



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



In the matter of: )  
)  
) ISCR Case No. 14-01041  
)  
Applicant for Security Clearance )

**Appearances**

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

08/21/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance. On May 24, 2014, Applicant answered

the SOR and requested a hearing. This case was assigned to me on July 15, 2014. On July 23, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for August 11, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, while Applicant testified, called one witness, and offered Applicant Exhibits (AE) A through I. All proffered exhibits were admitted into evidence without objection. The prehearing letter sent to Applicant was marked as Hearing Exhibit (HE) 1 and Department Counsel's list of exhibits was marked as HE 2. The transcript (Tr.) of the hearing was received on August 14, 2014.

### **Findings of Fact**

Applicant is a 39-year-old security guard who works for a defense contractor. She has been working for her current employer since January 2011. She graduated from high school in June 1994, earned an associate's degree in August 2012, and is working on her bachelor's degree. She married in November 1997 and divorced in September 2007. She has no children. This is the first time that she sought a security clearance.<sup>1</sup>

The SOR alleged that Applicant had 11 delinquent debts totaling \$14,378 (SOR ¶¶ 1.a – 1.k) and that she had outstanding student loans totaling approximately \$51,362 (SOR ¶ 1.I). In her Answer to the SOR, she did not deny any debts and indicated that she was working to resolve each of them. In AE E, she admitted the debts.<sup>2</sup>

Applicant attributed her financial problems to a divorce, a period of unemployment followed by a lower-paying job, medical problems, and caring for her ailing mother. She began dating her husband when she was 15 years old and married him at age 21. He handled the household finances, including the debt payments. After her divorce, she was not prepared to be self-sufficient and struggled financially.<sup>3</sup>

In February 2010, Applicant was terminated from a receptionist job when she did not complete a task in a timely manner. She was unemployed for about five months until she was hired in her current position at a lower pay. In August 2010, she was also terminated from a part-time retail sales job when she allowed family members and friends to utilize her employee discount. She was required to reimburse the store for the

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<sup>1</sup> Tr. 6-7, 39-42, 51-53; GE 1. Applicant started working in her current position in June 2010, but her position was outsourced in January 2011.

<sup>2</sup> GE 2, 3; AE E; Applicant's Answer to the SOR.

<sup>3</sup> Tr. 36-37, 65, 80; AE E.

unauthorized use of the employee discounts. Since September 2010, she has been working part time as a cleaner one day a week.<sup>4</sup>

Applicant has a chronic medical condition that has required multiple surgeries as well as radiation and steroid treatments. The condition also caused her other complications that have increased her medical bills over the past couple of years. Her health insurance pays only a portion of her medical bills. Her medical condition has required her to miss work for weeks at a time. She earns no sick leave in her job and is required to take either annual leave or unpaid leave for her medical treatments.<sup>5</sup>

Applicant's mother is disabled with a chronic medical condition. Her mother lives in an assisted living facility and needs assistance in performing the activities of daily living. Applicant travels approximately 60 miles roundtrip in the evenings about four days a week to provide care to her mother. Providing such care has been challenging and has caused Applicant to miss work on occasion.<sup>6</sup>

Applicant also provided shelter for about six months to a family member who was in an abusive relationship. Providing assistance to the family member almost doubled Applicant's living expenses. The family member promised to assist with living expenses as soon as she got on her feet, but the family member never provided any assistance. The family member no longer lives with Applicant.<sup>7</sup>

SOR ¶ 1.a – account 120 days past due for \$8,243. This was a mortgage loan that had a date of last activity of July 2012. In May 2014, Applicant was approved for a mortgage loan modification. Under the modification, her new mortgage loan balance is \$67,848 and her new monthly mortgage payment is \$415, which includes escrow payments for property taxes and insurance. Her credit report of July 18, 2014, reflected that her mortgage loan payment status was "as agreed," and this account was no longer past due.<sup>8</sup>

SOR ¶¶ 1.b and 1.e – collection accounts for \$193 and 165, respectively. These are medical debts that are being handled by the same collection agency. In June 2014, Applicant entered into a repayment agreement with the collection agency in which she will make monthly payments of \$23 until the debts are paid. She provided

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<sup>4</sup> Tr. 36-37, 53-57; GE 1, 2; AE E.

<sup>5</sup> Tr. 36-37, 42-51, 74-75; GE 2; AE E.

<sup>6</sup> Tr. 38-39, 75-77; GE 1.

<sup>7</sup> Tr. 77-79; Applicant's Answer to the SOR.

<sup>8</sup> Tr. 37-38, 57-60; AE B, D, E, F, H; Applicant's Answer to the SOR.

documentation showing that she made the \$23 payments in June, July, and August 2014.<sup>9</sup>

SOR ¶ 1.c – collection account for \$178. This was a medical bill that had a date of last activity of October 2013. Applicant entered into a repayment plan with the creditor in which she will make monthly payments of \$20 until the debt is paid. She provided documentation showing that she made the \$20 payments from January through July 2014.<sup>10</sup>

SOR ¶ 1.d – collection account for \$294. This was a telecommunications account that Applicant cosigned for the family member that she sheltered from the abusive relationship. The family member promised to make the monthly payments on this account, but failed to do so. According to Applicant, the family member has skipped town and no longer talks to her. In June 2014, Applicant entered into a repayment plan with the collection agency. Under that plan, she will make monthly payments of \$25 until the debt is paid. Applicant provided documentation showing that she made the \$25 payments for this debt on July 3 and 31, 2014.<sup>11</sup>

