



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-12280
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

June 30, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted her security clearance application on August 21, 2006. On February 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 13, 2008; answered it on March 3, 2008; and requested a hearing before an administrative judge. DOHA received the request on March 6, 2008. Department Counsel was prepared to proceed on April 7, 2008, and the case was assigned to me on the same day. DOHA issued a notice of hearing on April 17, 2008, scheduling the hearing for May 21, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were

admitted in evidence without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits (AX) A through DD, which were admitted without objection. I granted Applicant's request to keep the record open until June 6, 2008, to enable her to submit additional evidence. Applicant timely submitted AX EE through II, and they were admitted without objection. Department Counsel's response to AX EE through II is attached to the record as Hearing Exhibit I. DOHA received the transcript of the hearing (Tr.) on June 5, 2008. The record closed on June 6, 2008. Eligibility for access to classified information is granted.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the allegations in the SOR, except SOR ¶ 1.f, which she denied. Her admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 55-year-old senior software engineer for a federal contractor. She has worked for her current employer since June 2006. She began working for federal contractors in 1978, worked her way through school, and became a software engineer in 1999 (Tr. 51). She has worked for several federal contractors and held a clearance from March 1992 until about three years ago, when it was administratively terminated because she moved to a job that did not require a clearance (Tr. 9).

Applicant is highly regarded by her friends, co-workers, and supervisors. Her friends describe her as reliable, honest, dedicated, capable, hard-working, and dependable (AX X, Z, AA, and DD). Co-workers similarly describe her as having a zest for learning. She is considered affable, reliable, honest, conscientious, and dependable (AX Y and BB). Former supervisors evaluated her as trustworthy, hardworking, conscientious, and dependable (AX W, BB and CC).

Applicant was married in June 1971 and divorced in July 1975. She remarried in December 1975 and was divorced in February 1983, remarried in November 1990 and divorced in November 1991. She married her fourth husband in September 1998, and they divorced in May 1999. She married her fourth husband again in September 2000, and they divorced in June 2005. After her divorce in June 2005, she assumed most of the marital debts from her most recent marriage (Tr. 27).

When Applicant was divorced in June 2005, her ex-husband agreed to assume the credit card debt alleged in SOR ¶ 1.a, and his agreement was spelled out in the divorce decree (Enclosure to Answer to SOR). The debt has been resolved (AX E, F, and FF).

Applicant entered into a debt settlement program in November 2005 to resolve her debts after her last divorce. The total unsecured debt was about \$28,210, and her plan provided for eliminating the debt in 36 months (GX 1 at 39). She made monthly payments of \$210 beginning in November 2005. The three large debts alleged in SOR

¶¶ 1.b, 1.c and 1.d were not included in her debt settlement program, but she negotiated separate payment agreements with those creditors.

Applicant purchased a manufactured home in August 1997 and lived there with her spouse until October 1999 when her office relocated in another state (Tr. 52). Renters occupied the home until October 2000, when Applicant accepted a job in her home state and resumed living in the manufactured home. She and her spouse incurred about \$6,000 in credit card debt to repair the renters' damage (GX 6 at 1).

Applicant and her spouse purchased another house in January 2001, but were unable to sell the manufactured home. In July 2002, Applicant left her job because the company started laying off employees and she believed she would be laid off soon. She incurred the debt alleged in SOR ¶ 1.b when she left her job after less than one year and was required to reimburse her employer for training (Tr. 54-55). She learned about the debt a couple of years ago when a collection agency contacted her (Tr. 55-56). She recently negotiated a payment plan and has made payments of \$100 per month beginning in April 2008 (Tr. 56; AX R, S, T, and U).

Applicant found a job in another state, and she purchased a house at her new job location, hoping to sell the other two properties. In mid-2002, Applicant and her spouse were unable to make all their loan payments. Renters had again damaged the manufactured home, and they decided to allow the loan company to repossess it. This debt is alleged in SOR ¶ 1.c. Applicant negotiated a payment plan, paid a lump sum of \$4,000, and has been paying \$400 per month since January 2008 (Answer to SOR; AX J through Q).

The debt alleged in SOR ¶ 1.d is a credit card account. It is the same debt as alleged in SOR ¶ 1.f (AX G). While Applicant worked in another state, she and her spouse maintained two households and used credit cards for airline tickets to visit each other and to repair damage to their rental property. All the loans and credit cards were in Applicant's name because her spouse had bad credit. (Tr. 61-62; GX 6 at 1). Applicant negotiated a payment plan and has made seven \$500 payments on this debt (Tr. 62; Answer to SOR; AX H, I, and II)

The debt alleged in SOR ¶ 1.e was for a line of credit with a credit union. Applicant stopped making payments in December 2005 when she entered the debt settlement program (Tr. 67). In April 2008, she used her income tax refund to pay off this debt as well as the debt in SOR ¶ 1.h. (Tr. 69; AX B, C, and D). The credit card debt alleged in SOR ¶ 1.g was paid in full in 2007 (Answer to SOR; Tr. 69-70; AX A).

Applicant sold one of her two remaining homes in the summer of 2004. She became the sole owner of the one remaining home, which is currently occupied by renters while she works in another location (GX 6 at 2).

