



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



In the matter of: )  
)  
) ISCR Case No. 22-01190  
)  
Applicant for Security Clearance )

**Appearances**

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

03/16/2023

**Decision**

HALE, Charles C., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 22, 2018. On September 14, 2022, the Department of Defense sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The Department of Defense 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 and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on November 3, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant on November 8, 2022, who was given an opportunity to file objections and

submit material to refute, extenuate, or mitigate the Government's evidence. The FORM properly identifies Applicant in the title but misstates Applicant's name in the text. The Government exhibits and narrative apply to Applicant. She received the FORM on December 6, 2022, and submitted a Response on January 12, 2023. The case was assigned to me on March 8, 2023.

### **Evidentiary Issue**

FORM Items 4 and 5 are summaries of enhanced subject interviews (ESI) conducted on January 10, 2019, and January 3, 2022. The ESI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the ESIs were being provided to the Administrative Judge for consideration as part of the record evidence in this case, and she was entitled to comment on the accuracy of the ESIs; make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate; or object on the ground that the reports are unauthenticated. I conclude that Applicant waived any objections to the ESI summaries by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

The SOR and the Answer (FORM Items 1 and 2) are the pleadings in the case. Applicant's Answer consists of 13 pages. Her Response consists of a cover letter and three documents: a two-page letter dated November 2, 2022; a one-page document, titled *Payment Agreement*, and a letter dated January 11, 2023 (AE A through C). FORM Items 3 through 8 and AE A through AE C are admitted into evidence without objection.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a and 1.c. She denied SOR ¶ 1.b. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 47 years-old. She has been married twice. She has two adult children. She separated from her second husband in December 2016. (Item 3 at 23.) She earned her bachelor's degree in 2002. (Item 3 at 11.)

Applicant lost her job in January 2017 and moved from outside the continental United States (OCONUS) to the continental United States (CONUS) to obtain work. (Item 2 at 5.) She obtained employment in April 2017 and remained with the company until February 2018. (Item 3 at 14.) Thereafter, until May 2018, she lists just March 2018 as a period of unemployment, when she was hired by her sponsor as a senior manufacturing planner. (Item 3 at 13-14.)

Applicant's debts consist of a personal loan in a charged-off status; an unpaid deposit for an apartment application in collection; and the balance on a mortgage account

that is in foreclosure status. The three delinquent debts total over \$73,800. She attributes the delinquent debts to separation from her husband, loss of employment, subsequent unemployment, and costs associated with moving to CONUS to obtain employment after losing her job. Prior to the job loss and move, she states her debts “were managed.” (Response.)

SOR ¶ 1.a: past-due account charged off in the amount of \$9,798. Applicant acknowledges the debt on her SCA. (Item 3 at 39-40.) In her January 3, 2022 ESI she disputed the balance, citing payments she had made and money she requested be applied to the loan. (Item 5 at 2.) The May 23, 2022 credit report shows the status of the debt as a charged-off account, with a last activity date of February 2017. (Item 6 at 2.) In her Answer she states that before she moved, the loan was paid according to the loan agreement. She offered that “once the mortgage loan gets resolved, I will know how much I have available to comply with a payment plan and complete the payment of the loan.” (Item 2 at 3.) In her response she provided an agreement with the creditor dated December 16, 2022. The agreement calls for monthly payments of \$125 beginning on January 20, 2023, with an agreement that “After six months, changes in messages to credit agencies will be evaluated.” (AE B.) This debt is not resolved.

SOR ¶ 1.b: past-due account referred for collection for \$192. She denied the debt in her Answer and her dispute was noted on her October 1, 2021 credit report. (Item 7 at 3.) In her Response she stated she was 100% certain she did not owe this debt and that she had never lived in the apartment complex. She states that because an investigation could take 30 to 60 days to complete, she would rather pay the amount and get it off her credit report. She provided a letter from the creditor dated January 4, 2023, stating it had received final payment on the account and the debt was now satisfied. (AE C.) This debt is resolved.

SOR ¶ 1.c: past-due mortgage account for \$63,810, with a total loan balance of \$233,350, that is in foreclosure status. (Item 3 at 38.) Applicant states the mortgage payments were consistently made on time until she lost her job and was forced to move in January 2017. Her efforts were further complicated by the hurricane that struck her location in September 2017. (Item 2 at 5.) Her husband filed for divorce in 2019 and for bankruptcy in 2021, which complicated the foreclosure action. (Item 2 at 5.) She cites the COVID pandemic for disrupting normal services which prevented the foreclosure. (Item 2 at 5.) She offered in her Response a letter dated November 2, 2022, from her current mortgage holder denying her request for a modified payment plan on the basis the modified payment would cause her debt-to-income ratio to exceed the program’s guidelines. (AE A at 1.) She cites in her Response multiple trips to her old location to “manage the process” and find a solution. Based on her previous attempts to resolve this debt and the fact the foreclosure process has started; she now believes the process of foreclosure on the house is the best way to resolve the debt “due to the economy and dynamics of the process in [her previous location].” (Response.) This debt is not resolved.

## **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).

This case involves Applicant's inability to pay debts, arising from a series of life events, the loss of employment, separation from her husband, and a geographical move. Her admissions and the documentary evidence in the FORM establish the following 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 under AG ¶ 20 are relevant:

(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; and

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

AG ¶ 20(a) is partially established. The circumstances she claims triggered the largest debts are unlikely to recur, but they are recent and ongoing.

AG ¶ 20(b) is partially established. Applicant lost her job in January 2017 and became estranged from her husband at about the same time. She was able to obtain employment within a few months after her move. She does not support her claim that she acted responsibly under the circumstances to resolve the personal loan or mortgage debt, SOR ¶¶ 1.a and 1.c. She did not present any documentary evidence that she undertook action to resolve either delinquent account prior to completing her security clearance application in May 2018. She acted on SOR ¶ 1.a in December 2022, after receiving the SOR.

AG ¶ 20(d) is partially established. Applicant provided evidence to support her assertion that she had made a good-faith effort to resolve the debts. She paid SOR ¶ 1.b despite a clear dispute to the validity of the debt. After receiving the SOR she acted on SOR ¶ 1.a in December 2022, and after not being successful in other offers to resolve the mortgage debt she states she is relying on foreclosure to resolve SOR ¶ 1.c. She only began seriously to address the loan after receipt of the SOR. See ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Her reliance upon foreclosure after receipt of the SOR does not equate to a good-faith effort to resolve her financial problem. *Id.* I conclude that AG ¶ 20(d) is not fully established for the delinquent personal loan or mortgage.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.c:	Against Applicant
Subparagraph 1.b:	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.

Charles C. Hale  
Administrative Judge