SOR ¶¶ 1.f and 1.g – collection accounts for \$1,572 and \$2,127, respectively. These are medical debts that are being handled by the same creditor. In August 2013, Applicant entered into a repayment agreement with the creditor in which she will make monthly payments of \$25 until the debts are paid. She provided documentation showing that she made the \$25 payments from January 2014 to August 2014.<sup>12</sup>

SOR ¶ 1.h – collection account for \$1,205. This is a bank account. Applicant acknowledges that she owes about \$800 on this account and disputes the remaining amount. At one point, she had a repayment agreement with the creditor and was paying \$45 per month on the debt. She did not make the payments regularly and the debt was sold to a collection agency. She has been in contact with the collection agency, but has not yet been able to reach a repayment agreement. She stated that she intended to contact the collection agency again in an attempt to make such an arrangement. She provided no documentation supporting her partial dispute.<sup>13</sup>

SOR ¶¶ 1.i, i.j, and 1.k – collection accounts for \$106, \$225, and \$69, respectively. These are medical debts that are being handled by the same creditor. In August 2013, Applicant entered into a repayment agreement with the creditor in which

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<sup>9</sup> Tr. 42-51; AE C D, E, I; Applicant's Answer to the SOR.

<sup>10</sup> Tr. 42-51; AE D, E, I; Applicant's Answer to the SOR.

<sup>11</sup> Tr. 77-79; AE D, E, G; Applicant's Answer to the SOR.

<sup>12</sup> Tr. 42-51; AE C, D, E, I; Applicant's Answer to the SOR.

<sup>13</sup> Tr. 60-62, 81; AE D, E; Applicant's Answer to the SOR.

she will make monthly payments of \$25 until the debts are paid. She provided documentation showing that she made the \$25 payments from January 2014 to August 2014.<sup>14</sup>

SOR ¶ 1.I – student loans totaling \$51,362. The SOR did not allege that these loans were past due. These loans have been consolidated into one account that totals \$65,455. Applicant testified that she has never been delinquent on this account. She is participating in an income-based repayment plan and currently pays \$28.43 per month on these loans, which covers only the interest on the loans. The monthly payments are automatically deducted from her bank account. She provided documentation showing that she made the monthly payments from November 2013 to August 2014. Every year her income tax returns for the previous year are reviewed to establish the amount of future payments on these loans.<sup>15</sup>

Applicant uses a monthly budget for paying her debts. At the end of the month, she estimated that she has a net monthly remainder (monthly income minus expenses and debt payments) of about \$100. She testified that she has about \$30 in a saving account, \$100 in a checking account, and \$500 in a 401(k) account. In about 2009, she participated in a credit counseling program provided by her employer.<sup>16</sup>

Applicant's facility security officer (FSO) testified that she has known Applicant for two or three years. The FSO stated that Applicant was reliable and completes her work assignments as required. The FSO recommended that Applicant be granted a security clearance.<sup>17</sup>

Applicant testified that she has received special recognition from her employer for her outstanding customer support. She is also active in her church and its fundraising efforts for the local community.<sup>18</sup>

## **Policies**

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it

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<sup>14</sup> Tr. 42-51; AE C, D, E, I; Applicant's Answer to the SOR.

<sup>15</sup> Tr. 62-65; AE D, E, F; Applicant's Answer to the SOR.

<sup>16</sup> Tr. 65-71.

<sup>17</sup> Tr. 84-86; AE A.

<sup>18</sup> Tr. 87-89.

is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 unfavourable, to reach his decision.

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 of 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), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 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 or 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

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that she was unable to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Five 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 was unemployed for about five months in 2010, but that period of employment was not a condition beyond her control. Applicant went through a divorce in 2007 and she and her mother have chronic medical problems. Applicant's divorce, her medical problems, and her mother's medical problems are conditions beyond her control that contributed to her financial problems. Applicant has been steadily employed for the past four years. The evidence, however, shows that she only began addressing her delinquent debts in the past year. Recognizing that Applicant has only a small amount of discretionary monthly income, she receives only partial credit under AG ¶ 20(b) because of her delay in taking steps to resolve the delinquent debts.

Applicant obtained credit counseling in the past. She recently was approved for a mortgage loan modification. Under that program, her mortgage loan was taken out of a delinquency status. She has entered into repayment plans for nine of the ten remaining delinquent debts. She has been making regular payments under those repayment plans. She has about \$65,000 in outstanding student loans, but those loans have not been delinquent. She has been unable to reach an agreement on the remaining alleged delinquent debt, but indicated that she will make another attempt at resolving it. Her financial problems are under control and are being resolved. AG ¶¶ 20(c) and 20(d) apply. AG ¶ 20(a) partially applies. AG ¶ 20(e) does not apply.

### **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 relevant 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 and the whole-person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my



comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been employed in the same job for the past four years. Her FSO recommended her for a security clearance. Applicant is a hard working individual and a caring daughter. She has made significant progress in resolving her financial problems. While she still has delinquent debts, she is addressing them in a responsible manner. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings 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.l:	For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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James F. Duffy  
Administrative Judge