



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00777  
)  
Applicant for Security Clearance )

**Appearances**

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

06/30/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant failed to make sufficient timely progress resolving the debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 28, 2020, Applicant completed her Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On April 30, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant 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* (Directive) (January 2, 1992), as amended; 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.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. On May 11,

2021, Applicant provided two documents with her response to the SOR, and she requested a hearing.

On September 7, 2021, Department Counsel was ready to proceed. On September 17, 2021, the case was assigned to me. On March 9, 2022, the Defense Office of Hearings and Appeals issued a Notice setting the hearing date for April 5, 2022. Her hearing was held as scheduled using the DOD Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered 6 exhibits; Applicant did not offer any exhibits, but I labeled the two documents provided with her SOR response as Applicant Exhibit (AE) A and B; and all proffered exhibits were admitted into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation, but no other documents were submitted. On April 13, 2022, DOHA received a copy of the transcript (Tr.).

### **Findings of Fact**

In Applicant's SOR response, she admitted all of the allegations in SOR (¶¶ 1.a, through 1.h). Her admissions are accepted as findings of fact.

Applicant is a 28-year-old employee of a DOD contractor who has worked for this employer since February 2019. Her job title is aircraft modification electrician. She served in the Army National Guard from December 2010 until January 2019, when she received an honorable discharge. She earned an associate's degree in 2019. She has held a DOD security clearance since 2011. She was married in 2013, and has an 8-year-old son with special needs. (Tr. 10-11, 21; GE 1)

### **Financial Considerations**

The SOR alleges eight delinquent debts totaling approximately \$51,700. The majority of the debt is from two repossessed vehicles in the amount of \$48,372, with the most recent vehicle purchased in 2020 and repossessed shortly thereafter. (¶¶ 1.f and 1.h) Applicant stated that she suffered financial issues after she received a significant cut in pay after she was required to move for her job in February 2021. In addition, she was unemployed for a period of time taking care of her disabled son and step-father. Her current annual salary is \$88,100, and her husband's salary is approximately \$54,000. Beginning in June 2022, her husband will be earning approximately \$95,000 annually with his new employer. (Tr. 59; GE 2, GE 6)

In September 2020, Applicant participated in a background interview with a DOD investigator. Her delinquent debts were discussed and she stated that she was catching up on the overdue bills, and that some of the outstanding accounts from her credit report were being disputed. (GE 6)

Applicant lived with her parents from June 2013 to April 2019. She testified that she and her spouse suffered financial problems beginning in 2017, when she attended

college full-time until 2019. During this two-year period, she took care of their disabled son during the day, worked part-time, and her husband's hours were reduced from his employer. These circumstances caused them financial issues and they were unable to pay all of their bills. (Tr. 21-25, 28-29, 54-55; GE 1)

Applicant was hired by her current employer in February 2019. At the request of her employer, she moved from State A to live a month or two in State B to establish residency, and then she returned to State A for her employment duties. Her move increased her salary by 15% and she received a monthly housing stipend of about \$3,000. She believed that she would stay in State A for the next decade, but the pandemic hit the country, and in about December 2020, her employer notified her that she would return to State B in about February 2021. Upon her return to State B, Applicant lost the 15% pay increase and the \$3,000 monthly housing stipend, which negatively impacted her finances. (Tr. 13, 21-25, 28-29, 54-55; GE 1)

The SOR includes the following financial allegations:

SOR ¶ 1.a alleges Applicant is indebted for an unpaid medical account in the amount of \$662. Applicant stated that the insurance paid this medical bill and she was disputing the account. Department Counsel asked her if she could provide supporting documentation while I held the record open for two weeks, and Applicant agreed. No documentation was submitted and this debt remains unresolved. (Tr. 32, 58; GE 6)

SOR ¶ 1.b alleges a charged-off Bank of America account in the amount of \$783. Applicant testified that this was a credit card that became delinquent in 2017. The creditor recently offered a settlement of \$200 to resolve the outstanding balance, and she is currently working on paying that settlement. Department Counsel asked her to provide supporting documentation if she settled the account while the record was held open, and Applicant agreed. No documentation was submitted and this debt remains unresolved (Tr. 34-37, 61)

