



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



In the matter of: )  
)  
) ISCR Case No. 14-01834  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

07/07/2015

**Decision**

DUFFY, James F., Administrative Judge:

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

**Statement of the Case**

On January 2, 2014, Applicant submitted a security clearance application (SCA).<sup>1</sup> Based on a review of Applicant’s SCA and the ensuing investigation, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on June 27, 2014, 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*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006. The SOR alleged security concerns under Guideline F.

<sup>1</sup> The SCA was a Questionnaire for National Security Positions.

In an undated document, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On March 12, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On March 23, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections or supply additional information. She did not submit a response to the FORM. The case was assigned to me on June 1, 2015.

### **Findings of Fact**

The SOR alleged that Applicant filed Chapter 13 bankruptcy in August 2001 (SOR ¶ 1.a) and that she had 12 delinquent debts totaling about \$51,870 (SOR ¶¶ 1.b-1.m). In her Answer to the SOR, Applicant denied the debts in SOR ¶¶ 1.c (\$832) and 1.i (\$399) and admitted the remaining allegations. Her admissions are incorporated as findings of fact.<sup>2</sup>

Applicant is a 38-year-old employee of a defense contractor. She has been working for that contractor since October 2003. She graduated from high school in 1995 and received a certificate from a vocational institute in 1996. She married in 1996 and divorced in 2010. She married her current spouse in 2011. She has one child, age 18. She was granted a security clearance in June 2010.<sup>3</sup>

In 2001, Applicant filed Chapter 13 bankruptcy, which was dismissed later that year. The amount of her assets and liabilities when she filed that bankruptcy is unknown. The reason for dismissal of the bankruptcy is unknown. In her Answer to the SOR, she noted this bankruptcy was filed during her first marriage, but provided no other explanation of the circumstances that prompted the filing of that bankruptcy.<sup>4</sup>

In her Answer to the SOR, Applicant provided a letter dated August 4, 2014, reflecting that her government student loan (SOR ¶ 1.c) was paid. In her SCA, she indicated that her wages were garnished for payment of her student loan. The debt in SOR ¶ 1.i, which Applicant denied, is not reflected in the two credit reports submitted or in other record evidence.

In her Answer to the SOR, Applicant failed to explain the reasons for her financial problems. She also did not provide any evidence showing that she paid or otherwise resolved any of the alleged debts except for the student loan discussed above.<sup>5</sup>

---

<sup>2</sup> Items 1, 2.

<sup>3</sup> Item 3.

<sup>4</sup> Items 1, 2.

<sup>5</sup> Item 2.

Applicant's credit report dated February 27, 2015, reflected that she filed Chapter 13 bankruptcy on November 26, 2014. It is unknown whether this bankruptcy covers each alleged debt; whether a Chapter 13 Plan has been approved; or whether she is making regular payments under such a plan.<sup>6</sup>

Applicant provided no evidence that she received financial counseling. She did not provide a monthly budget. It is unknown whether she has any discretionary income remaining each month after payment of her expenses.

### **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, in reaching a 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

---

<sup>6</sup> Item 4.

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 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 admissions and the record evidence established two disqualifying conditions in AG ¶ 19:

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

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 paid her government student loan. AG ¶ 20(d) applies to SOR ¶ 1.c. Insufficient evidence was presented to establish the debt in SOR ¶ 1.i.

For the remaining debts, none of the mitigating conditions are established. There is no evidence that her financial problems were incurred due to conditions beyond her control or under circumstances making them unlikely to recur. There is no evidence that she received financial counseling or acted responsibly in addressing her unresolved delinquent debts. She provided no documentation showing she has a legitimate basis for disputing any debts. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching

a determination.<sup>7</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information does not outweigh the security concerns at issue. Applicant failed to meet her burden of persuasion. Her financial problems raise doubts about her eligibility to access classified information. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

### Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1.m:	Against Applicant

### Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

---

James F. Duffy  
Administrative Judge

---

<sup>7</sup> The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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.