015 and divorced in June 2018. She has a 14-year-old son from a previous relationship who lives with her. She received an associate's degree in April 2015. She has never held a security clearance.

The SOR alleges 19 delinquent debts that are reflected in credit reports from June 2021 (GX 2) and February 2019 (GX 3). The evidence regarding these debts is summarized below.

**SOR ¶¶ 1.a-1.c: debts to the U.S. Government for educational benefits, placed for collection of \$13,303; \$1,562; and \$15,248.** These debts were incurred between August 2015 and October 2016, when Applicant used her husband's military educational benefits to attend college. They became delinquent when her husband did not complete the military service required to qualify for the benefits, and the Department of Veterans Affairs (VA) initiated action to recoup the benefits. The record does not reflect whether her husband's premature termination of military service was voluntary or involuntary. A notification of the overpayment was sent in December 2016 to an address where Applicant no longer resided. She learned about the overpayment when her tax refund for tax year 2018 was diverted to repay the overpayment. She appealed the decision in December 2019, but her appeal was denied. The record does not reflect why

it was denied. The case was closed and is reflected in VA records as “unresolved” as of June 21, 2021 (AX A.) Her pay was garnished for \$200 per week from January 2019 until February or March 2019, when the garnishment was stopped because of the COVID pandemic. She testified that she has continued to dispute the debts, but she has been told by the VA that she must set up a payment plan in September 2021. (Tr. 19-22.) The record does not reflect whether any attempt was made to collect the debts from Applicant’s husband. She testified that she has been in contact with him, but she is not confident that he will help her resolve them. (Tr. 26.) The debts have not been resolved, but they are not yet delinquent because the deadline for establishing a payment plan has not passed.

**SOR ¶ 1.d: cellphone bill placed for collection of \$446.** This debt was referred for collection in September 2017. Applicant paid it in August 2019. (AX C.) It is not reflected in the June 2021 credit report. (GX 2.)

**SOR ¶ 1.e: cellphone bill placed for collection of \$121.** This debt was referred for collection in February 2016. Applicant testified that she paid this debt. (Tr. 23.) She did not submit any legible documentation to corroborate her testimony.

**SOR ¶ 1.f: delinquent medical bill for \$169.** Applicant admitted this debt and it is reflected in the June 2021 credit report (GX 2 at 1.) She testified that she would pay it promptly. (Tr. 24.) In her August 10, 2021 email, she stated that the debt was paid, but she did not submit legible documentation to corroborate her testimony.

**SOR ¶¶ 1.g-1.j: delinquent medical bills for \$368, \$450, \$480, and \$196.** Applicant denied these debts on the ground that they had been paid. At the hearing, she testified that she believed the debts were paid because they were no longer reflected on her credit report. (Tr. 24.) She did not submit any legible documentation showing that the debts were resolved.

**SOR ¶ 1.k: delinquent tuition bill placed for collection of \$3,390.** This debt was incurred when Applicant attended college courses, using her husband’s educational benefits. When her husband did not complete the military service required to qualify for the benefits, the VA refused to pay Applicant’s tuition, and the educational institution referred the amount of tuition for collection. Applicant contested the VA decision for the same reasons as the debts alleged in SOR ¶¶ 1.a-1.c. The debt is not resolved.

**SOR ¶ 1.l-1.s: delinquent student loans totaling \$31,756.** These debts were incurred before Applicant was married and before the educational debts alleged in SOR ¶¶ 1.a-1.c were incurred. She testified that the payments were due in about October 2015, and her pay was garnished to pay them. She testified that she set up a payment plan in 2018 and made monthly payments until March 2020, when student loan payments were deferred because of COVID-19. (Tr. 26-27.) She did not provide any documentation to corroborate her testimony about a payment plan or payments made under the plan.

Applicant earns about \$60,000 per year. (Tr. 14.) She testified that she does not receive child support from the father of her son because the father is disabled (Tr. 36.) She has been enrolled in a credit-counseling program provided by her employer for a “few years,” and has been able to pay off some delinquent debts. She has also opened some new accounts. The June 2021 credit report reflects a secured 12-month loan of \$1,000 opened in January 2021, with monthly \$84 payments which are current; a \$15,000 unsecured loan opened in December 2020, with monthly \$363 payments which are current; and a \$13,000 car loan, opened in March 2020, with monthly \$240 payments which are current. (GX 2 at 2-33; Tr. 30-32.)

These new financial obligations have mixed significance. On one hand, they show that Applicant has improved her credit rating to the extent that she was able to obtain the loans, and they show a limited pattern of financial responsibility. On the other hand, they raise questions about her ability to resolve the debts alleged in the SOR, because she has incurred substantial new debts before the debts alleged in the SOR have been resolved.

For about two years, Applicant has been helping her mother financially. She initially was giving her mother about \$50 per month, but she has increased that amount to about \$300 per month after her mother lost her job. (Tr. 33.)

### **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 documentary evidence submitted at the hearing raise 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;

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.

AG ¶ 20(a) is not fully established. Applicant's delinquent debts are numerous and recent. The debts alleged in SOR ¶¶ 1.d-1.j and 1.l-1.s were not incurred under circumstances making recurrence unlikely. The debts alleged in SOR ¶¶ 1.a-1.c and 1.k were incurred under unusual circumstances when her husband failed to complete his military service obligation and lost the educational benefits that Applicant relied on to attend college.

AG ¶ 20(b) is established for the educational debts alleged in SOR ¶¶ 1.a-1.c and 1.k. The failure of Applicant's husband to complete his service obligation was a condition beyond her control. The failure of the VA to send Applicant notification of the termination of benefits at her correct address was a condition beyond her control. She has acted responsibly by contesting the debts and contacting her ex-husband. This mitigating condition is not established for the debts alleged in SOR ¶¶ 1.d-1.j and 1.l-1.s.

AG ¶ 20(c) is not fully established. Applicant has received financial counseling, but her financial problems are not yet under control.

AG ¶ 20(d) is established for the cellphone bill alleged in SOR ¶ 1.d. It is not established for the debts alleged in SOR ¶¶ 1.e-1.j, because Applicant did not provide legible documentary evidence of payment. When applicants claim that debts have been paid, it is reasonable to expect them applicant to present documentary evidence showing resolution of the debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Illegible documents do not constitute meaningful documentary evidence. The fact that the debts alleged in SOR ¶¶ 1.g-1.j are no longer reflected in the credit reports does not establish that they were resolved. Debts are deleted from credit reports for various reasons, including the passage of time. See ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019).

AG ¶ 20(d) is not established for the delinquent student loans alleged in SOR ¶¶ 1.i-1.s. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law, and it provided for relief measures on Department of Education (DOE)-owned federal student loans through September 30, 2020. The CARES act provided for automatic forbearance and zero interest charges during the forbearance. This student-loan debt relief received several extensions. The most recent extension was on January 20, 2021, and the COVID-19 emergency relief measures were extended on DOE-owned federal student loans through September 30, 2021. Appellant's student loans went into forbearance on March 27, 2020, and are no longer delinquent. Notwithstanding the forbearance, Appellant's student loans were delinquent before the forbearance went into effect, and she presented no evidence to support her assertion that she established a payment plan in 2018 and made payments until March 2020. Accordingly, there is an unmitigated concern that Appellant will not resume making voluntary payments on her student loans when the forbearance ends.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.a-1.c and 1.k. Applicant was not notified in December 2016 when her husband's educational benefits were terminated, because the notification was sent to the wrong address. Applicant's appeal in October 2018 was considered in December 2019 and resolved against her. (AX a At 3.) Her pay was garnished until March 2019, when the garnishment was stopped due to the COVID pandemic. She has been informed by the VA that she must set up a payment plan by September 2021. The debts alleged in SOR ¶¶ 1.a-1.c are not resolved, but they are not delinquent at this time.

### **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). 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 not 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): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d and 1.k: For Applicant

Subparagraphs 1.e-1.j and 1.l-1.s: Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge