



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



In the matter of: )  
)  
) ISCR Case No. 22-00365  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2023

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant provided insufficient evidence to show why she was unable to make better progress with the resolution of her delinquent debts. She did not take responsible action to address her financial responsibilities despite having the financial means at her disposal. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 15, 2019, Applicant signed a security clearance application (SCA). On June 28, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility for Applicant’s security clearance. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

In July 2022, Applicant provided a response to the SOR with attached documentation and requested a hearing. On December 7, 2022, the case was assigned to me. On January 24, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 23, 2023, using the Microsoft Teams video teleconference system. Her hearing was held as scheduled.

During the hearing, Department Counsel offered nine Government exhibits (GE) 1-9; Applicant offered two exhibits which I labeled as Applicant exhibits (AE) A and B; and all proffered exhibits were admitted into evidence without objection. I held the record open until March 9, 2023, in the event either party wanted to supplement the record with additional documentation. On March 2, 2023, I received a copy of the hearing transcript. (Tr.) On March 9, 2023, Applicant submitted five exhibits, (AE C through G); which were admitted into evidence without objection; however, Department Counsel requested four days in which to respond to the newly submitted documents. I granted the request. I received Department Counsel's response on March 13, 2023, marked as GE 10, and the record closed.

### **Evidentiary Matters**

During the hearing, Department Counsel stated that the amounts for SOR ¶¶ 1.j and 1.k were transposed, and she requested the SOR be amended to accurately reflect the amount of debt owed to the specific creditor. I granted the motion without objection and amended the SOR accordingly. (Tr. 8-9)

### **Findings of Fact**

In Applicant's July 2022 SOR response, she admitted all of the debts (SOR ¶¶ 1.a-1.k.) and provided some clarification if the specific debt was considered a joint debt, or an account owned by her ex-husband. The SOR alleges 11 delinquent accounts with a combined total of \$134,323. Her admissions are accepted as findings of fact.

Applicant is 54 years old, and she has been employed by different federal contractors since June 2009. She began working for her current employer in September 2018. She is an assistant program manager for a program called Education with Industry. She earned a bachelor's degree in 2002 in government and international politics. She was married in 1990, separated in 2016, and divorced in May 2021. She has three adult children. She has recently remarried. Her annual salary is approximately \$83,000, and her husband's net monthly income is about \$3,000. (Tr. 27-28, 59; GE 1; AE A)

### **Financial Considerations**

Applicant testified that beginning in 2015, she and her spouse began to experience financial problems. At that time, her first husband was unemployed and a severe alcoholic. When he was employed, his salary was substantially higher than her annual income of about \$60,000. When he was unemployed, she would have just enough money to support the family but not enough to pay all their bills. Over time, the bills accumulated, and they soon were faced with an overwhelming amount of delinquent debt. They

separated in 2016 and their divorce was finalized in May 2021. She does not communicate with her ex-husband as their divorce was contentious. (Tr. 27-31, 35, 60-61)

SOR ¶ 1.a alleges a student loan referred for collection in the amount of \$113,181. Applicant admitted that about 63% of this debt belongs to her, which would amount to approximately \$68,000, and the remainder belongs to her ex-husband. In about 2005, they consolidated their student loans which, at that time, totaled approximately \$87,617. Since voluntary payments were not being sent to the creditor, the creditor garnished her wages. She provided a December 2019 pay stub that showed her 2019 wages had been involuntarily garnished in the total amount of about \$5,498 for the year. An April 2020 pay stub reflected her wages were garnished in the total amount of \$3,550 for the year, for a combined total of \$9,048. Thereafter the garnishment stopped, presumably due to President Biden's March 2020 order for an emergency pause on the payment of student loans. Under the CARES Act, Federal student loan payments remain paused until at least June 30, 2023. See <https://studentaid.gov/announcements-events/covid-19> (Tr. 32-41; GE 2, GE 7; AE C)

Applicant stated in response to interrogatories dated November 2021, that as soon as the federal pause on student loans is lifted, she will begin making payments. The outstanding student loan balance is \$113,181. She did not provide supporting documentation to show that 63% of the student loan debt is her responsibility, or that she had voluntarily made payments on her delinquent student loans before the CARES Act was passed. (Tr. 32-41; GE 2, GE 7; AE C)

SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.f allege five collection accounts with the same creditor totaling \$1,322. Applicant stated in her July 2022 SOR response that a payment plan was established with this creditor. Monthly payments of \$100 would start on July 25, 2022, through August 2023 to pay these accounts in full. On March 9, 2023, she provided documentation which showed the payment plan is in process with an outstanding balance of \$522. These accounts are being resolved. (SOR response; Tr. 41-42; AE E)

SOR ¶ 1.g alleges a delinquent account with a retail store that was charged-off as a bad debt in the amount of \$1,947. Applicant stated in her July 2022 SOR response that a payment plan was established with this creditor. Monthly payments of \$25 would start on July 25, 2022 and continue until the account was paid in full. During the hearing she stated she would submit supporting documentation while the record was held open. She timely submitted information that showed the account payment plan was not in effect. The payments had stopped in 2022 due to incorrect bank information. The balance of the account is \$1,848. Applicant stated in an email that she requested monthly statements be sent to her so she can start to make payments again. She did not provide supporting documentation. This account has not been resolved. (SOR response; Tr. 42; GE 3; E-mail dated March 9, 2023)

SOR ¶ 1.h alleges a delinquent account with a credit union that was referred for collection in the amount of \$492. Applicant testified that this was a joint account she had with her ex-husband. The December 2019 credit bureau report showed that the account

was opened in about 2009 and became delinquent in about 2019. Applicant testified that she had not taken any action to resolve this account. On March 9, 2023, she provided information in her email that the account had been referred to a collection agency that had been unable to contact her or her ex-husband. She has now provided updated addresses to the creditor. The account balance has increased to \$1,295, due to the accrual of interest. She requested an account statement be sent to her and her ex-husband. No supporting documentation was provided by Applicant. This account has not been resolved. (GE 3; Tr. 42-43; E-mail dated March 9, 2023)

SOR ¶¶ 1.i and 1.k allege two delinquent accounts with a bank creditor that was referred for collection in the total amount of \$4,059. Applicant provided documentation with her February 2022 SOR response that she had been making payments and the combined total amount of these accounts was approximately \$2,196. She also stated during the hearing she would submit supporting documentation while the record was held open. On March 9, 2023, she provided documentation which showed one of the accounts had been paid, and the outstanding balance for the other account was \$941. One account has been resolved and the second account is being resolved. (Tr. 43; SOR response and attachments; AE D)

SOR ¶ 1.j alleges a delinquent account with a credit card bank creditor that was charged-off as a bad debt in the amount of \$13,322. Applicant testified that it was a credit card account that had been opened in her name that was used to buy household supplies after she and her husband purchased a house. She testified that she would be able to gather more information about this account and would provide it while the record was held open. She timely provided information in her email that the creditor bank has merged with another bank, and that all past unpaid debts with the original bank had been charged-off. The bank representative advised her to work with a credit counselor to have this account removed from her credit bureau report. Applicant failed to provide supporting documentation. This account has not been resolved. (Tr. 43-45; GE 3; E-mail dated March 9, 2023)

Applicant testified that she does not have a formal monthly budget and she has not sought the assistance of a financial counseling program to resolve her indebtedness. She completed a personal financial statement (PFS) in November 2021. The PFS showed that after paying her monthly expenses, she had a net monthly remainder of about \$2,700. The PFS did not reflect any payment to her delinquent creditors. When she was asked during the hearing why she was not paying on her delinquent accounts, Applicant stated that she did not make payments on the unpaid accounts because she was waiting for her divorce to be finalized. (Tr. 45, 53-56, 62; GE 2; AE B)

### **Character Evidence**

Applicant submitted numerous reference letters from co-workers, a former supervisor, a former director and retired U.S. Air Force Colonel, and other high-ranking officials that have worked with her over the years. All of her references unequivocally and enthusiastically support Applicant. Applicant is regarded as a dedicated worker, and she is efficient and responsible. She is entrusted with “working unclassified and classified

tasks.” She possesses dedication and commitment to the mission. All references endorsed Applicant’s continued eligibility for a DOD security clearance. (AE B, AE G)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[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

### Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts, as shown by her admissions and by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

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

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Applicant has a long history of incurring delinquent debts. One of her debts has been paid, and some others are being resolved through a payment agreement. However, the bulk of Applicant's debts are unresolved, including her delinquent student loans. She has not made an effort to address them, and payments made through an involuntary wage garnishment does not receive full mitigation, such as a good-faith effort of initiating a payment plan with the creditor. Her student loans were delinquent long before the CARES Act was enacted in March 2020. She testified that she does not really have a monthly budget in place, and she had not completed financial counseling. She has not established that her financial behavior is unlikely to recur or no longer casts doubt on her reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(c) do not apply.

There were conditions beyond Applicant's control which contributed to her financial problems. Her spouse's unemployment, her underemployment, and a contentious divorce. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under the circumstances. Her PFS executed in November 2021 reflected that after paying her monthly expenses, she had a net monthly remainder of about \$2,700. The PFS did not show that she was making a

good-faith effort to repay her delinquent creditors. She stated that she withheld paying her delinquent creditors because she was waiting for her divorce to be finalized. Her divorced had already been finalized for six months at the time she filled out her PFS.

It is clear after reading Applicant's SOR response that she initiated two payment plans with creditors only after she received the SOR in July 2022. One of the payment plans was not executed, however, due to incorrect bank information. I find Applicant has not acted responsibly under the circumstances. She did not provide a reasonable explanation as to why she was unable to make better progress addressing her delinquent accounts when she had the financial resources at her disposal. AG ¶¶ 20(b) and 20(d) do not apply. Under all of these circumstances, Applicant failed to establish that financial considerations security concerns are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 54 years old, and she is highly regarded as a committed and responsible employee at her place of employment. I observed her demeanor during the hearing. There is no question in my mind that she is an exceptional employee providing outstanding service.

Applicant did not establish why she was unable to make better progress in resolving her delinquent creditors. This is especially so after the review of her November 2021 PFS showed she had a net monthly remainder of about \$2,700, without any payments going to her delinquent creditors. She did not initiate good-faith payments plans with some of her creditors until after she received the SOR in July 2022. Her actions demonstrate a lack of fiscal responsibility and good judgment, and raise unmitigated questions about her reliability, trustworthiness, and ability to protect classified information.



This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of her past-due debt, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.g, 1.h, and 1.j:	Against Applicant
Subparagraphs 1.b – 1.f, 1.i, and 1.k:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge