



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 21-02643
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2023

**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 April 16, 2019. On April 1, 2022, the Department of Defense 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) implemented by the and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on April 22, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on September 27, 2022. The Government’s submission included amendments to

the SOR. On October 18, 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 October 26, 2022. The record does not reflect a response to the FORM. Department Counsel submitted a revised submission on December 16, 2022, deleting the amendments to the SOR. The record does not reflect when the revised submission was received by Applicant, but she responded on January 17, 2023. Her response consisted of a three-page cover letter and six pages of a credit report dated January 17, 2023. I marked her response as Applicant's Exhibit (AX) A, and admitted it in evidence without objection. The case was assigned to me on February 23, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all the allegations except SOR ¶ 1.f. Her admissions are incorporated in my findings of fact.

Applicant is a 60-year-old human-resource manager employed by a defense contractor since March 2017. She married in August 1983, divorced in March 1993, and married in May 2005. She has two adult children and two adult stepchildren. She received a bachelor's degree in May 1986 and a master's degree in May 2008. She has been employed steadily since about February 2015. She received a security clearance in November 2019. (GX 5)

The SOR alleges a Chapter 13 bankruptcy (SOR ¶ 1.a), a failure to timely file a federal income tax return for 2017 and pay the taxes due (SOR ¶ 1.b), and six delinquent debts totaling about \$10,000 (SOR ¶¶ 1.c-1.h). The bankruptcy filing is reflected in court records (FORM Item 7), and the delinquent debts are reflected in credit reports from June 2021 and May 2020. (FORM Items 8 and 9)

In Applicant's SCA, she disclosed that she engaged a tax preparer to prepare and file her federal income tax 2017 tax return, but the tax preparer failed to file it. Applicant stated that she was unaware that the return had not been filed until she received a letter from the IRS. She stated that the return was filed in February 2019, and that she was making monthly payments on the tax debt. (FORM Item 3 at 41) When she was interviewed by a security investigator in August 2021, she stated that the debt had been satisfied through a payment plan and diversion of tax refunds. (FORM Item 4 at 10) In response to DOHA interrogatories on January 10, 2022, she submitted IRS tax transcripts reflecting that all tax returns for 2017 through 2020 had been filed, an installment agreement was established in April 2019, six payments were made in May through November 2019, and her tax debt was satisfied. (FORM Item 4 at 17-23)

Applicant filed a Chapter 13 bankruptcy petition in December 2019. The delinquent debts alleged in SOR ¶¶ 1.c-1.h were included in the bankruptcy. Her case was dismissed in August 2020 for failure to make payments on the bankruptcy plan. (FORM Item 7) When she was interviewed by a security investigator in August 2021, she stated that she expected that the bankruptcy plan would require payments of about \$876. However, when

the plan was finalized, it required payments of \$1,523. She told the investigator that, after making two or three payments, she found that she had insufficient income for her living expenses. After she missed two payments, she decided to negotiate directly with her creditors. (FORM Item 4 at 9)

When Applicant was interviewed by the security investigator, she had not contacted any of the creditors alleged in the SOR. (FORM Item 4 at 10-11) She told the investigator that she delayed contacting her creditors after the bankruptcy was dismissed, because she waited to see if they would contact her. She knew that she could not afford to pay all her creditors at the same time. (GX 4 at 12) She attributed her financial problems to overextending herself to help her children pay their bills. (GX 4 at 9)

In Applicant's response to the January 2022 interrogatories, she submitted evidence that she had resolved three debts not alleged in the SOR. (FORM Item 4 at 24-26) In April 2022, after she received the SOR, she paid the debts alleged in SOR ¶¶ 1.c, 1.g, and 1.h. In May 2022, she settled the debt alleged in SOR ¶ 1.e. In June 2022, she settled the debt alleged in SOR ¶ 1.d and paid the debt alleged in ¶ 1.f. (FORM Item 2 at 4-12; FORM Response at 4-9)

During the security interview, Applicant disclosed that she had traveled on cruises in 2014 with her husband, in 2015 with friends, in 2017 with her husband, and 2019 with her husband. (GX 4 at 8) She also disclosed to the investigator that she traded in an older luxury car for a newer two-year-old luxury car after her older car began to have mechanical problems. The trade-in value of her old car was sufficient to pay off the loan on that car. Her monthly car payments on the newer car are \$735. (GX 4 at 9)

In her response to the FORM, she asserted that her foreign travel did not contribute to her financial problems. (FORM Response at 2) She and her husband keep their incomes separate, and they have agreed which one will pay joint expenses such as housing, vehicles, and vehicle maintenance. Her husband paid for all the cruises except one.

### **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, the evidence in the FORM, and Applicant's response to the FORM establish the following disqualifying conditions under this guideline:

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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 relevant:

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(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 not established. Applicant's delinquent debts were numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. The failure of Applicant's tax preparer to file the 2017 tax returns was a condition largely beyond her control, but she did not act responsibly. She allowed two years to pass without monitoring her tax preparer or otherwise ensuring that the tax returns were filed, and she did not react until she was contacted by the IRS.

AG ¶ 20(c) is established. Applicant would have been required by the bankruptcy court to receive financial counseling. Even though Applicant failed to comply with the bankruptcy plan, her financial situation is now under control.

AG ¶ 20(d) is established for the tax debt alleged in SOR ¶ 1.b. Applicant started resolving the past-due income tax returns and tax debt before she submitted her SCA. By the time she was interviewed by a security investigator in August 2021, she had resolved the past-due returns and the tax debt.

However, this mitigating condition is not established for the other debts alleged in the SOR. She did not take any action to resolve these debts until she received the SOR. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). 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.) Even if an applicant has paid his or her debts, an administrative judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance. ISCR Case No. 14-02394 (App. Bd. Aug. 17, 2015.)

AG ¶ 20(g) is established. Applicant has filed the past-due federal income tax return and paid the amount due. While Applicant should have been more diligent in

monitoring the performance of her tax preparer, she resolved the tax issue shortly after she was notified by the IRS and before she received 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 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. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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**

Subparagraph 1.a: **Against Applicant**

Subparagraph 1.b: **For Applicant**

Subparagraphs 1.c-1.h: **Against 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