Applicant's net monthly income in June 2007 was about \$4,620, her household expenses were \$2,423, and her debt payments were \$2,177 (GX 6). She submitted an

updated financial statement after the hearing, reflecting net monthly income of \$6,121.94, expenses of \$2,982, debt payments of \$3,042, and a net remainder of \$117.94 (AX GG). At the time of the hearing, she was preparing to move to a smaller, less expensive apartment at the end of her lease (Tr. 29). After the hearing, she submitted a financial statement reflecting that her monthly rent and utilities in the new apartment would be about reduced by about \$600 (AX HH).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status at Hearing	Evidence
1.a	Credit card	\$5,504	Settled Apr. 2008	Answer to SOR; AX E, F, FF
1.b	Training program	\$7,048	Pays \$100 monthly since Apr. 2008	AX R through U
1.c	Repossession	\$36,615	Pays \$400 monthly since Jan. 2008	Answer to SOR; AX J-Q
1.d	Credit card	\$35,262	Pays \$500 monthly since Oct. 2007	Answer to SOR; AX H, I, II
1.e	Line of credit	\$2,686	Paid Apr. 2008	AX B, C
1.f	Credit card	\$24,860	Same debt as 1.d	AX G
1.g	Credit card	\$2,017	Paid 2007	Answer to SOR; Tr. 69-70; AX A
1.h	Collection	\$408	Paid Apr. 2008	AX D

### 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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines 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 over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, 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 the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It 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. 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 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 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.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an

“inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised where there is “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e). AG ¶ 19(b) is not raised because there is no evidence of “frivolous or irresponsible spending.”

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (b), (c) and (e), the burden shifted to Applicant to produce evidence 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).

Security concerns based on financial problems can be mitigated by showing that “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(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was “so long ago,” or “so infrequent,” or “occurred under such circumstances that it is unlikely to recur.” If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

The first two prongs (“so long ago” and “so infrequent”) are not established because Applicant incurred numerous delinquent debts, three of them were resolved only recently, and the recently negotiated payment plans for the three debts are not yet completed. The third prong (“under such circumstances that it is unlikely to recur”) is established. Applicant’s delinquent debts were caused by unwise purchases of multiple homes and the expense of maintaining two households while working at a location distant from where her spouse resided. Applicant is resolving the debt incurred when her manufactured home was repossessed. She is divorced, now owns only one home that is generating rental income, and earns a substantial income that is more than adequate to satisfy her financial obligations.

The fourth prong (“does not cast doubt”) also is established. Applicant held a security clearance for many years, apparently without incident. She is well respected by her friends, co-workers, and supervisors. She had no financial problems until about 2002. She responded to the debts alleged in the SOR decisively and responsibly. I conclude AG ¶ 20(a) is established.

Security concerns under this guideline also can be mitigated by showing that “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(b). Both prongs, i.e. conditions beyond the persons’s control and responsible conduct, must be established. Applicant’s first job relocation in October 1999 was a circumstance beyond her control, but her second job relocation to avoid a layoff was voluntary, albeit prudent. The damage to her manufactured home by renters was beyond her control. Her divorce was a circumstance beyond her control, but the debts had already occurred by this time, and she had voluntarily put all debts in her name because of her spouse’s bad credit record. Her decision to purchase two additional homes was voluntary. Since 2002, she has acted responsibly in resolving her financial problems. I conclude AG ¶ 20(b) applies only to her involuntary move in October 1999.

Security concerns under this guideline also can be mitigated by showing that “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(c). This mitigating condition also has two prongs that may be either disjunctive or conjunctive. If the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. However, if the person has not received counseling, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control.

Applicant sought financial counseling in November 2005. She negotiated separate payment plans for the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d, because they were not included in her debt settlement plan. She has sufficient income to make the payments on her debts and has done so. I conclude AG ¶ 20(c) is established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant began working on her financial situation in November 2005, long before the SOR was issued. She paid the debt alleged in SOR ¶ 1.g in 2007. She negotiated a payment plan for the debt alleged in SOR ¶ 1.d in October 2007. She negotiated a payment plan for the debt alleged in SOR ¶ 1.c in January 2008. In April 2008, she used her income tax refund to pay the debts alleged in SOR ¶¶ 1.e and 1.h., and she negotiated payment plans for the debt alleged in SOR ¶ 1.b. I conclude AG ¶ 20(d) is established.

Security concerns under this guideline also can be mitigating by showing “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(e). Applicant disputed the debt alleged in SOR ¶ 1.f and provided documentary evidence that it was a duplicate of the debt alleged in SOR ¶ 1.d. I conclude AG ¶ 20(e) is established with respect to SOR ¶ 1.f.

### **Whole Person Concept**

Under 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 the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a mature adult who has spent virtually all of her career as a government contractor. She and her former spouse made some unwise financial decisions while they were living separately because of her job. She had no financial problems before 2002. After her divorce in June 2005, she addressed her financial situation aggressively, and her financial situation is under control. She lives frugally and has a good income. She was candid, sincere, and credible at the hearing.

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 mitigated the security concerns based on financial considerations. Accordingly, I conclude she has 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 for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

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

Subparagraphs 1.a-1.h: For Applicant

## **Conclusion**

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

---

LeRoy F. Foreman  
Administrative Judge