



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 12-10796  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2016

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate Guideline F (financial considerations) security concerns. Clearance is denied.

**Statement of the Case**

On April 18, 2012, Applicant submitted a Questionnaire for National Security Positions (SF-86). On January 28, 2015, 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) effective on September 1, 2006.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national defense to grant 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 or denied.

On February 11, 2015, Applicant answered the SOR. On June 1, 2015, Department Counsel was ready to proceed. On June 11, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 11, 2015, DOHA issued a hearing notice, setting the hearing for July 9, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through GE 4, which were received into evidence without objection.

Applicant did not call any witnesses, testified, and offered Applicant Exhibits (AE) A through AE D, which were received into evidence without objection. On July 17, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

Applicant admitted all of the SOR allegations except for SOR ¶¶ 1.b and 1.k, which she denied. Her admissions are accepted as findings of fact.

### **Background Information**

Applicant is 51-year-old senior technician employed by a defense contractor since December 1998. She seeks a secret security clearance as a condition of her continued employment. (GE 1; Tr. 17-19)

Applicant completed her education as far as the 11<sup>th</sup> grade and has no further education beyond that. (GE 1; Tr. 20) She was previously married from June 1984 to November 2006. That marriage ended by divorce. Applicant has three adult children --- a son in the Army, a daughter in the Air Force, and a son who just completed his enlistment in the Air Force. Applicant did not serve in the U.S. armed forces. (GE 1; Tr. 21-24)

### **Financial Considerations**

Applicant's SOR alleges 12 separate debts totaling \$31,424. Her debts range from a \$95 past-due medical account to a charged-off \$16,128 credit card account. She admitted all of the debts except for a \$9,657 collection account (SOR ¶ 1.b) owed to a former landlord and a \$431 collection account (SOR ¶ 1.k) owed to a cable company. (SOR ¶¶ 1.a – 1.l) These debts have been ongoing "probably since 2007." (Tr. 56)

Applicant attributed her financial problems to three events: (1) a 2005 house fire in which her marital home was completely destroyed; (2) a 2006 divorce that Applicant claims cost her "close to \$30,000;" and (3) a 2006 hospitalization and loss of work. Applicant was reimbursed by insurance "a few months" after the fire and got by with "a lot of help from friends and family." Her husband was in prison at the time of her divorce. She was in the hospital for two collapsed lungs and on life support for four days. Her husband had been released from prison on the same day she was released from the hospital, and was waiting for her at home with a gun. She described the experience as, "I actually escaped death twice in one week." After she was released from the hospital, she went on disability that involved a recovery process that lasted

“about four or five months.” Applicant also claimed that her husband placed “a lot” of charges on one of her credit cards. (Tr. 24-32)

Applicant denied two of her SOR debts as noted, but did not provide any documentation that she had contacted her creditors to dispute or otherwise resolve those debts. These debts are documented in her May 2012 and November 2014 credit reports. (GE 3, GE 4; Tr. 39-44) To resolve her long-standing indebtedness, Applicant had retained a bankruptcy attorney and plans to file Chapter 13 bankruptcy. As of April 6, 2015, she had paid \$250 towards a required initial payment of \$613 that included a \$310 Chapter 13 filing fee; \$53 for a credit report, credit counseling, and debtor education; and a \$250 attorney fee, leaving a balance of \$363. Applicant’s bankruptcy attorney requires the balance of \$363 be paid before filing her case. (AE A – AE C; Tr. 49-51)

Applicant had not paid her bankruptcy attorney the balance owed because she was uncertain whether she would be laid off because of a company buyout. In short, Applicant planned to file Chapter 13 bankruptcy at some future date, but that was contingent on whether she retained her job, and if she retained her job, she would pay her bankruptcy attorney the balance owed, and proceed with filing bankruptcy. (Tr. 51-55)

During cross examination, Applicant stated that she had not filed or paid her 2005 state and federal income taxes. (Tr. 33-38) Applicant has not completed financial counseling. (Tr. 49-50) During Applicant’s Office of Personnel Management Personal Subject Interview (OPM PSI) on July 5, 2012, she stated that she was currently in the process of filing her tax returns. The investigator also discussed her debts with her, and she acknowledged that she had delinquent accounts that needed to be paid. (GE 2)

Applicant testified that her annual income was approximately \$72,000. She estimates that after paying all of her monthly expenses, her net monthly remainder is “close to \$1,000.” As of her hearing date, she had “about \$400” in her savings account and “close to \$700” in her checking account. Applicant has two modest retirement accounts. (Tr. 44-47) Applicant did not submit any character evidence.

### **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**

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 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." 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. (internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports and in the evidence presented.

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.

Considering the record evidence as a whole,<sup>1</sup> I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable to explain, extenuate, or mitigate the security concern related to Applicant's ongoing indebtedness since 2007. Potential mitigating conditions are also not applicable given the length of time that has elapsed since the events described in 2006 occurred. Applicant could be well on her way to resolving her debts through the Chapter 13 bankruptcy process, but for reasons discussed, she chose to defer paying \$363 to her bankruptcy attorney. Of further concern, Applicant had not paid or filed her 2005 state and federal income taxes.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.<sup>2</sup> Rather the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a 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 [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [she] 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 his actions in evaluating the extent to which that applicant's plan for the reduction of [her] outstanding indebtedness is credible and realistic. 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 payments 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.<sup>3</sup>

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,<sup>4</sup> I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

---

<sup>1</sup> See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

<sup>2</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>3</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotation marks omitted).

<sup>4</sup> AG ¶ 2(a) (1)-(9).

## **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.I:                      Against Applicant

## **Conclusion**

In light of all 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. Clearance is denied.

---

Robert J. Tuidier  
Administrative Judge