



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 21-02114
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/12/2022

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on June 5, 2017. On November 26, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006, and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February

15, 2022. Scheduling of the hearing was delayed by COVID-19. The case was assigned to me on September 6, 2022. On September 20, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 26, 2022. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 11 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until November 29, 2022, to enable her to submit additional documentary evidence. She timely submitted AX E through H, which were admitted without objection. DOHA received the transcript (Tr.) on November 3, 2022.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.f, 1.i, and 1.u-1.x. She denied the allegations in SOR ¶¶ 1.g, 1.h, and 1.j-1.t. Her admissions are incorporated in my findings of fact.

Applicant is a 47-year-old administrative assistant employed by a defense contractor since August 2007. She has held a security clearance since November 2017. She married in April 1999 and separated in June 2013. Her husband initiated the separation. (Tr. 16.) Applicant does not know where he works or what he does, and she avoids contact with him. (Tr. 50.) She has a 20-year-old son who is a college student and lives with her. (Tr. 15.) She took courses from an on-line university for three months in 2006 and attended a technical university from March 2010 to February 2012, but she has not received a degree. (GX 1 at 9-10.)

The SOR alleges eight delinquent consumer debts, six delinquent student loans, and six delinquent medical bills. It also alleges that Applicant failed to timely file her federal and state income tax returns for tax years 2014 through 2016, that her wages were garnished twice for delinquent student loans and once for a delinquent account with a military exchange, and that on one occasion she improperly used her employer's credit card for personal expenses. The delinquent debts alleged in the SOR are reflected in credit reports from January 2007, June 2020 (two reports), March 2021, and October 2022. (GX 3-6 and 8.) The evidence concerning the allegations in the SOR is summarized below.

**SOR ¶ 1.a: debt placed for collection of \$10,522.** Around 2019, Applicant obtained a loan to pay off some of her other debts. She made the payments for about a year, until she was hospitalized for blood clots. About \$2,500 of her medical expenses were not covered by insurance. (Tr. 27-29.) In response to DCSA interrogatories and the SOR, Applicant admitted this debt but disputed the amount. In her SOR answer, she stated that she attempted to make a payment agreement, but the creditor wanted monthly payments that she could not afford. (GX 2 at 21.) At the hearing, she testified that she paid \$541 on this debt and began paying \$100 per month about two weeks before the hearing. (Tr. 30.) She did not provide any documentation of these payments or a payment agreement. The debt is not resolved.

**SOR ¶¶ 1.b-1.f and 1.i: student loans placed for collection of \$3,633; \$2,011; \$1,550; \$1,462; \$1,182; and \$830.** Applicant testified that her student loans originally totaled about \$23,000. In May 2016 and March 2017, her pay was garnished for \$222 per pay period for her delinquent student loans. (GX 9; GX 10 at 4.) As of August 2018, she owned \$23,780, and she was paying \$5.00 per month. (GX 7; GX 8.) On a date not reflected in the record, she stopped making the monthly \$5.00 payments. She testified, “In my mind I was like I’ll owe them until I’m 300 years old at \$5.00 per month, which is why I let the garnishment just go ahead.” (Tr. 22.) She believes that \$19,080 was collected by garnishment, and that she now owes about \$12,900. (Tr. 19.) The garnishment has been paused due to COVID-19. (Tr. 23.)

**SOR ¶ 1.g: credit-card debt placed for collection of \$944.** In Applicant’s response to DCSA interrogatories, Applicant stated that she had arranged to pay \$30 every two weeks, beginning in March 2021, until the debt was paid in full. (GX 2 at 23.) At the hearing, she testified that the debt was paid in full. (Tr. 33.) She submitted documentation of payments to this creditor in March, April, and May of 2021, but the account number and amount do not match the debt alleged in the SOR and reflected in the credit reports in the record. The October 2022 credit report reflects that the balance on this debt has been reduced to \$584 and the last payment was in August 2021. (GX 11 at 2.) The debt is not resolved.

**SOR ¶¶ 1.h, 1.j, 1.k, 1.o, 1.r, and 1.s: medical bills placed for collection of \$903, \$717, \$623, \$378, \$25, and \$171.** In response to DCSA interrogatories, Applicant stated that one of these debts is not valid and the others are her estranged husband’s responsibility for their son’s medical bills. (GX 2 at 24; Tr. 36-40.) She provided no documentation to support her testimony.

**SOR ¶¶ 1.l, 1.m, 1.p, and 1.q: consumer debts placed for collection of \$489, \$463, \$345, and \$314.** Applicant testified that she made payment agreements for these four debts and they had been paid in full. She provided documentation for settlement of the debts alleged in SOR ¶¶ 1.l, 1.m, and 1.p, but her documentation for the debt alleged in SOR ¶ 1.q has a different account number than the debt alleged in the SOR. The debts alleged in SOR ¶¶ 1.l, 1.m and 1.p are resolved but the debt alleged in SOR ¶ 1.q is not resolved.

**SOR ¶ 1.n: telecommunication debt placed for collection of \$409.** Applicant testified that she disputed this debt because it was for something that she did not order. She had not received a response to her dispute, and she had not followed up as of the date of the hearing. (Tr. 43-44.) She provided no documentary evidence of the basis for her dispute or efforts to resolve it.

