



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



In the matter of: )  
)  
) ISCR Case No. 22-01105  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2023

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant provided insufficient evidence to support her assertions that she is no longer responsible for the debts alleged in the Statement of Reasons (SOR). She did not take responsible action to address her financial obligations while she was employed. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 6, 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.

On January 11, 2023, Applicant provided a response to the SOR and requested a hearing. On February 17, 2023, the case was assigned to me. On April 18, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 17, 2023. Applicant’s hearing was held as scheduled.

During the hearing, Department Counsel offered five Government exhibits (GE); Applicant's four exhibits (AE A-D) were attached to her SOR response; there were no objections, and all proffered exhibits were admitted into evidence. Applicant planned to call a witness to testify, but the witness was unable to join the hearing. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. Applicant timely provided two personal statements, (Applicant Exhibit (AE) E and F), which were admitted without objection. On May 24, 2023, I received the hearing transcript. After the hearing, Applicant's witness did not want to get involved in this hearing and would not provide any information or a written statement for the Applicant. Applicant tried to submit a text and recorded message from the reluctant witness as evidence, but I would not admit this information into the record. The record closed on June 1, 2023. (e-mail communications)

### **Findings of Fact**

In Applicant's SOR response, she denied all five of the debts in SOR ¶¶ 1.a-1.e. Department Counsel submitted three credit reports which support the SOR financial allegations. (GE 3, GE 4, GE 5)

Applicant is 53 years old. In June 1998, she immigrated to the United States from Liberia. She became a naturalized U.S. citizen in November 2003. In 2005, Applicant married and divorced in 2010. She married a second time in 2014, and she became widowed in 2018. She has a daughter, age 27, and three minor children between the ages of 17 and 13. She received her cosmetology license for management and business in May 2012. In 2022, she earned an associate degree in cybersecurity. (Tr. 87-92; GE 1; AE F)

Applicant has been employed as a protective agent for a government contractor since November 2020. She was issued an interim security clearance, but she lost her job in September 2022 after her interim security clearance was revoked with the issuance of the SOR. She earned over \$28 an hour for this position. She recently started employment as a certified nursing assistant earning \$20 an hour. Applicant would like to receive her DOD security clearance so that she can resume her employment with the government contractor. (Tr. 87-92, 103; GE 1; AE F)

### **Financial Considerations**

Applicant created significant debt due, in part, to her ignorance of business and financial practices. She does not believe she is responsible for the SOR debts because of her lack of knowledge, and her claim that these creditors took advantage of her and were dishonest in their business transactions. Her financial problems worsened after she lost her employment in about September 2022. (Tr. 95-102; SOR response)

The SOR alleges five delinquent debts totaling approximately \$40,335. The record establishes the status of Applicant's accounts as follows:

SOR ¶¶ 1.a and 1.e allege two delinquent accounts with an insurance company that were referred for collection in the amount of \$118 and \$85, respectively. In the SOR response, Applicant stated that she does not owe any money to this insurance creditor, and that these are false allegations. During the hearing, she testified that she had opened an account with this creditor, and they sent her a piece of equipment to install in her son's car. She was unable to install the equipment. She thought the account for \$118 was for the equipment she returned to the insurance company, although the return was admittedly late. She provided photos of the equipment and the mail receipt for the returned equipment. She also provided a screen shot from the creditor acknowledging the equipment was received. Applicant said the information from the insurance company was confusing. She called them multiple times to have them explain why she owed any money, but the insurance creditor could not provide any information. She has not paid any money to either of these delinquent accounts. (Tr. 25-42, GE 2, GE 3, GE 4, GE 5, AE B)

The credit reports in the record show that SOR ¶ 1.a is a duplicate account for SOR ¶ 1.e since they have the same account numbers. Based on the most recent credit report, the insurance account has an outstanding balance of \$35. Applicant has reasonably disputed this \$35 debt. (Tr. 25-42, GE 2, GE 3, GE 4, GE 5, AE B)

SOR ¶ 1.b alleges a charged-off car loan account in the amount of \$10,208. The February 2023 credit report showed that the account was opened in February 2019, and April 2020 was the date of "major first delinquency reported." Applicant denied this debt in her SOR response and claimed it was a false allegation. She provided a September 2021 statement that she received pre-approval from the car loan creditor for financing. She initially wanted to purchase a Lexus when she went to the dealership, but she ended up buying a Mitsubishi instead. She testified that she had been at the dealership all day and signed the paperwork to purchase the Mitsubishi car. She was unhappy with this vehicle and called the car-loan creditor. She was advised to return the car back to the dealership if she did not like it. It is unclear how long she had possession of the car, but at the minimum, she had the car for a week. On July 12, 2019, she called the dealership and reported the conversation she had with the car loan creditor. The next day she voluntarily returned the car to the dealership. She reported this information to the car loan creditor, who in turn told her that she had nothing to worry about and that she did not owe any money for the returned Mitsubishi car. The February 2023 credit report showed that Applicant had disputed this account with the car loan creditor, but after information was provided to the credit agency, the account was taken out of dispute status. Applicant did not provide supporting documentation to show that she is not liable for this delinquent account. For example, she did not provide correspondence sent to the creditor or credit reporting company explaining why she believed she was not responsible for this debt. This debt remains unresolved. (SOR response, Tr. 49-66, 93-97; GE 2 page 5, GE 3, GE 5; AE E)

