



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02126
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny G. Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on February 10, 2022. On November 9, 2022, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD 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 DoD on September 1, 2006, and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on January 21, 2023, and requested a decision on the written record without a hearing. She submitted a supplemental letter to her Answer

dated February 24, 2023, which was included as an exhibit in the Government's written case. Department Counsel submitted the Government's written case, the file of relevant material (FORM), on March 16, 2023. The Government moved to withdraw SOR ¶¶ 1.b-1.c and 1.e-1.f on the basis Applicant's Answer showed that the allegations in SOR ¶¶ 1.e and 1.f were resolved and that she had made significant progress repaying the creditors alleged in SOR ¶¶ 1.b and 1.c.<sup>1</sup> A motion of this nature cannot be granted in a FORM but it is clear by the detailed and well written analysis the Government intended to withdraw these allegations, which is how SOR ¶¶ 1.b-1.c and 1.e-1.f shall be treated.<sup>2</sup> On March 17, 2023, a complete copy of the 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 April 19, 2023. She did not submit a Response. The case was assigned to me on July 17, 2023.

The SOR and the Answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 14 are admitted into evidence without objection.

### **Evidentiary Issue**

FORM Items 13 and 14 are summaries of an enhanced subject interview (ESI) conducted on February 23, 2022, and another ESI conducted over two days in January 2021. The ESI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant in the FORM that these ESIs were being provided to the Administrative Judge for consideration as part of the record evidence in this case; and that she was entitled to comment on the accuracy of each ESI; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; or object on the ground that the report is 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. 12010810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted SOR ¶ 1.a and denied SOR ¶ 1.d. 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 68-year-old Federal contractor. She holds a bachelor's degree. She married in 1990 and has an adult son. She has been granted a security clearance twice, in October 2012 and January 2022.

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<sup>1</sup> "E3.I .6. Should review of the applicant's answer to the SOR indicate that allegations are unfounded, or evidence is insufficient for further processing, Department Counsel shall take such action as appropriate under the circumstances, including but not limited to withdrawal of the SOR and transmittal to the Director for notification of the DISCO for appropriate action."

<sup>2</sup> If SOR ¶¶ 1.b-1.c and 1.e-1.f had remained I would have adopted the Government's analysis and mitigated these allegations.

Applicant's financial difficulties began in 2014 due to income loss and her husband's accumulating medical bills. Due to her husband's medical issues, she was unemployed at various times between 2012 and 2019. (Item 13 at 2.) She enrolled the debts delineated in SOR ¶¶ 1.b-1c and 1.e-1.f totaling about \$43,435, in a payment plan with a debt relief company in 2019. (Item 13 at 3.) The Government withdrew these allegations on the basis that she had resolved or sufficiently mitigated them.

The evidence concerning the two remaining delinquent debts totaling \$63,005 is summarized below.

**SOR ¶ 1.a: past-due account charged off in the amount of \$56,612.** Applicant's debt arose from a second mortgage on a previous residence. Her husband got sick right after they bought a new home. She paid the doctors first to get the help her husband needed. (Item 13 at 4.) The home was sold in a short sale arranged by her husband in 2016, which she believed was supposed to have covered the delinquency. (Item 14 at 7.) In July 2022, a Writ of Garnishment was issued against Applicant's wages to satisfy the debt. She stated she was never served with the court papers, which resulted in the default judgment. She contacted a law firm to seek assistance in reaching a settlement with the creditor. The law firm stated that efforts to negotiate a settlement had been unsuccessful to date. (Item 3.)

**SOR ¶ 1.d: past-due account charged off in the amount of \$6,393.** Applicant denied SOR ¶ 1.d on the basis she was unaware of the debt and would have enrolled it in the debt relief payment plan. (Item 13 at 5; Item 14 at 7; Answer.) The debt is held by the same creditor as SOR ¶ 1.a, and she believes may be linked to the mortgage and short sale. She states she has not heard from the creditor. (Item 13 at 5.) In both ESIs she stated she was unaware of the debt and why it was coming up. (Item 13 at 5 and Item 14 at 7.)

Applicant states she has worked to avoid having to file for bankruptcy. She has been using a debt relief company since 2019, prior to the start of the security clearance process, to resolve her debts. The debt relief company has worked with her creditors. (Item 13 at 4.) Prior to receiving the FORM, she had resolved over \$43,000 of debt. Her actions resulted in the withdrawal of SOR ¶¶ 1.b-1c and 1.e-1.f.

### **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 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.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Prior to the SOR being issued Applicant set in motion a plan to resolve the majority of her debts that were alleged on the original SOR.

AG ¶ 20(a) is established. Applicant's delinquent debts arose during a change of employment status shortly after her husband fell ill resulting in her being unemployed at various times between 2012 and 2019, while accumulating medical bills. She has established a history of repayment by resolving four of the six delinquent accounts

originally alleged in the SOR. SOR ¶¶ 1.a and 1.d are unresolved but under these limited circumstances, given her actions by using a debt relief company prior to the start of the security clearance process to resolve her other delinquent accounts demonstrates her current reliability and trustworthiness to resolve these remaining debts.

AG ¶ 20(b) is established. Applicant cites her husband's medical issues and unemployment as conditions largely beyond her control. Her new employment status has coincided with her track record of reducing her debts. An applicant is not held to a standard of perfection in her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that [she] act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Her actions demonstrate she will address her remaining debts, SOR ¶¶ 1.a and 1.d.

AG ¶ 20(d) is established. Applicant provided evidence to support her assertions that she had resolved debts listed on the SOR, and the Government acknowledged those actions by its withdrawal of SOR ¶¶ 1.b-1c and 1.e-1.f. Applicant's actions demonstrate she understands what she needs to do to establish and maintain her financial responsibility and resolve SOR ¶¶ 1.a and 1.d. She has taken reasonable actions under her unique financial circumstances to address her delinquent debts and has established a "meaningful track record of debt reduction." See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant does not present a perfect case in mitigation, but perfection is not required. Under the limited circumstances of this case, I find that her finances no longer generate questions about her judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about her finances are mitigated.

### **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.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a and 1.d: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale  
Administrative Judge