



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 20-02215
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
 For Applicant: *Pro se*  
 08/31/2021

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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 October 14, 2019. On December 15, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 March 9, 2021, and requested a decision based on the written record in lieu of a hearing. On April 21, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary 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 May 4, 2021, and did not respond to the FORM or object to the Government's evidence. The case was assigned to me on July 23, 2021.

### **Evidentiary Matters**

Items 1 and 2 contain the pleadings in the case. Items 3 through 7 are admitted into evidence. Item 7 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 7. The Government included in the FORM a prominent notice advising Applicant of her right to object to the admissibility of Item 7 on the ground that it was not authenticated. Applicant was also notified that if she did not raise an objection to Item 7 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 7 could be considered as evidence in her case. Applicant did not respond to the FORM or object to Item 7.

Applicant's SOR answer (Item 2) references an attached accident report to support the fact that she was involved in a motor vehicle accident in April 2018 with a driver who was determined to be at fault. However, the accident report was not attached to the SOR answer. In the FORM, the Government noted: "Applicant failed to actually attach the report." (FORM at 3). Applicant failed to respond to the FORM or provide the missing accident report. However, I find that the accident report is not a materially relevant piece of evidence. The absence of the accident report did not affect the relative positions of the parties or my decision. Accordingly, given that Applicant's SOR answer was subscribed and sworn before a notary public and there was no contradictory evidence proffered by the Government or found in the record, I am able to make the finding of fact without the need for a corroborating document. Thus, I conclude that there is insufficient cause to delay these proceedings in order to obtain a copy of the missing accident report.

### **Findings of Fact**

Applicant, age 27, honorably served the U.S. Marine Corps from 2011 through 2015. She received a bachelor's degree in 2018. In October 2019, she was offered employment by a defense contractor to be deployed overseas as an armed guard, pending the favorable adjudication of her 2019 SCA. She has been employed as a global security officer by a biopharmaceutical company since November 2019. She previously held a DOD security clearance in connection with her military service. (Item 3; Item 7 at 1)

The SOR alleged six delinquent debts totaling \$29,056, consisting primarily of an automobile loan account totaling \$24,741. In her SOR answer, Applicant admitted all but the following two alleged debts: SOR ¶ 1.d (\$592 collection account); and SOR ¶ 1.f (\$321 collection account). The denied debts were confirmed by her credit reports. (Items 2, 4-6)

In October 2017, Applicant financed the purchase of a car with an \$18,882 loan. Her monthly payment was \$520 per month. After she defaulted on the loan, the lender charged off the account in the approximate amount of \$24,741 (as alleged in SOR ¶ 1.a). She attributed this debt to an April 2018 accident, in which the other driver was at fault. Neither Applicant nor the at-fault driver had adequate insurance coverage. Although her car was deemed totaled, she remained liable for the loan. She engaged an attorney to file a lawsuit against the at-fault driver. She continued to make her monthly payment on the loan until August 2018 when her attorney advised her to stop making her monthly payment pending final adjudication of the lawsuit. On a date not indicated in the record, she withdrew her lawsuit after determining that the risks and uncertainty associated with the lawsuit were not worth the costs of her attorney's fees. (Item 2; Item 4 at 3; Item 5 at 1; Item 6 at 2; Item 7 at 5)

In January 2020, prior to her security clearance interview (SI), Applicant discussed with the lender various options for repaying the debt alleged in SOR ¶ 1.a, but had not yet reached an agreement for a repayment plan. During her January 2020 SI, she anticipated finalizing the repayment plan within a couple of weeks and paying the account in full by the fall of 2020. In her March 2021 SOR answer, Applicant admitted the allegation, acknowledged that the debt remained unresolved, and advised that she was working with her lender for a "viable solution." She did not proffer any evidence corroborating her efforts to resolve the debt. (Item 2; Item 3 at 46-47; Item 7 at 3)

The debt alleged in SOR ¶ 1.b is a charged-off credit-card account in the amount of \$2,226. This account was opened in 2012 with a credit limit of \$2,000. During her January 2020 SI, Applicant admitted that she used this credit card sometime in 2014 while deployed overseas to purchase a round-trip airline ticket to visit her family back home. She acknowledged that she missed one or two payments while she was in the field without access to a computer to make a payment. However, she claimed that the account was paid in full sometime before her deployment ended in September 2014. There is no proof of payment in the record. In her March 2021 SOR answer, Applicant admitted the allegation without explanation or proffer of a repayment plan. (Item 2; Item 4 at 5; Item 5 at 2; Item 6 at 3; Item 7 at 4)

The debt alleged in SOR ¶ 1.c is a collection account for a medical provider in the amount of \$1,073. The original creditor was the provider of an ambulance ride, which Applicant took as a result of her April 2018 automobile accident. In her March 2021 SOR answer, Applicant admitted the allegation and stated that she is "currently looking for relief with [the U.S. Department of] Veterans Affairs to cover this medical cost." (Item 2; Item 4 at 5; Item 5 at 2)

The debt alleged in SOR ¶ 1.d is a collection account for a credit-card company in the amount of \$592. During her January 2020 SI, Applicant acknowledged the account as a credit card she opened with a \$500 limit. She claimed that she closed the account the same year that she opened it since she no longer needed it. She did not recall being delinquent on the account (other than maybe by a week) or being contacted by the creditor for any past-due balance. She planned to investigate this account and

start making payment arrangements if it is deemed a valid debt. In her March 2021 SOR answer, Applicant denied the allegation and stated "I am unaware of this charge." She did not proffer evidence of any efforts she made to investigate or dispute the debt. The debt was validated by three credit reports, dated December 2019, March 2020, and April 2021. (Item 4 at 5; Item 5 at 2; Item 6 at 2-3; Item 7 at 4-5)

The debt alleged in SOR ¶ 1.e is a collection account for a utility company in the amount of \$103. During her January 2020 SI, Applicant acknowledged having an account with the utility company for electricity in 2015. However, she claimed that she always paid her bill on time and denied that she owed any past-due balance. She planned to investigate this account and start making payment arrangements if it is deemed a valid debt. In her March 2021 SOR answer, Applicant admitted the allegation, but claimed: "This was just brought to my attention via this notice." She did not proffer a plan for repayment or evidence of any efforts she made to investigate the debt. (Item 2; Item 4 at 4; Item 5 at 2; Item 6 at 1; Item 7 at 4-5)

The debt alleged in SOR ¶ 1.f is a collection account for a cell phone company in the amount of \$321. During her January 2020 SI, Applicant acknowledged that this debt related to a cell phone she had and then suspended while she was deployed for eight months between 2013 and 2014. Upon her return from deployment, the creditor contacted her about a past-due balance. She claimed that after she presented a copy of her orders, the creditor erased her past-due balance. She also claimed that she remained a customer, in good standing, of the same cell phone company for several more years. She planned to investigate this debt and start making payment arrangements if it is deemed a valid debt. In her March 2021 SOR answer, Applicant denied the allegation and stated "I am unaware of this charge." She did not proffer evidence of any efforts she made to investigate or dispute the debt. The debt was validated by her December 2019 credit report. It did not appear on her March 2020 or April 2021 credit reports. (Item 2; Item 4 at 4; Item 7 at 4-5)

Applicant disclosed the debt alleged in SOR ¶ 1.a on her October 2019 SCA. She explained that the debt was "[c]urrently being paid off in increments and a settlement is in the process of being reached." She also stated that she was "working with the creditor to pay off the rest of the loan" and that she "just need[ed] a better paying career to help pay off the debt." (Item 3 at 46-47).

Following her 2015 discharge, Applicant enrolled in school full time with the financial support of her GI bill and part-time employment. After obtaining her degree in 2018, she has been steadily employed full time. Applicant did not proffer any details about her income history. During her January 2020 SI, she characterized her financial situation as being in an overall better place due to the income earned from the employment she began in November 2019. She also asserted that the income she anticipated from her pending employment with the defense contractor would be essential in helping her to gain full control of her finances. (Item 3 at 47; Item 7 at 5)

## 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 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. 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 admissions and her credit reports establish the following two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

Applicant did not meet her burden to establish the applicability of any of the following mitigating factors: 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); or 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 failed to resolve any of the debts alleged in the SOR. Although she expressed potential bases to dispute the legitimacy of the debts alleged in SOR ¶¶ 1.d and 1.f, she did not provide sufficient proof to substantiate the bases of the dispute or evidence of actions she has taken to investigate or resolve the issues. The fact that the debt alleged in SOR ¶ 1.f did not appear on her most recent credit reports does not, by itself, absolve her from financial liability.

While her 2018 car accident was a circumstance beyond her control, Applicant did not meet her burden to establish that all of her SOR debts were attributable largely to that circumstance or that she acted responsibly to resolve them in the subsequent years. Exacerbated by her failure to respond to the FORM, the record contains insufficient detail and documentation about her ongoing efforts to investigate, dispute, or resolve her debts. Given the lack of information about her income history, I am unable to conclude that Applicant is able to repay her debts or that her indebtedness is not likely to recur. Thus, I find that Applicant has not mitigated the Guideline F concerns at this time.

### **Whole-Person Analysis**

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 the security concerns raised by her delinquent 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.f:                    **Against Applicant**

## **Conclusion**

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

Gina L. Marine  
Administrative Judge