



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 14-00200  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2015

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On September 5, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 13, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it

recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued or revoked.

Applicant answered the SOR on June 24, 2014 and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 30, 2015, was provided to her by letter dated February 5, 2015. Applicant received the FORM on February 24, 2014. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the allotted period of 30 days after receipt of a copy of the FORM. On March 11, 2015, Department Counsel indicated that he had no objection to Applicant's additional information. On March 16, 2015, the case was assigned to me.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough review of the record, I make the following findings of fact.

#### **Background Information<sup>1</sup>**

Applicant is a 46-year-old security services supervisor, who has been employed by a defense contractor since September 2011. She seeks a security clearance in conjunction with her current employment. (Item 5.)

Applicant earned her GED in August 1994. She was married from July 1996 to November 1997, and that marriage ended by divorce. Applicant remarried in December 1998. She has two adult daughters and one adult stepson. (Items 5, 8.) Applicant did not serve in the armed forces. (Item 5.)

#### **Financial Considerations**

Applicant's SOR contains 13 allegations under this concern alleging a county tax lien, a judgment, unpaid taxes, and other delinquent debt totaling approximately \$18,964. Applicant provided little information regarding the status of these debts and Department Counsel prepared a FORM reflecting an SOR response with little or no mitigating evidence.

However, Applicant's FORM response provided additional mitigating evidence supported by documentation regarding her debt status. The following summarizes the status of Applicant's 13 SOR debts:

SOR ¶ 1.a – County tax lien for \$1,138 filed in September 2012. County filed release of tax lien in January 2015. **DEBT RESOLVED.** (FORM response)

---

<sup>1</sup>The FORM contains limited facts regarding Applicant precluding the development of a more comprehensive Background Information section.

SOR ¶ 1.b – Judgment in favor of credit card company filed in September 2008 for \$968. Satisfaction of judgment filed in July 2013. **DEBT RESOLVED.** (FORM response)

SOR ¶ 1.c – Past-due debt to a “medical creditor” for \$1,053. Applicant contacted the three major credit bureaus and they were unable to provide her with any information about this account. Debt appears on Applicant’s September 2013 credit report with no identifying creditor information, but does not appear on her January 2015 credit report. Upon further review, it appears the account was sold to creditor in SOR ¶ 1.h, discussed below. **DEBT DISPUTED.** (Items 6 and 7; FORM response)

SOR ¶ 1.d – Collection account for \$270. In August 2014, Applicant retained the services of a credit management company and enrolled this debt in a debt consolidation plan. Since enrollment, Applicant pays \$279 monthly by direct debit to the credit management company and will continue to do so until enrolled debts are settled or paid off. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.e – Collection account for \$8,441. In August 2014, Applicant retained the services of a credit management company and enrolled this debt in a debt consolidation plan. Since enrollment, Applicant pays \$279 monthly by direct debit to the credit management company and will continue to do so until enrolled debts are settled or paid off. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.f – Collection account for \$107. Applicant contacted the three major credit bureaus and they were unable to provide her with any information about this account. Debt appears on Applicant’s September 2013 credit report, but does not appear on her January 2015 credit report. Upon further review, it appears the account was sold to creditor in SOR ¶ 1.h, discussed below. **DEBT DISPUTED.** (Items 6 and 7; FORM response)

SOR ¶ 1.g – Collection account for \$1,246. In August 2014, Applicant retained the services of a credit management company and this debt was enrolled in a debt consolidation plan. Since enrollment, Applicant pays \$279 monthly by direct debit to the credit management company and will continue to do so until enrolled debts are settled or paid off. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.h – Collection account for \$1,404. In August 2014, Applicant retained the services of a credit management company and enrolled this debt in a debt consolidation plan. Since enrollment, Applicant pays \$279 monthly by direct debit to the credit management company and will continue to do so until enrolled debts are settled or paid off. This account appears to include the debts in SOR ¶ 1.c and 1.f, discussed above. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.i – Collection account for \$346. Applicant contacted the three major credit bureaus and they were unable to provide her with any information about this account. Debt does not appear on her credit reports. **DEBT DISPUTED.** (Items 6 and 7; FORM response)

SOR ¶ 1.j – Collection account for \$402. In August 2014, Applicant retained the services of a credit management company and enrolled this debt in a debt consolidation plan. Since enrollment, Applicant pays \$279 monthly by direct debit to the credit management company and will continue to do so until enrolled debts are settled or paid off. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.k – Collection account for \$1,545. In August 2014, Applicant retained the services of a credit management company and enrolled this debt in a debt consolidation plan. Since enrollment, Applicant pays \$279 monthly by direct debit to the credit management company and will continue to do so until enrolled debts are settled or paid off. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.l – Collection account for \$172. Paid in full in February 2015. **DEBT RESOLVED.** (FORM response)

SOR ¶ 1.m – Federal income taxes owed to the Internal Revenue Service (IRS) for tax year 2010 for \$1,872. Per her January 2015 agreement with the IRS, Applicant began making \$150 monthly payments in March 2015 by direct debit. **DEBT BEING RESOLVED.** (FORM response)

The FORM contains limited information regarding the circumstances that led to Applicant's financial difficulties. During her October 2013 Office of Personnel Management Personal Subject Interview (OPM PSI), Applicant stated that she quit her job and was in a non-income earning status from November 2010 to August 2011. She did this to care for her granddaughter while her daughter left home to serve in the Navy. Applicant's ten-month loss of income impacted her ability to remain current on her bills. (Items 5, 8)

During her OPM PSI, Applicant stated that her current financial condition is "fair and stable." Apart from the SOR debts, Applicant is current on her remaining monthly bills. She has also benefited from financial counseling provided by the credit management company handling her debt consolidation. (Items 6, 7, 8)

### **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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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 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 (4<sup>th</sup> 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 her 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. Sep. 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 relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt

is a “continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and her behavior does not cast doubt on her current reliability, trustworthiness, or good judgment.

Application of AG ¶ 20(b) is warranted. Applicant experienced a ten-month period of period of unemployment while she cared for her granddaughter during her daughter’s Navy service. When Applicant’s daughter finished her Navy service and was able to care for her daughter, Applicant returned to work. Applicant’s ten-month loss of income affected her earning potential and ability to remain current on her debts.

AG ¶ 20(c) is applicable because Applicant retained the services of a credit management company and received credit counseling. AG ¶ 20(d) is fully applicable.<sup>2</sup> Applicant made a good-faith effort to address financial concerns alleged. She has paid three of her debts, has consolidated six of her debts with a credit management company, and has made payment arrangements with the IRS. AG ¶ 20(e) is applicable. Applicant disputes the validity of three of her debts and contacted all three credit bureaus. At least two of those debts appear to have been sold to one of the creditors alleged in the SOR.

### **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(a):

- (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.

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

---

<sup>2</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether she maintained contact with her creditors and attempted to negotiate partial payments to keep her debts current.

and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's employment with a defense contractor weighs heavily in her favor. She is a law-abiding citizen and a productive member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that [s]he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [s]he has ". . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and [her] actions in evaluating the extent to which that applicant's plan for the reduction of [her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Six of Applicant's debts are being paid through a debt consolidation company and her IRS debt is being satisfied through monthly payments. After Applicant regained a steady income stream, she was able to address her past-due debts. Applicant was faced with a difficult choice – quit her job in order to care for her granddaughter or let her daughter and granddaughter fend for themselves. Applicant made the choice of putting family first to help her daughter and granddaughter. Despite her financial setback, it is clear from Applicant's actions that she is on the road to financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered the circumstances that led to her financial difficulties, her financial recovery, the steps she has taken to resolve her financial situation, her potential for future service as a defense contractor, and the mature and responsible manner in which she dealt with her situation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude she has mitigated the financial considerations security concerns.



I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **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: FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

---

ROBERT J. TUIDER  
Administrative Judge