



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-01369  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

10/22/2021

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate financial considerations concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On October 23, 2020, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on December 7, 2020, and requested a hearing. This case was assigned to me on June 1, 2021. A hearing was scheduled for June 25, 2021, and heard on the date as scheduled. At the hearing, the Government's case consisted of six exhibits (AEs 1-6). Applicant relied on two exhibits and one witness (herself). The transcript (Tr.) was received on July 9, 2021.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding \$77,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In her response to the SOR, Applicant admitted all of the allegations with explanations. She claimed she lost her father to natural causes in 2004 that caused a loss in the family structure. She claimed that in 2015 she lost her brother (age 60) due to a stroke.

Applicant also claimed that in 2015, her sister was diagnosed with breast cancer requiring surgical treatments and her mother's health was declining due to kidney failure requiring dialysis treatments three times a week. She claimed further emotional and financial strains in 2016-2018 from a flooding disaster in her home state of A, resulting in the loss of her sibling's homes and seven units of her personal rental properties with self-sustaining mortgages.

Applicant claimed, too, that in 2016, she assumed full-time caregiving responsibilities for her mother, sister, and brother-in-law in the family home located in her home state of A. And, she claimed that her sister's husband suffered a heart attack in 2017; while her sister lost her battle to cancer at age 55. Finally, Applicant claimed that her mother expired in 2018 at the age of 87.

Addressing the individual debts alleged in the SOR, Applicant admitted each of the debts. She admitted that each of the debts remained delinquent.

### **Findings of Fact**

Applicant is a 60-year-old software engineer for a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant never married and has no children. (GEs 1-2) She earned a high school diploma in May 1979 and a bachelor's degree in May 1990. She reported no military service. (GE 1)

Since October 2018, Applicant has been employed by her current employer. (GE 1) Previously, she worked for other employers in different types of jobs. (GE 1) She has never possessed a security clearance. (GE 1)

### **Applicant's finances**

Between December 2012 and December 2018, Applicant accumulated five delinquent consumer debts exceeding \$77,000. (GEs 2-6; Tr. 39-61) Broken down, her debts are comprised of the following: ¶¶ 1.a, for \$41,431; 1.b, for \$5,975; 1.c, for \$1,314; 1.d, for \$24,885; and 1.e, for \$3,209.

Applicant attributed her debt delinquencies to severe family problems over the course of the previous 14 years. She lost her father to natural causes in 2004 that caused a loss in the family structure and imposed additional financial burdens on her. (Tr. 26-27) In 2015, she lost her brother (age 60) due to a stroke. Also in 2015, her sister was diagnosed with breast cancer requiring surgical treatments, and her mother's health declined due to kidney failure requiring dialysis treatments three times a week. (Tr. 26-27) Applicant experienced further emotional and financial strains in 2016-2018 from a flooding disaster in her home state of A, resulting in the loss of her sibling's homes and seven units of her personal rental properties with self-sustaining mortgages. (Tr. 30)

In 2016, Applicant assumed full-time caregiving responsibilities for her mother, sister, and brother-in-law in the family home located in her home state of A. In 2017, her sister's husband suffered a heart attack, and her sister lost her battle to cancer at age 55. (Tr. 26) In 2018, Applicant's mother expired at the age of 87. (Tr. 30)

Applicant's problems with her finances trace to 2012. (GEs 2-6) Since 2015, she has made little progress in paying and resolving her SOR-listed debts. Following the initiation of foreclosure of a rental property she purchased in 1992, she was left with a deficiency balance on a second trust deed in the amount of \$41,431. (GEs 2-6) While foreclosure proceedings are currently on hold, the deficiency covered by SOR ¶ 1.a remains unsatisfied and outstanding. To date, she has made no effort to reach out to the explore the possibilities of a negotiated settlement. (Tr. 37-38)

Currently, Applicant is working with a legal group to resolve the debt. Monies she has received from a state housing agency to support the rehabilitation and renovation of her rental properties are currently in a suspension status pending resolution of contract issues involving the properties. (Tr. 27-29)

