



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 20-03661  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

09/29/2022

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 21, 2018, which apparently was never adjudicated. She submitted a second SCA on April 22, 2020. On February 5, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 on January 23, 2022, and February 8, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case in an undated document. On May 31, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on June 7, 2022, and did not respond. The case was assigned to me on September 6, 2022.

### **Evidentiary Issue**

FORM Exhibit 6 is a summary of a personal subject interview (PSI) conducted on June 26, 2020. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all the allegations in SOR ¶¶ 1.a-1.i under Guideline F, but she asserted that the debts alleged in SOR ¶¶ 1.g and 1.i were paid in full and that she had established a payment plan for the debt alleged in SOR ¶ 1.f. She did not expressly admit or deny the allegation in SOR ¶ 2.a that she falsified her SCA. However, she claimed that she did not intend to falsify or withhold information. I have treated her response to SOR ¶ 2.a as a denial. Her admissions are incorporated in my findings of fact.

Applicant is a 43-year-old travel specialist employed by a federal contractor since March 2018. She worked for other federal contractors from November 2004 until she was hired by her current employer. She has taken college courses but does not have a degree. She married in April 2014 and has no children. She has never held a security clearance.

The SOR alleges nine delinquent debts reflected in credit reports from May 2018 (Exhibit 7), June 2020 (Exhibit 8) and May 2022 (Exhibit 9). The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: auto lease past due for \$4,738, with a balance of \$43,268.** In the PSI, Applicant denied owning an auto from this manufacturer and stated that she intended to dispute the debt. (Exhibit 6 at 3.) In her answer to the SOR, she admitted the debt and stated that she was in contact with the creditor, but she provided no information about the status of the debt. The May 2020 credit report reflects that the debt is a joint account opened in August 2017, with the last activity in September 2017. (Exhibit 8 at 3.) For reasons not reflected in the record, the debt is not listed in the May 2022 credit report.

**SOR ¶¶ 1.b-1.e: four student loans placed for collection of \$14,229; \$5,961; \$5,832; and \$3,786.** The credit report from May 2018 reflected three student loans. One was opened in October 2007 with a balance of \$17,574. A second was opened in March 2011 for \$5,188. A third was opened in March 2011 for \$3,441. All three loans were reflected as current on the March 2018 credit report. (Exhibit 7.)

The June 2020 credit report reflected that all three loans had been transferred to the U.S. Government after being past due for 120 days or more. (Exhibit 8.) The credit report from May 2022 reflected that the loans for \$14,229 and \$5,832 were consolidated direct loans, and the loans for \$5,961 and \$3,786 were direct loans. All loans were referred for collection. (Exhibit 8.)

In the PSI, Applicant stated that she intended to consolidate her student loans. (Exhibit 6 at 3.) In her answer to the SOR, she stated that she intended to make arrangements to resolve all of her delinquent student loans. Collection of payments on the loans is paused under the CARES Act until December 31, 2022.

**SOR ¶ 1.f: medical debt placed for collection of \$1,681.** In Applicant's answer to the SOR, she stated that she had established a payment plan providing for payments of \$60 per month for 26 months. She attached a receipt to her answer reflecting a \$100 payment on January 3, 2022.

**SOR ¶ 1.g: medical debt placed for collection of \$1,661.** In Applicant's answer to the SOR, she stated that this debt was paid in full and that a receipt was attached. However, the record contains no receipt.

**SOR ¶ 1.h: college tuition debt placed for collection of \$1,049.** In Applicant's answer to the SOR, she stated that she will make arrangements to resolve this debt. It is not resolved.

**SOR ¶ 1.i: telecommunications debt placed for collection of \$245.** In Applicant's answer to the SOR, she stated that this debt was paid in full, and she attached a receipt reflecting the payment.

When Applicant submitted her SCA in March 2018, she answered "No" to all the questions about delinquent debts in Section 26. (Exhibit 5 at 26-28.) The SOR does not allege falsification of the March 2018 SCA. When Applicant submitted her second SCA in April 2020, she was familiar with the form, having previously submitted an SCA. The content and organization of the two SCAs is virtually identical. She again answered "No" to the same questions. She did not disclose any of the delinquent debts alleged in the SOR. She admitted the debts when she was confronted with them during the PSI. In her answer to the SOR, she admitted that she did not answer the financial questions correctly, but she denied intending to falsify or withhold information. She did not provide any explanation for her negative answers to the financial questions.

In the PSI, Applicant attributed her delinquent debts to “health issues.” She stated that she was able to work in a limited capacity. (Exhibit 6 at 3.) She did not provide any details about the nature of her health problems or the impact of her health problems on her ability to pay her debts. She also did not provide any information on her current income, expenses, or overall financial situation.

### **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 evidence in the FORM establish 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 established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. In the PSI, Applicant attributed her delinquent debts to "health issues." She has not provided any further information or documentation showing the nature of her health issues or their impact on her ability to pay her debts.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and her financial problems are not yet under control.

AG ¶ 20(d) is not established for the delinquent auto lease alleged in SOR ¶ 1.a. Applicant admitted the debt in her answer to the SOR. The fact that the lease is not reflected in the May 2022 credit report is not meaningful evidence of the disposition of the debt. See ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019). This mitigating condition also is not established for the student loans alleged in SOR ¶¶ 1.a-1.e. The credit reports reflect that she has made some progress in consolidating her student loans, but they appear to have become delinquent before COVID-19, and she has not demonstrated that she is able and willing to resume payments when the current pause is lifted. This mitigating condition is established for the debt alleged in SOR ¶ 1.f, on which she is making payments, and SOR ¶ 1.i, which has been paid in full. It is not established for the medical debt alleged in SOR ¶ 1.g, because she did not provide documentation to support her assertion that the debt is paid. It is not established for the debt alleged in SOR ¶ 1.h, because a promise to pay a debt in the future is not a substitute for a track record of paying debts in a timely manner ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

AG ¶ 20(e) is not established. Applicant initially denied any knowledge of the delinquent auto lease alleged in SOR 1.b and declared her intention to dispute it. However, she later acknowledged and admitted it in her answer to the SOR.

### **Guideline E, Personal Conduct**

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition under this guideline is set out in AG 16:

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant is a mature adult with some college education and with considerable experience working for federal contractors. She submitted an SCA in 2018 and was familiar with the content of the questionnaire. Although she denied intentional falsification of her most recent SCA, she provided no explanation for her negative answers to the financial questions. I conclude that AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is not established. Applicant did not attempt to correct the omissions in her SCA until she was confronted with the evidence during the PSI, two months after she submitted her SCA. She has provided no explanation for the omissions.

AG ¶ 17(c) is not established. Applicant's falsification of her SCA was arguably "infrequent," but it was recent and did not happen under unique circumstances. Falsification of an SCA is not "minor," because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

### **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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor or to question her about her financial problems and her omissions from her SCA. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines F and E, 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 and lack of candor during the adjudication of her application for a security clearance.

### **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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g and 1.h	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	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