



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 20-02748
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

05/24/2022

**Amended Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

**Statement of the Case**

On November 23, 2020, the Department of Defense (DoD) Consolidated Central 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); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (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 February 16, 2021, and requested a hearing. This case was assigned to me on November 30, 2021. A hearing was scheduled for February 22, 2022, via TEAMS, and was heard on the scheduled date. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (herself) and no exhibits. The transcript (Tr.) was received on May 9, 2022.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with creditor checks and endorsements. For good cause shown, Applicant was granted 14 calendar days to supplement the record. Department Counsel was afforded five days to respond.

Within the time permitted, Applicant supplemented the record with endorsements and an email covering her unsuccessful efforts to address her \$15,060 vehicle debt (SOR ¶ 1.a) and her \$4,464 medical debt (SOR ¶ 1.b) with her creditor contacts, but without success in obtaining helpful identifying information from either creditor. Reportedly, neither creditor could find the debts in their respective systems. Applicant's endorsements are attached and admitted as AE A.

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant accumulated five delinquent medical and consumer debts exceeding \$20,000. Allegedly, these debts have not been resolved.

In her response to the SOR, Applicant admitted three of the debts (SOR ¶¶ 1.b-1.d), but denied the remaining two debts with explanations. She claimed she never received bills for the debts covered by SOR ¶¶ 1.b and 1.d. Addressing SOR ¶ 1.a, she claimed she could not find the \$15,060 SOR ¶ 1.a debt on her credit report. In her follow-up remarks about SOR creditor ¶ 1.d, she claimed she could not obtain any helpful information from either the hospital or insurance carrier on the covered \$4,464 medical debt covered by SOR ¶ 1.d

### **Findings of Fact**

Applicant is a 50-year-old logistics planner of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

### **Background**

Applicant married in July 2000 and divorced in September 2012. (GEs 1-2; Tr. 46) She has two children from this marriage, ages 18 and 20. (GE 1; Tr. 46) Applicant earned an associate's degree from an international business college in October 2017. (item 1) She reported no military service.

Since May 2018, Applicant has been employed by her current employer as a logistics planner. (GE 1; Tr. 48) Previously, she worked for other employers in various types of customer service and clerical positions. (GE 1) She reported unemployment between October 2015 and April 2016. (GE 1)

### **Applicant's finances**

In April 2013, Applicant purchased a vehicle for a little over \$15,000, according to her October 2019 credit report. (GEs 2-4) She estimates to have made about nine payments on her car loan before she began encountering difficulties in making her car payments. (Tr. 29-32) Once her hours were reduced by her employer, she found she could no longer afford the vehicle. (Tr. 29-32)

Still, applicant continued to make her car payments and tried to work out a payment plan with the lender in 2013 that would reduce her car payments and permit her to keep the car. (Tr. 33) Told that her only option was to turn in the car if she could not make the payments, she consented to having her car picked up by the lender. (Tr. 33-34) Thereafter, she was never told of the vehicle's sale, or that she still owed money to the vendor. (Tr. 34-36) She has had no contact with the vendor since she returned the vehicle. (Tr. 35) The estimated deficiency balance on the returned vehicle was \$15,060. (GEs 2 and 4)

Besides Applicant's SOR creditor 1.a vehicle debt, Applicant accumulated several medical debts that are reported by her creditors as delinquent. (GEs 2-4) The reported debts are covered by SOR ¶¶ 1.b-1.e as follows: 1.b ( for \$4,464); 1.c (for \$106), 1.d (for \$529), and 1.e (\$372).

Applicant acknowledged the SOR 1.b debt (reported on her earlier credit reports) as a debt she incurred in connection with an emergency procedure her daughter underwent in 2018. (GE 4; Tr. 36-38, 43) She believes the debt was covered by her medical insurance carrier (either through her old or newest policy), but is not sure whether the bill was ever paid by either carrier. (Tr. 38-39) The listed medical debt is not listed in her most recent August 2021 credit report. (GE 5)

The remaining two medical debts listed in the SOR (SOR ¶¶ 1.c-1.d) were never billed to Applicant, and she does not know whether they were ever paid by her insurance carrier. (Tr. 41-42) A final debt listed in the SOR is a reported utility debt in the amount of \$372. (GEs 2-4) Applicant cannot account for this debt, and she assured that she has never had a cable or similar service account. (Tr. 39-40) Her explanations are credible and accepted.

Applicant explained that her listed SOR debts are not the result of overspending, but due to her loss of income. (Tr. 43-44) She is currently stable with her finances. (Tr. 43-46) She reported net income of \$3,000 a month and monthly expenses of \$800. (Tr.

49) She retains \$3,500 in a savings account and does not have any open credit card accounts. (Tr. 44-45)

### **Endorsements and awards**

Applicant is well regarded by friends and colleagues who have worked with her. (AE A) Uniformly, they consider her to be honest and trustworthy. They credit her with considerable contributions to her employer and her community.

Senior colleagues with her employer confirm her unique display of ability to identify and solve problems and credit her with being a valuable asset to her company. (AE A) Her credited contributions to her community include raising donations for her local school to aid a teacher in need of school supplies for her students. (AE A)

### **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. These 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 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 or inability 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 or 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 acts or otherwise questionable acts to generate funds. . . . 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 reported accumulation of delinquent accounts that she has not addressed according to most of her recent credit reports. Applicant expressed no awareness of any of the reported delinquency balances carried by these creditors. She was never billed by any of the creditors covered by the SOR and is currently up to date with all of her accounts.

### **Financial concerns**

Credit reports reveal that Applicant’s five reported delinquent debts remain unaddressed and unresolved. These debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligation.” Each of these DCs apply to Applicant’s situation.

Applicant’s three admitted debts with explanations and clarifications 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 debts are fully documented and create judgment issues as well over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004). Although she qualified her admissions with explanations, her admissions can be weighed along with other evidence developed during the hearing.

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules 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 cited income limitations impaired her ability to make her timely monthly payments on the vehicle she purchased in 2013. Unable to work out more favorable payment arrangements with her lender, she returned the vehicle to the vendor in late 2013 after making nine monthly payments.

Never receiving any notice of sale and credited proceeds (if any) from the sale of the vehicle, she presumed the remaining loan balance on the vehicle was satisfied from the sale proceeds. From the credit reports produced, it is unclear whether any sale proceeds were ever credited to Applicant's loan balance on the returned vehicle.

Application of mitigating condition MC ¶ 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," has partial application to any remaining delinquent loan balance covered by SOR ¶ 1.a, as well as the emergency medical procedure required for Applicant's daughter that is covered by SOR ¶ 1.b.

Reported medical debts associated with emergency and other procedures for Applicant's daughter, and covered by SOR ¶¶ 1.b-1.d, were never billed to Applicant and presumably were paid by one or more of her insurance carriers. Applicant's credible explanations of these reported delinquent medical debts are covered by MC ¶ 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." MC ¶ 20(e), is also available to Applicant in connection with the reported utility service debt (SOR ¶ 1.e) she incurred without ever receiving any services supporting the debt.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020).

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her finances are fully compatible with minimum standards for holding a clearance. Taking into account Applicant's credited defense contributions and accepted explanations of the debts attributed to her in the SOR, sufficient evidence has been presented to enable her to maintain sufficient control of her finances to meet minimum standards for holding a security clearance.

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 financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

### **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): FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Roger C. Wesley  
Administrative Judge