SOR ¶¶ 1.c and 1.d allege two unpaid accounts with Credit One Bank, one account is \$100 past due with a balance of \$630, and the second account is delinquent in the amount of \$545. Applicant stated that she is in the process of paying the first account, and the second account remains unpaid. She agreed to submit documentation while the record was held open, but she failed to provide any. Both accounts remain unresolved. (Tr. 38-39, 61-62; SOR response at 3; AE 2-3)

SOR ¶ 1.e alleges a charged-off account with Suncoast Credit Union in the amount of \$489. Applicant stated that she contacted the creditor to see if she could settle the account, or arrange a payment plan. She had not received a response from the creditor as of the date of the hearing. This account remains unresolved. (Tr. 42-43)

SOR ¶ 1.f alleges a delinquent account with American Credit Union in the amount of \$27,059, the balance due after a vehicle was repossessed in about February 2021. Applicant stated that this was for her motorcycle. When she received notification from her employer that she would be relocated in State B, she voluntarily called the bank to have

the motorcycle repossessed. At the hearing, she claimed that the motorcycle was auctioned and the proceeds paid the outstanding balance in full. Department Counsel requested supporting documentation be submitted while the record was held open, and Applicant agreed. No documentation was submitted and this account has not been resolved. (Tr. 25-29, 61; AE 4)

SOR ¶ 1.g alleges a delinquent account with Fingerhut Webbank in the amount of \$216. Applicant testified that she had contacted the creditor to see if a settlement could be arranged, or set-up a payment plan, but as of the date of the hearing, she had not heard from the creditor. No post-hearing documentation concerning the status of this account was received. This account remains unresolved. (Tr. 42-43)

SOR ¶ 1.h alleges a delinquent account with Chrysler Capital in the amount of \$21,313, the balance due after a vehicle was repossessed in about October 2017. Applicant stated that the document provided with her SOR response, a single page taken from a credit report, showed that Chrysler Capital sold the account to another agency and the balance reflected a zero. Applicant claimed that the loan balance of \$21,313 was the total loan balance, and not the actual amount of approximately \$4,000 owed after the vehicle was repossessed and later auctioned. She also stated that she had not been contacted by a collection agency pursuing the deficit loan balance. Department Counsel requested supporting documentation be submitted while the record was held open, and Applicant agreed. No documentation was submitted to support her claims. This account has not been resolved. (Tr. 43-44, 50-51; AE A)

Applicant stated that she and her spouse have worked with a debt resolution agency in the past, but for “whatever reason”, they were dropped from the program. The debt agency’s repayment schedule attached to her SOR response showed that the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.g were the same amount as alleged in the SOR or higher. Applicant testified that they are currently working with a new debt resolution agency. She participated in financial counseling classes with her current bank, through her employer, and she also took personal finance courses while attending college. Applicant offered to send supporting documentation to show that she was working with the debt resolution agency to pay off their debts. She also stated that when her husband returns to State B in June 2022, he will be employed at a new job with a significantly higher salary. He is currently enrolled in school and their son will complete his school in June 2022. Department Counsel asked Applicant to provide a monthly budget, to show her current status, and also a monthly budget that incorporates her husband’s anticipated earnings. Applicant did not provide any documentation. (AE A; Tr. 39, 45-46, 49-52, 56-57, 65-68)

Applicant stated that their son is significantly disabled and has been through 86 surgeries to date. State A paid for his medical care until she was hired by her current employer in February 2019. Her employer’s insurance now covers almost all of his medical costs, so they have “minimal copays” for their son’s medical care. (Tr. 57-58)

Applicant and her spouse received approximately a \$3,000 to \$4,000 federal tax refund last year. She used the money to move to State B. She also admitted that her

employer provided her a moving stipend, but it did not cover “deposits” she was required to pay in State B. She also received this year’s tax refund of approximately \$14,000. She used the money to pay some late car payments and about \$5,000 of unpaid medical expenses. She admitted that despite the April 2021 SOR putting her on notice of the Government’s concerns about her financial issues, she did not use any money from their combined 2020 and 2021 tax refunds totaling over \$17,000 to voluntarily pay, settle, or resolve any of the debts alleged in the SOR, which included six accounts under \$800. (Tr. 59-61, 64-66)

Applicant admitted upon questioning that she had a delinquent account with Verizon in the amount of approximately \$3,000. This debt developed after they left Verizon in January 2021, and the balance owed is for the devices that they kept. This debt is not resolved. She did not think to mention this debt when specifically asked if she had any other outstanding delinquent debts because she thought this debt was already alleged in the SOR. Applicant purchased a 2020 vehicle and has a \$600 monthly car payment, and her husband has a 2019 vehicle with a \$500 monthly payment. She claimed that she could not get a used vehicle with a lower monthly payment due to her poor credit score. (Tr. 59-64, 68-71; AE B)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The SOR alleges eight delinquent debts totaling approximately \$51,700. The majority of the debt is from two repossessed vehicles in the amount of \$48,372, with the most recent vehicle purchased in 2020 and repossessed shortly thereafter. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

- (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;
- (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;
- (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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 described several circumstances beyond her control, which adversely affected her finances. In December 2020, she received an unexpected notice from her employer that she needed to move to State B in February 2021. This move caused her to lose her \$3,000 monthly housing stipend and reduced her salary by 15%. Another circumstance beyond her control is her disabled son who requires intensive medical care and therapy. Since February 2019, she has been responsible for paying the medical co-payments not covered by insurance. Some of the factors adversely affecting her finances; however, were within her control, such as choosing to reduce her employment to part-time while attending college full-time. She admitted that from 2013 to early 2019, she and her spouse lived with her parents. However, “[e]ven if applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the judge could still consider whether applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

There is no requirement that an applicant immediately resolve all financial issues or make payments on all delinquent debts simultaneously. Rather, a reasonable plan and good-faith efforts to pay delinquent debts, or resolution of such issues, one at a time, is sufficient. An applicant’s mere promises to pay debts in the future, without further confirmed action, are inadequate.

An administrative judge is “required to examine all the circumstances surrounding the debts and their eventual satisfaction” including the timing of any settlements, applicant’s salary for the past several years, and whether a debt or debts “had already been reduced to judgment.” ISCR Case No. 20-01656 at 5 (App. Bd. Mar. 31, 2022) (citing ISCR Case No. 03-04704 at 4 (App. Bd. Sep. 21, 2005)). The Appeal Board has noted, “an applicant who resolves financial problems after being placed on notice his or her security clearance may be in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his [or her] own interests.” ISCR Case No. 17-01213 (App. Bd. June 29, 2018) (citing ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016)).

Applicant did not provide a budget or other documentation about her financial resources or show why she was unable to make greater progress resolving her delinquent SOR debts before the SOR was issued. The combined salaries of her and her husband totaled in the six-figure range following her employment in February 2019. At the hearing, she admitted that she had not voluntarily paid, settled, or resolved any of the debts alleged



in the SOR, despite the fact that she and her spouse received tax refunds totaling approximately \$17,000 the last two years. Her recent purchase of a newer model vehicle is also troubling after considering that she had two vehicles repossessed in 2017 and 2021. There is insufficient assurance or supporting documentation in the record that her financial problems are under control and will not recur in the future. Under all the circumstances, Applicant failed to establish mitigation of financial considerations security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 28-year-old employee of a DOD contractor who has worked for this employer since February 2019. She served in the Army National Guard from December 2010 until January 2019, when she received an honorable discharge. In 2019, she received an associate's degree. She and her spouse have an 8-year-old son who is severely disabled.

Although Applicant did provide some mitigating information of circumstances beyond her control, the evidence against grant of a security clearance is more substantial at this time. She did not provide documentation about why she was unable to make greater documented progress resolving any of the delinquent SOR debts. Her financial history raises unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified

information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

### **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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant

### **Conclusion**

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

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Pamela C. Benson  
Administrative Judge