SOR ¶ 1.c alleges a car loan creditor account for a repossessed car with an outstanding deficiency balance of \$29,692. In May 2019, Applicant stated that she had purchased a Ford vehicle, but due to the pandemic, she lost her employment in March 2020. She called the car loan creditor to report her unemployment and to see if the creditor would work with her on a payment plan. Based on her September 2021

interrogatory, her car was repossessed in October 2020. There were inconsistent details reported in the interrogatory and during her testimony. She claimed the creditor told her that if she wanted the car, she could redeem the vehicle in the amount of \$2,867. If she did not want the car returned, she did not owe any money. Applicant testified that the creditor was dishonest, and she is not liable for this delinquent account. She did not provide sufficient supporting documentation, and this debt remains unresolved. (Tr. 66-80, 95; SOR response, GE 2, GE 5; AE E)

SOR ¶ 1.d alleges a delinquent account with a bottled water supplier that was referred for collection in the amount of \$232. During the hearing, Applicant stated that this account was opened in about July 2020 at a retail store for a water bottle delivery service for her residential water cooler. After four bottles of water were delivered, she called the water supplier and told them that her equipment was incompatible and their water bottles would not work with her cooler. The water supplier told her to leave the bottled water outside of her residence and they would pick it up. They automatically charged her credit card approximately \$150 for this service. She did not understand why the water supplier account showed an outstanding balance of \$232. She had called the creditor on several occasions, but no one was able to respond to her questions. Applicant's supporting documentation submitted to demonstrate that she is not responsible for the unpaid \$232 debt was insufficient and unpersuasive. For example, she did not provide correspondence sent to the creditor or credit reporting company explaining why she believed she was not responsible for this debt. This debt remains unresolved. (SOR response, Tr. 42-49, 92; GE 3)

During the hearing Applicant discussed delinquent accounts that were listed on her February 2023 credit report. These delinquent accounts were not included in the SOR. She did not know why her credit report showed a delinquent account with an insurance creditor in the amount of \$167, but she did admit that she had business dealings with this company. She also had two delinquent credit card accounts totaling \$303. In July 2022, she had another credit card account that was charged off in the amount of \$665. She stated that she is aware of these credit card accounts and has contacted the creditors about her employment and financial issues. She stated that some of the SOR debts she was unaware of until she received the SOR in September 2022. She admitted that she was aware of the two largest SOR debts when she completed her interrogatory in September 2021. (Tr. 80-85, 97-100; GE 2, GE 3; AE D)

## **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.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." 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.

The credit reports in evidence reflect five delinquent debts and Applicant's responsibility for the debts she denied. The record establishes the disqualifying conditions in AG ¶¶ 19(a), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

None of the mitigating conditions apply. Applicant admitted a certain amount of financial ignorance, which caused her to develop two significant SOR debts from the purchase and return of two vehicles. Her loss of her employment in September 2022 also contributed to her financial problems. Applicant signed contracts with different businesses, but she failed to comply with the terms of these contracts. She became aware of her two largest debts in at least September 2021, a full year before she lost her government contractor employment. At the time of the hearing, she still had not taken any action beyond telephone calls to the creditors to resolve her delinquent accounts. She claimed that she is not responsible for these SOR debts due to her lack of business knowledge and the deceptive business practices of her creditors. A degree of ignorance to one's financial situation may suggest an indifference to the proper satisfaction of legal obligations. After September 2021, her knowledge about the two largest debts at issue can no longer be attributed to unawareness, but rather a lack of due diligence. Her failure to take more aggressive actions to resolve her legal obligations creates a security concern about her reliability and her willingness to follow laws, rules, and regulations.

There are circumstances beyond an individual's control that can adversely affect their personal finances. However, to receive full credit for this mitigating condition, an applicant must show that he or she acted responsibly under the circumstances. In this instance, Applicant failed to demonstrate that she acted responsibly since she did not take more aggressive actions to document the disputes of her delinquent debts. She

failed to provide supporting documentation that she had a legitimate and legal basis to dispute any of her outstanding accounts. Given the lack of supporting evidence and the development of new debt, I am unable to find that her financial issues are unlikely to recur. She has not established a track record of financial responsibility. 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 developed delinquent debt before she lost employment in September 2022, and there is no track record of steady, systematic payments over an extended period of time. She has not taken responsibility for the debts she created, and if she did not fully understand the significance of signing a legally binding business contract, then she should have sought advice from a family member, friend, or attorney. Her inability to fully understand business transactions is not a valid excuse. She did not show that the purchase of the two vehicles involved complicated contracts or payment plans. Her actions demonstrate a lack of financial 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, and a track record of behavior consistent with her obligations, 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b, through 1.d:	Against Applicant
Subparagraph 1.e:	Withdrawn

### **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