



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02804
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2022

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**Decision**

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CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 19, 2020. On January 28, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). The DCSA 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) effective on June 8, 2017.

Applicant responded to the SOR on March 24, 2022, and requested a hearing before an administrative judge. The case was assigned to me on October 11, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 18, 2022, scheduling the hearing for November 1, 2022. The hearing was held via video

teleconference, as scheduled. Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. Applicant testified but offered no exhibits at the hearing. The record was held open until November 14, 2022, to permit Applicant to submit documentary evidence. She submitted exhibits collectively marked as Applicant Exhibit (AE) A, which were admitted into evidence without objection. DOHA received the hearing transcript on November 16, 2022.

### **Findings of Fact**

Applicant is a 33-year-old flight scheduler for a defense contractor, employed since February 2020. She served as an aviation resource manager in the Air National Guard from 2009 to 2021, and currently serves in the U.S. Air Force Reserve as a joint operations center non-commissioned officer since 2021. Applicant earned an associate's degree in 2013 and completed some credits toward a bachelor's degree. She married in 2013 and has two children, ages eight and eleven. She has held a secret security clearance since 2009.

The SOR alleges under Guideline F that Applicant has ten delinquent debts, including seven delinquent student loans, two small medical debts and a small phone utility debt, totaling about \$31,000. Applicant admitted all of the allegations with explanations, and submitted documentary evidence with her Answer to the SOR.

Applicant explained in testimony that she fell behind on debts when she left college in 2015 with a toddler and a baby, and her husband was medically discharged from the military. She was unable to finish her education, and instead began working to support her family. Her husband was unable to maintain regular work and started an unsuccessful business in 2020. He secured reliable, full-time work in July 2021, and consistently contributes toward the family income.

Applicant did not pay on her student loans since 2015 because of a lack of income, and did not understand the availability of income-driven payment plans. During her interview with a Government investigator in May 2020, she learned how to set up a student-loan repayment plan, but understood the COVID-19 related Federal student loan repayment freeze provided her with more time to arrange a repayment plan. During that time, she paid other debts and switched to a higher paying job, however; her husband started his unsuccessful business that did not assist in supplementing the household income.

Applicant paid the two small medical debts (SOR ¶¶ 1.h and 1.i), and the phone utility interest charge for turning in equipment late four years ago (SOR ¶ 1.j). Applicant contacted the Department of Education regarding consolidating her student loans. All of the loans were consolidated into one direct student loan in March 2022. Once the COVID-19 loan repayment freeze is lifted, she has budgeted to pay \$214.30 per month, and has agreed to an automatic debit from her account. In good faith, she has made several payments toward her loans to take advantage of the interest-free period.

Applicant and her husband now earn nearly \$140,000 per year, have about \$7,400 in savings, and a retirement account. They own a home with about \$87,000 in equity. They are current on all debts and comfortably meet monthly expenses. Applicant has excellent military evaluations and earned an Air Force Commendation Medal for her work while on deployment. Her colleagues and friends describe her as trustworthy, loyal, and a team player. She completed formal financial counseling in November 2022, and prepared a monthly budget.

## 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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG ¶ 1(d).

## Analysis

### 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

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

Applicant incurred delinquent debts, including student loans that were exacerbated by her spouse's inconsistent employment and the resulting loss of income when he left the military. Applicant left school before completing her degree to support her family. She has increased her salary and her husband has maintained steady employment to the point where they are now financially secure and able to meet all expenses. She has taken substantial action to resolve her debts, and is currently in a satisfactory repayment plan to address her student loans when the freeze is lifted. She has even made payments toward the loan to take advantage of the zero interest environment during the freeze period.

Applicant has regained control of her finances and resolved the SOR debts through diligent work and tenacious efforts. Applicant has used the resources available to her to resolve accounts, has obtained financial counseling, and has a current budget with a positive net monthly remainder. I find that Appellant's financial issues no longer cast doubt on her current reliability, trustworthiness, and good judgment. She has overcome her financial problems and additional delinquencies are unlikely to recur. AG ¶¶ 20(a), (b), (c), and (d) apply.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant's education, employment history, her spouse's medical condition, and her efforts to resolve debts. Applicant has shown a recent history of ability, intent, and desire to meet her financial obligations in the future.

Accordingly, I conclude Applicant has carried her burden of showing that it is clearly consistent with the national security interest of the United States to continue her eligibility for access to classified information.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interest of the United States to continue Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

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Gregg A. Cervi  
Administrative Judge