



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-02538
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/18/2014

---

**Decision**

---

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on March 7, 2013. On July 11, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 July 18, 2014; answered it on July 29, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 14, 2014, and the case was assigned to an administrative judge on October 27, 2014. It was reassigned to me on October 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 31, 2014,

scheduling the hearing for November 18, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on December 3, 2014.

### **Evidentiary Ruling**

Department Counsel offered GX 3, a summary of a personal subject interview extracted from a report of investigation, without authenticating it as required by the Directive ¶ E3.1.20. I explained the authentication requirement to Applicant, and she declined to waive it (Tr. 23-25). I did not admit GX 3.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the allegations except SOR ¶ 1.i, which she neither admitted nor denied. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old employee of a defense contractor, working at a naval shipyard since September 2012. From February 2001 until her current employment, she worked as a cashier at various retail stores and earned the minimum wage (about \$7 per hour). She now earns \$19 per hour. (Tr. 15.) She has never held a security clearance.

Applicant married in September 2002. She and her husband have two children, ages 13 and 10. Appellant's husband worked as a brick mason, earning about \$15 per hour, until he was disabled with a back injury in 2009. (Tr. 37.) Starting in 2010, he began receiving disability benefits of \$1,100 per month. His benefits are currently reduced to about \$600 per month, because an arrearage for child support is deducted from his disability pay. (Tr. 39-40.)

The SOR alleges 22 delinquent debts totaling about \$15,000 that are reflected in Applicant's credit bureau reports (CBRs). (GX 2; GX 4.). Thirteen debts are delinquent medical bills (SOR ¶¶ 1.a-1.k, 1.m, and 1.u). One of the medical bills is for \$625 (SOR ¶ 1.b); two are for \$302 (SOR ¶¶ 1.e and 1.i); and ten are for amounts less than \$200.

SOR ¶ 1.n (\$6,976) is a deficiency after an automobile repossession. SOR ¶ 1.o (\$1,601) is a judgment filed by a furniture store. SOR ¶¶ 1.l (\$176) and 1.p (\$882) are cable bills. SOR ¶ 1.s (\$114) is a delinquent line of credit. SOR ¶ 1.q (\$622) is a cell phone bill. SOR ¶ 1.r (\$92) is a car insurance bill. SOR ¶¶ 1.t (\$576) and 1.v (\$660) are personal loans.

On August 1, 2014, Applicant sent certified letters to all the creditors alleged in the SOR, except SOR ¶ 1.i, promising to pay \$5 per month on each of the debts. She did not send a letter to the creditor for the \$176 debt in SOR ¶ 1.l, because she could not determine the original creditor. (Answer to SOR.) On October 10, 2014, she paid

\$25 to the loan company holding the \$576 debt alleged in SOR ¶ 1.t. (AX B.) On October 24, 2014, she paid \$25 to the loan company holding the \$660 debt alleged in SOR ¶ 1.v, which covered the accrued interest but did not reduce the principal. (AX A.) As of the date of the hearing, she had not made any additional payments on the debts alleged in the SOR. (Tr. 45-47.)

Applicant has not received financial counseling, and she does not have a formal household budget. (Tr. 53.) Her understanding of financial matters is limited. For example, she testified that she thought that charged-off debts were forgiven and need not be paid. (Tr. 64-66.)

Applicant estimates that her family's monthly income is about \$3,000, and her living expenses total about \$2,420 per month, leaving a net monthly remainder of about \$580. Her living expenses include a car payment of \$471 for a late-model used car she purchased in 2013. (Tr. 47-52.)

### **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 and 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 applicable;

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 partially established. Applicant's delinquent debts are numerous and recent. However, some of the debts, such as the car repossession deficiency, furniture debt, and medical bills, occurred after the family income was reduced due to the disability suffered by Applicant's husband, which was an unusual circumstance.

AG ¶ 20(b) is not fully established. The disability of Applicant's husband was a condition largely beyond her control. However, Applicant has not acted responsibly. Her family has a net monthly remainder of about \$580, but she has taken no meaningful steps to resolve her numerous delinquent debts.

AG ¶ 20(c) is not established. Applicant has limited understanding of financial matters and could likely benefit from financial counseling, but she has not sought or received it.

AG ¶ 20(d) is not established. Applicant sent letters to her creditors offering payments of \$5 per month, and she made \$25 payments on two debts, but she has made no further payments, and she has no realistic plan to systematically resolve her debts. She has good intentions, but has not taken meaningful steps to carry out her intentions.

AG ¶ 20(e) is not established. Applicant stated that she did not recognize the debt alleged in SOR ¶ 1.I, but she has taken no action to identify the original creditor or the basis for the CBR entry. She has not disputed any of the debts in the SOR.

### **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 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 was sincere and candid at the hearing. She has worked at minimum-wage jobs for most of her adult life, and the shipyard job more than doubled her earnings, but she is financially unsophisticated and needs financial counseling. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant 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): **AGAINST APPLICANT**

Paragraphs 1.a-1.v:

Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge