



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 22-00254
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

02/16/2023

**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 September 18, 2020. On March 15, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The 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 March 22, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 18, 2022, and the case was assigned an administrative judge on November 1, 2022. The case

was reassigned to me on December 15, 2022, because of the medical inability of the assigned administrative judge to travel to the hearing site. On January 4, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 20, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until February 7, 2023, to enable her to submit additional evidence. She timely submitted AX C through H, which were admitted without objection. DOHA received the transcript (Tr.) on January 31, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.g and 1.i-1.n. She denied the allegations in SOR ¶¶ 1.a-1.f and 1.h. Her admissions are incorporated in my findings of fact.

Applicant is a 39-year-old project manager employed by a defense contractor since August 2022. She worked as a government employee at a naval shipyard from about February 2002 to July 2016. She received a security clearance in February 2002. She was self-employed as a graphic designer from July 2016 to December 2017. She worked for non-federal employers from December 2017 to June 2019. She was unemployed from June to November 2019, while caring for her mother. She was a federal employee from November 2019 to August 2022. She was hired by her current employer, a defense contractor, in August 2022. She has held an interim clearance since November 2020. (Tr. 27.)

Applicant was enrolled in college courses from an online university from July 2011 to July 2014 and from April 2020 to the present. She does not yet have a degree. She is not married and has no children.

Applicant testified that her financial problems began when she was arrested in October 2014 for driving under the influence. Although the charge was reduced to reckless driving, she incurred about \$8,000 in legal expenses. (Tr. 16.) Her self-employment was not as profitable as she expected. Her student loans went into default, and she fell behind on credit-card payments and the loan for her motorcycle. (Tr. 18.). Wage and income transcripts from the IRS reflect the drastic reduction in her income during her period of self-employment. (AX C, D, and E.)

The SOR alleges 14 delinquent debts reflected in credit reports from July 2021 and November 2020 (GX 2 and 3). The evidence related to the debts is summarized below.

**SOR ¶¶ 1.a-1.f: student loans totaling \$46,135.** In February 2020, Applicant entered into a rehabilitation agreement providing for \$5 payments for 12 consecutive months. (AX H.) At the hearing, she provided documentation showing that her student loans were rehabilitated and that she had a payment plan providing for monthly

payments of \$483. She was scheduled to begin payments in January 2021, but payments were deferred in accordance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act. (AX H; Tr. 22.)

The CARES act provided for automatic forbearance and zero interest charges during the forbearance. This student-loan debt relief was extended several times. Most recently, it extended to permit the Department of Education to implement a debt-relief program, which is under litigation. Loan payments will restart 60 days after the debt-relief program is implemented or the litigation is resolved.<sup>1</sup> Appellant's student loans were current when the forbearance went into effect. Her student loans are not delinquent.

**SOR ¶¶ 1.g and 1.h: credit-card accounts charged off for \$3,717 and \$2,157.** The debt for \$3,717 was charged off in August 2020 and the debt for \$2,157 was charged off in October 2020. (GX 3 at 4.) At the hearing, Applicant testified that she was making monthly payments of \$300 on each of these accounts. (Tr. 36.) She did not submit documentation of payments.

**SOR ¶ 1.i: personal loan charged off for \$2,035.** This debt was charged off in August 2020. (GX 3 at 5.) At the hearing, Applicant testified that this debt was paid in full. (Tr. 37.) She did not submit any documentation of payment.

**SOR ¶ 1.j: telecommunications account placed for collection of \$1,105.** In October 2020, Applicant made a payment agreement providing for six monthly payments of \$122.87. (AX F.) At the hearing, she testified that it was paid in full. (Tr. 38.) She did not submit any documentation of payment.

**SOR ¶ 1.k: credit-card account charged off for \$808.** This debt was charged off in October 2020 (GX 3 at 6.) At the hearing, Applicant testified that she is willing to pay this debt but has been unable to do so because she cannot find out who owns it. She testified that she disputed the debt electronically and it was removed from her credit record. (Tr. 40, 61.) However, the debt is still reflected in the July 2021 credit report. (GX 2 at 4.) She did not submit any documentation of her dispute or its resolution.

**SOR ¶ 1.l: credit-card account placed for collection of \$1,575.** Applicant testified that she paid this debt with the proceeds of the loan alleged in SOR ¶ 1.i. (Tr. 41.) The debt was charged off in March 2016 and is reflected as disputed in the July 2021 and November 2020 credit reports. (GX 2 at 4; GX 3 at 6). Applicant did not submit any documentation of payment.

**SOR ¶ 1.m: personal loan charged off for \$2,417.** Applicant testified that she incurred this debt to buy a motorcycle, that her mother gave her the money to pay the debt, and that it was paid off when she sold the motorcycle. (Tr. 43.) The loan was

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<sup>1</sup> <https://studentaid.gov/announcements-events/covid-19>.

charged off in October 2020. (GX 3 at 5.) Applicant testified that she needed to pay off the loan to obtain the title to the motorcycle so that she could sell it. After the hearing, she submitted a screen shot of state motor vehicle records showing that she owned the motorcycle and that the license plate would expire in August 2023. (AX G.) She argued that the motor vehicle records show that she sold the motorcycle, but her evidence does not support her claim that the motorcycle was sold. (AX A at 3.) Furthermore, even if she sold the motorcycle, she presented no evidence showing that the proceeds of the sale were used to pay off the personal loan.

**SOR ¶ 1.n: medical debt placed for collection of \$718.** This debt was placed for collection in October 2020. (GX 3 at 6.) Applicant testified that she incurred this debt when she went to an urgent care facility while she was unemployed and without medical insurance. She testified that this debt has been paid. (Tr. 45.) She did not submit any documentation of payment. However, the debt is not reflected on the July 2021 credit report. Because the debt is too recent to have aged off her credit record under the Fair Credit Reporting Act, its absence from the credit report suggests that it was resolved.

Applicant testified that her current salary is about \$9,000 per month, which is about \$3,000 more than her salary for her previous job. She has about \$500 in savings and \$2,600 in her retirement account. Her monthly rent is \$1,800. She has a ten-year-old car that she bought in 2019, and her payments on the loan are \$414. She has a monthly remainder of \$200 to \$300 after paying all her expenses. She plans to travel overseas in the summer and has budgeted \$6,000 for the trip. She testified that she has a financial counselor, and she uses computer software to track her expenses. (Tr. 46-54.)

Applicant's supervisor has known her for 10 years. He submitted a letter stating that she has been selected for multiple special assignments because of her character and willingness to help. He states that she has left a positive impact and improvement on every assignment. In addition to her work, she has "volunteered for more causes and mentored more people than [he] can list." (AX B.)

## 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 submitted at the hearing 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 fully established. The failure of Applicant's business, the illness of her mother, and her illness while she was unemployed and without medical insurance were conditions largely beyond her control. However, she has not acted responsibly. She has been employed continuously since November 2019. She has acted responsibly regarding her student loans, but she has not submitted documentary evidence of responsible conduct toward the other debts alleged in the SOR.

AG ¶ 20(c) is not established. Applicant testified that she has a financial counselor, but she provided no evidence showing that her counselor is "a legitimate and credible source, such as a non-profit credit counseling service," and, except for her student loans, she has not submitted evidence that her financial problems are under control.

AG ¶ 20(d) is established for the student loans alleged in SOR ¶¶ 1.a-1.f and the medical bill alleged in SOR ¶ 1.n. It is not established for the debts alleged in SOR ¶¶ 1.g-1.m. Although Applicant testified that these debts were resolved or were being resolved, she submitted no documentation of payments or payment agreements. Applicants who claim that debts have been or are being resolved are expected to present documentary evidence supporting those claims. ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is not established. Applicant testified that she disputed the debt alleged in SOR ¶ 1.k, but she provided no documentation of the basis for the dispute or its resolution. She has not disputed any of the other debts alleged in the SOR.

### **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 and I have considered the factors in AG ¶ 2(d). 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 delinquent debts.

### **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.f: For Applicant

Subparagraphs 1.g-1.m: Against Applicant

Subparagraph 1.n: For 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