**SOR ¶ 1.t: failure to file federal and state income tax returns for tax years 2014 through 2016.** Applicant testified that her returns were filed late because she and her husband separated in 2013 and she “couldn’t catch up with him to file joint returns.” In response to DCSA interrogatories in March 2021, she stated that she had filed her federal and state income tax returns for 2014 and the returns for 2015 and 2017 were

“completed.” (GX 2 at 20.) In her answer to the SOR, she provided evidence that the 2014 and 2015 federal tax returns were filed and the taxes due were paid. She submitted wage and income transcripts for 2014 and 2016, but they do not reflect that the federal return for 2016 was filed. She provided no evidence that any of the past-due state tax returns had been filed.

**SOR ¶¶ 1.u and 1.v: wage garnishment for delinquent student loans.** This garnishment is for the delinquent student loans alleged in SOR ¶¶ 1.b-1.f, and 1.i. In 2017, \$252 per two-week pay period was collected. The collection per pay period was \$255 in 2018 and \$265 in 2019. (AX A, B, and C.) In Applicant’s response to DCSA interrogatories, she stated that about \$20,540 was collected by garnishment. (GX 2 at 14.) The collection by garnishment was paused due to COVID-19.

**SOR ¶ 1.w: improper use of employer’s credit card in June 2017.** Applicant admitted using a company travel card to buy gasoline on one occasion. She testified at the hearing that she was out of gas and did not have the money pay for it. She self-reported it and paid the bill as soon as it was due. (Tr. 48.)

**SOR ¶ 1.x: wage garnishment for delinquent balance of \$14,513 on a military exchange credit card that was placed for collection.** Applicant testified that she and her husband obtained this credit card while he was on active duty. She was unaware of the debt until she was notified of the garnishment. (GX 9; Tr. 49.) She believes that the collection agency targeted her for collection because they could not find her husband. (Tr. 50.) She submitted documentary evidence reflecting a payment of \$682 and a balance due of \$2,445 as of October 7, 2022. (AX D.) She anticipates that the debt will be paid in full in about four months. (Tr. 51.)

Applicant submitted a personal financial statement when she responded to DCSA interrogatories. It reflected net monthly income of about \$3,928, monthly expenses of about \$2,350, and debt payments of about \$395. She has a monthly car payment of \$350 and a credit card with a balance of \$1,500, on which she pays \$50 per month. Her estranged husband owns the home that she rents for \$400 per month. (GX 2 at 17.) If these numbers are accurate, she has a net monthly remainder of about \$1,183.

A coworker, who has known Applicant since 2007 and is familiar with her family situation, has observed her as she continues to “roll with the punches of life.” He considers her loyal, dedicated, and trustworthy. (AX E.)

## **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).

The garnishments alleged in SOR ¶¶ 1.u and 1.v were imposed to collect the student loans alleged in SOR ¶¶ 1.b-1.f, and 1.i. As such, they duplicate SOR ¶¶ 1.b-1.f and 1.i. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶¶ 1.u and 1.v for Applicant.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is established for the misuse of the credit card alleged in SOR ¶ 1.w. It was an isolated incident that happened five years ago under unusual circumstances. Applicant promptly self-reported it and paid it as soon as it was due. AG ¶ 20(a) is not established for the other debts alleged in the SOR. They are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's medical debts, her marital separation, and her husband's neglect of the debt to the military exchange were conditions largely beyond her control. She has settled the consumer debts in SOR ¶¶ 1.l, 1.m, and 1.p and has been making payments on the military exchange debt alleged in SOR ¶ 1.x, but she has not acted responsibly regarding the other debts alleged in the SOR. After entering a rehabilitation program for her delinquent student loans, she stopped making payments and relied on involuntary garnishment to pay them. Her student loans were delinquent before the COVID-19 forbearance went into effect. Accordingly, there is a continuing concern that she will not make payments on her student loans when they are no longer in forbearance.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.l, 1.m, 1.p, and 1.x, but not for the other debts alleged in the SOR. She stopped making payments on the debt alleged in SOR ¶ 1.g in August 2021. She provided no documentary evidence showing that her husband was solely responsible for their son's medical bills. She provided no evidence showing that one of the medical bills was invalid. She claimed that the debt alleged in SOR ¶ 1.q was settled, but she did not provide documentation to support her

claim. When applicants claim that a debt has been resolved, they are expected to present documentary evidence showing resolution of those debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). She has relied on involuntary garnishment for the student loans alleged in SOR 1.b-1.f, and 1.i. Payment by involuntary garnishment is not a good-faith effort to resolve debts. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

AG ¶ 20(e) is not established. She provided no documentary evidence to support her assertion that one of the medical bills alleged in SOR ¶¶ 1.h, 1.j, 1.k, 1.o, 1.r, and 1.s was invalid, no documentary evidence to show that her husband was responsible for their son's medical bills, and no documentary evidence to show the basis for disputing the telecommunication debt alleged in SOR ¶ 1.n.

AG ¶ 20(g) is not fully established. In her answer to the SOR, Applicant provided evidence that the 2014 and 2015 federal tax returns were filed and the taxes due were paid. She provided no evidence that she had filed the 2016 federal returns. She provided no evidence that any of the past-due state tax returns had been filed. Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets. ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015).

### **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has worked for her currently employer and held a security clearance for many years. She was candid and sincere at the hearing, but she clearly is not in control of her financial situation. She has reacted passively and erratically, and has no clear plan to regain financial stability. After weighing the disqualifying and mitigating



conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her financial problems.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

SOR ¶¶ 1.a-1.k:	Against Applicant
SOR ¶¶ 1.l and 1.m:	For Applicant
SOR ¶¶ 1.n and 1.o:	Against Applicant
SOR ¶ 1.p:	For Applicant
SOR ¶¶ 1.q-1.t:	Against Applicant
SOR ¶¶ 1.u-1.x:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge