



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [Redacted]                       | ) | ISCR Case No. 14-00649 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

11/12/2014

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant has mitigated the Guideline F concerns and refuted the Guideline E allegations. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 4, 2013. On April 22, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F and E. The DOD acted under Executive Order 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 DOD on September 1, 2006.

Applicant received the SOR on April 30, 2014, and answered it on May 22, 2014. She did not request a hearing before an administrative judge. On June 18, 2014, Department Counsel requested a hearing. (Hearing Exhibit (HX) I.) Department Counsel

was ready to proceed on August 14, 2014, and the case was assigned to me on August 19, 2014. Department Counsel's pre-hearing letter to Applicant, providing copies of evidence to be submitted at the hearing, is attached to the record as HX II. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2014, scheduling the hearing for September 10, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until September 26, 2014, to enable Applicant to submit additional documentary evidence. She timely submitted AX G through J, which were admitted without objection. Department Counsel's comments regarding AX G through J are attached to the record as HX III. DOHA received the transcript (Tr.) on September 25, 2014.

### **Amendment of SOR**

Department Counsel moved to amend SOR ¶ 1.a to conform to the evidence by alleging that a judgment was entered against Applicant in November 2007, instead of April 2009 as originally alleged. Applicant had no objection to the amendment, and the motion to amend was granted. (Tr. 17-18.)

### **Findings of Fact**

In her answer to the SOR, Applicant admitted ¶¶ 1.a, 1.b, 1.e-1.i, 1.k, 1.l, 1.n, 1.o, and 1.q-1.x. She denied ¶¶ 1.c, 1.d, 1.j, 1.m, 1.p, 2.a, and 2.b. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 49-year-old production planner and scheduler for a defense contractor. She has worked for her current employer since April 1997. She has held a security clearance since 2011. (Tr. 11.)

Applicant's performance appraisals use a four-point scale: 1 (below expectations), 2 (meets expectations), 3 (exceeds expectations), and 4 (far exceeds expectations). She was rated as meeting expectations in 2011 and 2012 and exceeding expectations in 2013. (AX D, E, and F.)

Applicant did not complete high school, but she received her general educational development (GED) certificate in 1990. She earned an associate's degree in April 1997 and a bachelor's degree in November 2007.

Applicant married in September 1990, separated in August 2003, and divorced in March 2005. She has two children, now ages 27 and 23. The two children lived with her during the separation and after the divorce. The divorce decree required her ex-husband to pay child support of \$450 per month. Their daughter was 18 years old and their son was 14 years old at the time of the divorce. (AX H.) The child support payments stopped in 2008, but their son continued to live with Applicant. (GX 6 at 4.)

The SOR alleges 24 delinquent debts. The evidence concerning these debts is summarized below.

**SOR ¶ 1.a, judgment for unpaid rent, entered in November 2007 (\$1,350).** Applicant rented an apartment for one year, agreeing to pay rent of \$1,350 per month. In a July 2010 personal subject interview (PSI),<sup>1</sup> she told the investigator she moved out of the apartment before the end of the lease term because her landlady made repeated no-notice visits and harassed her about nonexistent issues. When the landlady sued for the rent for the remaining term of the lease, Applicant contacted the landlady's attorney, but she had not resolved the debt at the time of the PSI. (GX 6 at 1.)

In a second PSI in December 2013, Applicant told the investigator that, after she moved in, the landlady informed her that she was required to pay an additional \$250 per month because she had a dog. Applicant immediately moved out to avoid the additional fee. In this PSI, she stated that she contacted the owner's lawyer, and they agreed to settle the dispute for \$600. (GX 3 at 2.) In her answer to the SOR, Applicant stated that the debt was settled for \$1,350.

At the hearing, Applicant testified that she was uncomfortable with her landlady's frequent and unexpected visits and decided to move out of the apartment after about three months. After the judgment was filed, she visited the landlady's lawyer, who agreed to settle the matter for \$600. Applicant has no documentation of a \$600 payment to the lawyer. She testified that she thought the issue was resolved until she was confronted with the unsatisfied judgment by a security investigator. (Tr. 38-39.) The debt is not resolved.<sup>2</sup>

**SOR ¶ 1.b, debt to credit union, referred for collection in September 2009 (\$275).** In the December 2013 PSI, Applicant told the investigator that she was not aware of this debt until he confronted her with her credit report. (GX 2 at 7; GX 3 at 3.) She admitted the debt in her answer to the SOR and promised to contact the original creditor. She determined that the debt was a joint debt with her ex-husband, and she intends to pay it by the end of 2014. (AX G at 2.)

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<sup>1</sup> There are three PSI summaries in the record. GX 3 is a summary of a PSI in December 2013 and GX 6 consists of summaries of two PSIs in July 2010 and September 2010. GX 3 and GX 6 were not authenticated as required by Directive ¶ E3.1.20. I explained the authentication requirement to Applicant, and she waived it. (Tr. 27-29.)

<sup>2</sup> The same creditor obtained a judgment against Applicant for \$4,364 in April 2009 (the date originally alleged in SOR ¶ 1.a). Applicant had leased an apartment in the same building for her daughter, who was attending college, with the understanding that her daughter and a roommate would pay the rent. The roommate moved out and Applicant's daughter could not afford to pay the rent. The creditor obtained a judgment against Applicant, which was collected by garnishment of her pay. This judgment was satisfied in July 2011. (Tr. 62-68; GX 2 at 4.) The confusion about two judgments filed by the same creditor that caused the drafting error in SOR ¶ 1.a may account for Applicant's conflicting descriptions of the events surrounding the judgment filed against her in November 2007.

**SOR ¶¶ 1.c and 1.d, delinquent utility bills, referred for collection in December 2010 (\$78) and in September 2008 (\$50).** In the December 2013 PSI, Applicant told the investigator she was unaware of these debts until confronted with them, because she always paid her electric bill on time. (GX 2 at 8; GX 3 at 3.) In her response to the SOR, she denied this debt, stating she has an account with the same utility company and could not have opened a new account without closing out and paying the account for her previous residence. At the hearing, she testified that she contacted the utility company and was informed that her account is not delinquent. (Tr. 80-83.) I found Applicant's testimony regarding this debt plausible and credible. Thus, I conclude that the debt in SOR ¶ 1.c is resolved.

Applicant's credit reports do not establish the \$50 utility debt alleged in SOR ¶ 1.d. Both credit reports reflect that the collection account alleged in the SOR (#2082671237) is for a medical debt, not a utility bill. (GX 2 at 8; GX 5 at 21.) The medical debt is not alleged in the SOR. SOR ¶ 1.d is resolved for Applicant.

**SOR ¶¶ 1.e-1.h, delinquent student loans totaling \$16,305, and SOR ¶¶ 1.q-1.x, delinquent student loans totaling \$44,904.** Applicant began a loan rehabilitation program in September 2013, requiring her to pay \$100 per month for 12 months. She completed the program in August 2014, and her student loans are now in forbearance for one year. During the forbearance period, she is required to pay only the interest on the loans. She intends to consolidate all her student loans at a more favorable interest rate. (Answer to SOR; AX A; Tr. 83-91.)

**SOR ¶ 1.i, cell phone bill, referred for collection in November 2012 (\$944).** Applicant admitted this debt in her answer to the SOR. She is negotiating with the creditor, who is willing to settle for less than the full amount. However, the debt is not yet resolved. (AX G at 3.)

**SOR ¶ 1.j, cell phone bill, referred for collection in November 2012 (\$939).** Applicant denied this debt in her answer to the SOR. She stated that she obtained a cell phone with a 30-day return agreement about seven years ago. She decided that it was too expensive and returned the cell phone within 30 days. In her December 2013 PSI, she stated that she obtained a cell phone under an introductory program in which the first 60 days were free, and she returned the cell phone before the 60-day trial period ended. (GX 3 at 3.) Applicant's June 2010 CBR indicates that the account number alleged in SOR ¶ 1.j is the same account number as another account with a different cell phone service provider, but she has not contacted the creditor reflected on the June 2010 CBR. The cell phone service reflected on the June 2010 CBR was used by Applicant's ex-husband. (GX 5 at 14; Tr. 91-94.) Applicant has filed a dispute with the credit reporting agencies. The debt is not resolved.

**SOR ¶¶ 1.k and 1.l, medical bills referred for collection in October (\$37) and November 2013 (\$27).** Applicant admitted these debts in her answer to the SOR. They are not resolved.

**SOR ¶ 1.m, cell phone bill referred for collection in August 2013 (\$161).** Applicant denied this debt in her answer to the SOR. She has disputed the debt with the credit reporting agencies. It is not resolved.

**SOR ¶ 1.n, medical bill, referred for collection in October 2013 (\$125).** Applicant admitted this debt in her answer to the SOR. It is not resolved.

**SOR ¶ 1.o, checking account debt, referred for collection in August 2013 (\$91).** Applicant admitted this debt in her answer to the SOR. She opened this account for her son in 2008-2009. The debt is for her son's dishonored check. (AX G at 2.) It is not resolved.

**SOR ¶ 1.p, medical debt, referred for collection in April 2009 (\$312).** Applicant denied this debt in her answer to the SOR. It is not resolved.

When Applicant submitted her SCA in October 2013, she answered "No" to all the questions about financial problems. (GX 1 at 26-27.) However, in the space for additional comments, she disclosed that she had delinquent student loans in a rehabilitation program. She also disclosed that she was making monthly \$50 payments to the Internal Revenue Service (IRS) to satisfy a tax debt, which has since been paid. (GX 1 at 29.) In her December 2013 PSI, she told the investigator that she did not list any delinquent debts because she had made payment agreements for the debts she knew about. She voluntarily disclosed three satisfied judgments reflected on her CBR but not alleged in the SOR. She told the investigator that she was unaware of the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, and 1.i-1.p until he confronted her with her CBR. (GX 3 at 3.)

In her answer to the SOR and at the hearing, Applicant denied intentionally falsifying her SCA. (Tr. 100-01.) She pointed out that she had answered the financial questions correctly in a previous SCA submitted in 2010. In her previous SCA, she disclosed failing to pay taxes when due, having her wages garnished, and having been more than 180 days delinquent on debts, including her student loans. In the section for additional comments, she stated that she and her ex-husband were still sorting out who was responsible for joint debts incurred during the marriage. (GX 4.) On her current SCA, she disclosed her delinquent student loans and IRS debt. (GX 1 at 29.)

Applicant maintains a detailed budget. Her monthly net income is about \$3,009 and her expenses are about \$2,376, leaving a net monthly remainder of \$633. Her income projection includes at least 14 hours of overtime each week. Without overtime, her monthly income would be \$2,571, leaving a net monthly remainder of \$195. Her expenses include repayment of the 401k loan, interest on student loans, contributions to her 401k account, and \$50 in savings. She drives a 15-year-old car that is debt free. (AX J.)

Applicant plans to pay the delinquent loans alleged in the SOR, starting with the smallest debts and working up to the larger debts. She intends to pay off the following

debts by the end of \$2014: SOR ¶¶ 1.c (\$78), 1.d (\$50), 1.k (\$37), 1.l (\$27), and 1.n (\$125). She intends to pay the debt in SOR ¶ 1.b (\$275) by mid-2015. She is negotiating with the creditor in SOR ¶ 1.i, who has offered to settle the account for less than the full amount. Her plan does not include the unsatisfied judgment in SOR ¶ 1.a. (AX G.) As of the date the record closed, she had not tried to obtain a copy of the judgment or check the court records to determine if the judgment was satisfied or otherwise resolved. This creditor was aggressive in collecting the two previous judgments, but the record reflects no effort by the creditor to enforce the judgment in SOR ¶ 1.a. The absence of enforcement action suggests that the creditor may consider the matter closed. I am satisfied that Applicant will pay the amount due, if any, on the debt underlying the judgment in SOR ¶ 1.a.

### **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, *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 AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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 in her answer to the SOR, her testimony at the hearing, her responses during the PSIs, and the information in her CBRs establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous and not yet resolved. Additional student loans are not likely to recur, but the other delinquent debts were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's marital breakup, her daughter's inability to pay her rent, her son's dishonored check, and Applicant's various medical bills were circumstances beyond her control. Her response to some of the delinquent debts was delayed because she was not aware of the full extent of her financial problems related to joint accounts and marital debts until a security investigator confronted her with her CBR. However, she has a plan for resolving all her delinquent debts and has taken substantial steps to implement the plan.

Much of Applicant's plan for regaining financial stability consists of promises to resolve debts within the next year. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008). However, Applicant has already established a track record of financial responsibility by satisfying three judgments not alleged in the SOR, resolving a federal tax debt not alleged in the SOR, and completing a rehabilitation plan for her student loans.



AG ¶ 20(c) is not fully established, because Applicant has not sought or received financial counseling. However, there are “clear indications” that her financial problems are being resolved.

AG ¶ 20(d) is established. The fact that Applicant has not addressed every debt alleged in the SOR does not preclude application of this mitigating condition. A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant resolved several debts not alleged in the SOR, rehabilitated her student loans, and devised a credible and reasonable plan to resolve her remaining debts.

AG ¶ 20(e) is established for the debts in SOR ¶¶ 1.j and 1.m, which she has formally disputed with the credit reporting agencies. She has denied several other debts, but she has not yet filed formal disputes with the credit reporting agencies.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . .” When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant’s level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant’s explanation for answering “No” to all the financial questions on her most recent SCA was plausible and credible. She disclosed her delinquent debts in her

previous SCA, was candid and open during three PSI's, and disclosed her delinquent student loans and a federal tax debt on her most recent SCA. I am satisfied that she did not intend to conceal material and relevant information. Thus, I conclude that AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

### **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(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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has been a trustworthy and dependable employee for 15 years and has held a security clearance for almost four years. She was candid, sincere, and credible at the hearing. She has protected her children, sometimes to her financial detriment. She has endured a marital breakup and the financial chaos that followed it, and she is well on her way to restoring her financial stability.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on financial considerations and refuted the allegations that she falsified her SCA. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.x: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a-2.b: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge