



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



In the matter of: )  
)  
) ISCR Case No. 14-01092  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

10/23/2014

**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 14, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken 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 a security clearance. In an undated document, Applicant

answered the SOR and indicated that she did not wish to have a hearing. On August 4, 2014, Department Counsel requested a hearing. This case was assigned to me on August 18, 2014. On September 12, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for September 26, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant Exhibit (AE) A. The record of the proceeding was left open until October 3, 2014, to provide Applicant an opportunity to present additional matters. She submitted documents that were marked as AE B through E. All proffered exhibits were admitted into evidence without objection. Department Counsel's memorandum forwarding Applicant's post-hearing submission was marked as Hearing Exhibit 1. The transcript (Tr.) of the hearing was received on October 6, 2014.

### **Findings of Fact**

Applicant is a 37-year-old family counselor who works for a defense contractor. She has been working for her current employer since June 2010. She served in the Army Reserve in 1996 and 1997. She earned a bachelor's degree in 1999, a master's degree in 2002, and is enrolled in a doctorate degree program. She is divorced and has two children, ages 11 and 16. This is the first time that she is seeking to obtain a security clearance.<sup>1</sup>

The SOR alleged that Applicant had five delinquent debts totaling \$133,477. In her Answer to the SOR, Applicant denied each allegation with comments. Credit reports in the record established each of the alleged debts by substantial evidence.<sup>2</sup>

Applicant attributed her financial problems to a marital separation and divorce. She separated from her ex-husband in 2004, and they divorced in 2007. After they separated, she was forced to pay bills that they jointly incurred, and she was unable to keep up with other bills based on her sole income.<sup>3</sup>

SOR ¶ 1.a – judgment filed in March 2007 for \$7,804. In 2005, Applicant purchased a used vehicle for about \$8,000. She financed this purchase with a personal loan that was not secured by the vehicle. Her monthly payments were \$254. After her marital separation, she could not afford to make the payments. She later reached an agreement with the creditor to modify the loan and made payments on this debt. She made the final loan payment in August 2012.<sup>4</sup>

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<sup>1</sup> Tr. 6-8, 24-28, 39, 46; GE 1.

<sup>2</sup> GE 3 and 4; Applicant's Answer to the SOR.

<sup>3</sup> Tr. 26-28, 33, 35, 38, 51-52; GE 2.

<sup>4</sup> Tr. 32-35; GE 2, 3, 4; Applicant's Answer to the SOR.

SOR ¶ 1.b – foreclosed mortgage with a balance of \$123,373. Applicant purchased this home in 2002 for about \$95,000. She was married then, but the home was purchased solely in her name. When she and her ex-husband separated in 2004, she remained in the home, but the home was refinanced to give him some of the equity. She had an adjustable-rate mortgage that doubled in 2007. She did not have the income to cover the higher payments. The loan was foreclosed in 2008. The mortgage company later went out of business. She thought the home was sold and no deficiency was owed on the mortgage loan. She never received an IRS Form 1099-A or 1099-C and provided no documentation substantiating that she owed no deficiency. The credit reports in the record show the last entry the creditor reported on this debt was in April 2008. In her Answer to the SOR, she stated:

I made various attempts for several years to contact the [mortgage lender] in regards to any funds that may be due however all contact information that I had was no longer valid. The company that inherited accounts from the [mortgage lender] upon [it] going out of business had no record of any account for me nor could they tell me how I could contact or access [the mortgage lender]. Upon refinancing my current mortgage I attempted to have the lender give me information about [the former mortgage lender] and the mortgage lender stated there was no available contact information for [the former mortgage lender] and advised this could have been a predatory lender that has since gone out of business.

About six months after the foreclosure, she participated in a rent-to-own program for a new home. After disclosing her foreclosure, the new bank agreed to a one-year rental in which, if she made the rental payments on time, she would receive credit for those payments when the sale was completed. After six months of timely rental payment, the bank agreed to an early sale of the property. Her new mortgage is current and in good standing.<sup>5</sup>

SOR ¶ 1.c – collection account for \$1,243. This was a credit card account that had a date of last activity of June 2008. Applicant used this credit card for daily living expenses. She fell behind on this debt after her marital separation. She settled this debt in June 2010.<sup>6</sup>

SOR ¶ 1.d – collection account for \$964. This was a debt to a cable television company for failing to return the cable box. In her Answer to the SOR, Applicant indicated that she turned in the cable box in the summer of 2006. She knew the name of the employee to whom she returned the box because he was a high school classmate of hers. When she called the cable company, it informed her that she had two cable boxes, and she only turned in one of them. She stated that she never had two cable

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<sup>5</sup> Tr. 26-32; GE 2, 3, 4; Applicant's Answer to the SOR.

<sup>6</sup> Tr. 35-37; GE 2, 3; AE A.

boxes and turned in the only cable box that she had. She believes that she disputed this debt, but no longer had the paperwork.<sup>7</sup>

SOR ¶ 1.e – collection account for \$93. This was a consumer debt that was placed for collection in 2010. Applicant paid this debt in July 2014.<sup>8</sup>

Since she has obtained her current job, Applicant has not missed any credit card payments or incurred any new delinquent debts. She has a number of student loans, but those are deferred while she remains a full-time student.<sup>9</sup>

Applicant submitted a letter of recommendation from a senior noncommissioned officer who indicated that she was very trustworthy. She also provided photocopies of a number of command coins that she has been awarded for her service to military families.<sup>10</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 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 unfavorable, to reach his decision.

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<sup>7</sup> Tr. 44-46; GE 2; Applicant’s Answer to the SOR.

<sup>8</sup> Tr. GE 2; Applicant’s Answer to the SOR.

<sup>9</sup> Tr. 36-44, 54-55.

<sup>10</sup> Tr. 46-47; AE B-E.

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's marital separation and divorce, which were conditions beyond her control, created her financial problems. Since obtaining her current job, she has been living within her means and has incurred no new delinquent debts. She has resolved the debts in SOR ¶¶ 1.a, 1.c, and 1.e. The mortgage lender in SOR ¶ 1.b has gone out of business. When Applicant contacted the company that acquired her mortgage lender's account, the successor company had no record of her. In about 2008, she purchased a new home and has been current on her new mortgage payments. Her financial situation is stable. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

Applicant disputes the debt in SOR ¶ 1.d. She claims she returned in the cables boxes that are the basis for that debt. Her testimony is believable. AG ¶ 20(e) applies to SOR ¶ 1.d.

## **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 is a counselor who supports military members and their families. She travels extensively in her job. She has received recognition from many military units for her contributions. She has acted responsibly in resolving her financial problem. Those problems are unlikely to recur. Overall, the record evidence leaves me with no questions and 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.e:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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James F. Duffy  
Administrative Judge