



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 20-01819
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2023

**Decision**

HESS, Stephanie C., Administrative Judge:

Applicant’s past financial difficulties were due to circumstances beyond his control, are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or judgment. Applicant worked with her creditors and has resolved or is currently resolving the majority of her delinquent accounts. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on March 26, 2015. On May 12, 2021, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Ex. 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 June 8, 2017.

Applicant submitted her Answer to the SOR, with evidentiary attachments, and requested a hearing before an administrative judge from the Defense Office of Hearings

and Appeals (DOHA). Department Counsel was ready to proceed on January 6, 2022, and the case was assigned to me on April 8, 2022. On September 30, 2022, DOHA notified Applicant that the hearing was scheduled for October 13, 2022. I convened the hearing as scheduled via Microsoft Teams video-teleconference. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant testified but did not submit any documentary evidence. I left the record open until October 28, 2022, to enable Applicant to submit documentary evidence. She timely submitted Applicant Exhibits (AX) A through AX K, which were admitted without objection. DOHA received the transcript (Tr.) on October 20, 2022.

### **Findings of Fact**

Applicant, 52, is a logistics planner currently employed by a federal contractor since January 2020. She served an active duty in the Army from January 1994 until she retired as an E-7 in January 2018. Her military career included five deployments. She received a bachelor's degree in October 2022. She married in 1995 and divorced in 2004. She married again in 2004 and she and her husband separated in 2019. This is her first application for a security clearance. (GX 1; Tr. 32-36.)

The SOR alleges 22 delinquent accounts totaling \$56,564. The debts are comprised of delinquent credit-card accounts. Applicant admits each of the debts and states that she has resolved each of them either through 1099-Cs with her 2019/2020 federal tax returns or directly with the creditors. The delinquent debts are reflected in Applicant's January 2022, October 2020, and January 2020 credit-bureau reports (CBR). (GX 5; GX 4; GX 3.) Applicant's admissions are incorporated in my findings of fact.

Applicant's financial difficulties initially arose in 2016 when she returned from a deployment. She received her pay, paid her ongoing financial obligations, and spent the remaining money. She was then paid a second time for the same pay period. She contacted the Defense Finance and Accounting Service (DFAS) and wanted to return the money in a lump-sum. However, DFAS would not permit her to do so. Instead, DFAS prorated the repayment over a three-month period. While Applicant and her husband did not share any primary banking accounts, Applicant's husband had historically contributed to household and other living expenses. After Applicant's husband also returned from deployment in 2016, he stopped making financial contributions to the household. This caused Applicant to not have enough money to meet her monthly financial obligations. She asked her husband for financial assistance and he declined to contribute. The combination of these events was too great a strain on Applicant's finances, and she began to fall behind on her consumer credit-card obligations. (Tr. 28-31; Tr. 62-64.)

Applicant retired from the Army in January 2018. At the end of 2017, she enrolled in an out-of-state university because it had a program of study in logistics, and she commuted to attend her classes. She initially attended classes full-time. Her income was her retirement and VA disability pay. While she was able to pay her living expenses and not incur additional delinquent debt, she was unable to address the consumer credit-card

debt that became delinquent beginning in 2016. In October 2019, she began working at a local department store to increase her income. (Tr. 36-38.)

In approximately 2018, Applicant became determined to resolve her delinquent accounts. She began contacting her creditors to enter repayment agreements with them. She attended several credit counseling sessions on her university campus. She learned methods for negotiating repayment agreements as well as how to prioritize the repayment of debts. Specifically, she learned the prioritizing technique of paying as many of the smallest debts off as quickly as possible rather than small payments on each of the debts. (Tr. 51-53.)

When she was hired by her current employer in January 2020, Applicant changed her school schedule to part-time, worked full-time as a government contractor, and continued to work part time at the local department store. She continued to work at the department store for additional income to address her debts until it permanently closed in May 2021. (Tr. 36.)

Applicant stated that she has resolved all of the SOR debts either through repayment plans or through cancellation of debt as reflected in 1099-Cs. She has not been contacted by any of her former creditors since she resolved each of the accounts. (Tr. 52-53.)

With her answer to the SOR, Applicant provided six 1099-Cs that she filed with her 2019 Federal tax return, as required. She also submitted a 1099-C that she filed with her 2020 federal tax return, as required. (AX E.) They correspond with the following SOR debts, totaling \$27,160:

- ¶ 1.b - \$3,078;
- ¶ 1.c - \$819 (AX E);
- ¶ 1.g - \$6,693;
- ¶ 1.h - \$5,849;
- ¶ 1.i - \$6,394;
- ¶ 1.q - \$2,369;
- ¶ 1.t - \$1,958.

Applicant has provided documentation showing that she has paid the following accounts, totaling \$14,168:

- ¶ 1.m - \$1,331 (AX B; AX J);
- ¶ 1.o - \$699 (AX G);
- ¶ 1.p - \$1,180 (AX B; AX J);
- ¶ 1.r - \$8,721 (AX A);
- ¶ 1.v - \$2,237 (AX F).

Applicant combined the debts alleged in SOR ¶ 1.a - \$927, ¶ 1.e - \$595, ¶ 1.j - \$620, and ¶ 1.k - \$397, totaling \$2,539. These debts were owed to the same creditor and

Applicant paid them off over a six-month period in 2019 to 2020. Applicant stated that she paid the \$1,782 debt alleged in SOR ¶ 1.d on a monthly payment plan, but also thinks that she received a 1099-C. She has not been contacted by any of her former creditors since she resolved each of the accounts. (Tr. 52-57; Tr. 90-91.)

On the advice she received in credit counseling, Applicant has been working to reestablish her credit. She has opened new credit-card accounts with six of the creditors of the SOR debts. She was advised to maintain small balances on several accounts long enough for the accounts to be reported, then pay the balance of the accounts. Additionally, Applicant stated that there are several circumstances, such as travel and car rental, where a credit card is required. (Tr. 77-81.)

In January 2022, Applicant's total balance on her 16 open credit-card accounts was \$19,014 with the highest balance on one credit card being \$8,062. As of October 23, 2022, the outstanding total balance on those same accounts is \$10,602, with the highest balance on one credit card being \$6,988. She is current on all of her open accounts and has a overall on-time payment history. Ten of the accounts have a \$0 balance. (AX J; GX 5.)

Applicant purchased a car in May 2019 with a car-loan amount of \$13,605. In January 2021, Applicant's mother totaled her car. Applicant gave her car to her mother and purchased a used vehicle for herself. She has continuously made on-time payments. Applicant's mother also totaled Applicant's car. Applicant has continued to make on-time payments and the car-loan balance is now approximately \$3,200. (Tr. 24; Tr. 48-49; AX J.)

Since beginning her current job, Applicant has maintained a written budget. She bought her house in 2014 and her October 2022 CBR shows her mortgage-loan payment history beginning in May 2015. She has never made a late payment. She refinanced her house in June 2021 at a considerably lower interest rate. Applicant uses an application on her cell phone to monitor her accounts and her credit score. The application also provides credit-management tips. Applicant is current on her ongoing financial obligations and has not incurred any recent delinquent debt. She has a checking account, savings account, and makes contributions to a 401(k). She has a net monthly remainder. (AX J; Tr. 49-50; Tr. 82.)

Applicant's coworker and friend for more than ten years and considers Applicant to be reliable, trustworthy, and dedicated. Applicant's coworker and friend since 2015 considers Applicant to be reliable, professional, and trustworthy. She states that Applicant exercises good judgment and has an outstanding work ethic. Applicant was sincere and credible during her testimony. (AX K.)

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The 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....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a): an 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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues arose in 2016 under unusual circumstances that are unlikely to recur and were largely beyond her control. Specifically, coincident with receiving a duplicate payment that was deducted from her pay for three months, Applicant's husband stopped making any financial contributions to the household. Applicant was unable to maintain her consumer credit-card payments on her retirement and disability pay. However, she maintained her mortgage-loan payments. Applicant and her husband separated in 2019.

While attending college, Applicant met with a credit counselor on several occasions and learned techniques for addressing delinquent debt. In 2018, Applicant began contacting her creditors in an effort to pay her smaller accounts and enter repayment plans with the larger accounts. She received seven 1099-Cs that she filed with her 2019 and 2020 federal tax returns..

Applicant has resolved each of the debts alleged in the SOR through either cancellation of debt or repayment. She provided documentation showing the repayment of five of the SOR debts. Through the cancellation of debt and the repayment of her accounts, Applicant has resolved \$41,328 of delinquent debt, which is greater than 73% of the SOR debt. She has not recently been contacted by any of the creditors of the SOR debts. She has re-established credit with six of the creditors of the SOR debts.

Applicant, on the advice of the credit counselor, has used her credit cards to continue to work on re-establishing her credit. She was advised to carry small balances, allow the balances to be reported on her credit reports, and then pay them. From January 2022 until October 2022, Applicant reduced credit-card balances by more than \$6,000. She continues to make timely payments on all of her open accounts with balances, including her mortgage loan, and her two car loans.

Applicant has acted in good faith in her efforts to resolve her financial delinquencies. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

"A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure." ISCR Case No. 09-

02160 (App. Bd. Jun. 21, 2010.) While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection.

There is nothing in the record that suggests Applicant is financially reckless or irresponsible or that she is likely to disregard her financial obligations in the future. She established a plan to resolve her debts and has implemented that plan. She lives within her means, maintains a budget, and has not incurred any recent delinquent debt. She maintains a checking account, savings account, and a retirement account. She has a positive net monthly remainder. Applicant's past financial issues do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

### **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. 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 I have also considered the following:

Applicant served honorably in the Army for 24 years, including five deployments. She demonstrated her dedication to continuing to serve as a civilian through her pursuit of a degree in logistics, the field in which she now works. She is financially stable and fiscally responsible. She was sincere and credible while testifying.

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 mitigated the potential security concerns raised by her financial issues. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a through 1.v:	For Applicant



## **Conclusion**

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

Stephanie C. Hess  
Administrative Judge