While Applicant claims to be working on payment plans with her remaining creditors to resolve her debt delinquencies, to date, she has not been successful in addressing any of her outstanding SOR account. (GEs 2-6; Tr. 17-18, 39-49, 56-57) Several of her listed creditors that she contacted in 2019 reported no account record (SOR ¶¶ 1.c and 1.e). (Tr. 43-48) For other listed debts in which she received 1099 debt cancellation notices (SOR ¶ 1,b), she has not declared her debt cancellations on her tax returns. (Tr. 39-40) Without documentation from Applicant of her addressing her

delinquent debts with either payoffs or payment arrangements to establish some payment track record, she cannot be credited with addressing any of her listed SOR debts at this time.

Addressing her financial resources currently available to her, Applicant has about \$6,000 in her checking accounts and another \$40,000 in her 401(k) retirement account that she can draw on in emergency circumstances. (Tr. 52) She owns no stocks, bonds, or mutual funds. She does not smoke or gamble and relies on her own cooking for her dining needs. (Tr. 53) Applicant maintains a budget on a spreadsheet to keep track of her income sources and expenses. (Tr. 54) She has benefited from some financial counseling, but not enough to quantify with specific suggestions for stabilizing her finances. (Tr. 54)

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information.

The guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These AG guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* 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 personal 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage. AG ¶ 18.

### **Burdens of Proof**

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). *The burden of disproving a mitigating condition never shifts to the Government.* See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Security concerns are raised over Applicant’s accumulation of delinquent debts between 2012 and 2018. On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply to Applicant’s situation: DC ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s admitted delinquent debts require no independent proof to substantiate them. See Directive 5220.6 at E3. 1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). Her admitted debt delinquencies are fully documented and create judgment issues as well over the management of her finances. See ISCR Case No. 19-02593 at 2 (App. Bd. Oct. 18, 2021); ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004)

Financial stability in a person cleared to protect classified and sensitive information is required to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified and sensitive information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion to classified information or to holding sensitive position, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing and resolving of debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability and good judgment in following rules, regulations, and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016; ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's history of financial difficulties associated with her delinquent debt accumulations raises considerable concerns over her ability to manage her finances in a responsible and reliable way.

Extenuating circumstances appear to have played some role in Applicant's debt accumulations. Mitigating condition (MCs) 20(b), "the conditions that resulted in the financial problem were likely 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 has acted responsibly under the circumstances," partially applies to Applicant's situation.

However, the financial consequences imposed on her by the 2016 flood, together with her assumption of caretaking responsibilities for her ill-stricken family members do not adequately explain her post-2018 failure to make documented payment initiatives with her individual creditors or follow-up with the creditors she contacted about the availability of payment plans. With so little financial information to work with on the state of her finances during this extended period of income reduction spanning 2016 and 2018, no meaningful extenuation or credit can be assigned based on her claims of limited income.

Afforded opportunities to provide clarification of her financial conditions and explanations of her lack of payment progress on her delinquent accounts, Applicant provided no persuasive clarifications or explanations for (a) why she allowed her accounts to remain delinquent after returning to full-time employment in 2018; (b) why she has failed to take any documented follow-up initiatives to pay and resolve her delinquent debts. For lack of any documented repayment or financial counseling initiatives by Applicant, other potentially available mitigating conditions cannot be applied to her situation.

Based on her failure to date to establish a meaningful track record of addressing her delinquent debt deficiencies, it is too soon to make safe predictive assessments as to whether Applicant can restore her finances to stable levels consistent with minimum requirements for holding a security clearance. Mitigation requirements are not met.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her accrued delinquent debts and her failure to sufficiently address them heretofore are otherwise compatible with DoD requirements for holding a security clearance. While Applicant is entitled to credit for her contributions to the defense industry, her employment contributions are not enough at this time to overcome

her accumulated delinquent debts and her lack of a meaningful track record for dealing with them.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1-e:

Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Roger C. Wesley  
Administrative Judge