



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



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 08-10490  
SSN: XXX-XX-XXXX )  
 )  
Applicant for Security Clearance )

**Appearances**

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

August 31, 2009

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on September 14, 2004. On July 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F for Applicant. 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 answered the SOR in writing on February 24, 2009, and requested a hearing before an administrative judge. DOHA received her response on March 3, 2009. Department Counsel was prepared to proceed on March 20, 2009. On April 2, 2009, the case was assigned to another administrative judge, and on May 11, 2009, the case was reassigned to me due to caseload considerations. DOHA issued a notice of hearing on April 23, 2009, scheduling the hearing for May 18, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 6, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through K, which were received without objection, and testified on her own behalf.

I held the record open until May 29, 2009 to afford the Applicant the opportunity to submit additional evidence. Applicant timely submitted AE L through AE DD, which were received without objection. DOHA received the hearing transcript (Tr.) on June 3, 2009.

### **Procedural Matters**

At the onset of the hearing, Department Counsel stated the debts alleged in SOR ¶¶ 1.b., 1.c., 1.d., 1.g. and 1.h. had been paid or resolved as evidenced by Applicant's documentation. Tr. 13-15, AE A - AE E.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a., 1.b., 1.e., and 1.f.; and denied 1.c., 1.d., 1.g., and 1.h. Her admissions are accepted as findings of fact.

Applicant is a 38-year-old integrated logistics manager, who has been employed by a defense contractor since August 2008. Tr. 17, 25, She previously held a secret security clearance while in the U.S. Army, discussed *infra*. She does not currently have a clearance, and seeks a secret security clearance as a condition of her employment. Tr. 26-28.

Applicant graduated from high school in June 1989. Tr. 20-21. She served in the U.S. Army from October 1996 to November 2002, and was honorably discharged as a Specialist 4 (pay grade E-4). While in the Army, she successfully held a secret clearance during her entire enlistment, and also during a brief period of employment as a Department of the Army civilian employee from July 2003 to September 2003. Tr. 18, 26-28, AE H, AE I, AE J. Applicant has earned 134 college credit hours and has one course to complete before earning a Bachelor of Science degree in Professional Aeronautics. She also attended a vocational school from June 2005 to September 2005 to learn software programming. Tr. 22-24, 30, GE 1.

Applicant has never been married, and has a 17-year-old son for whom she has custody of and provides for his sole support. Tr. 18, 21, GE 1.

Applicant's background investigation addressed her financial situation and included the review of her July 2008 e-QIP, her November 2008 and August 2008 credit reports, her September 2008 Office of Personnel Management (OPM) Personal Subject Interview, and April 1992 and March 2007 judgment and lien filings. GE 1 – 6.

Applicant's SOR identified eight separate line items, which included three liens, and five collection accounts approximating \$44,803. (Debts in SOR ¶¶ 1.c. and 1.d. are duplicates.) Tr. 13.

Applicant attributes her financial problems to an overpayment and recoupment that occurred in the Army, and two periods of unemployment following her discharge from the Army. It was not until she secured her present job that she was able to earn sufficient income to support herself and her family. Tr. 32-38.

Since her SOR was issued, Applicant has paid off or resolved all debts alleged in her SOR. As noted at the onset of the hearing, Department Counsel stated the debts alleged in SOR ¶¶ 1.b., 1.c., 1.d., 1.g. and 1.h. have been paid or resolved as evidenced by Applicant's documentation. AE A - AE E. After her hearing, Applicant submitted documentation that she took out a loan from her 401k to pay off the \$1,163 cable bill alleged in SOR ¶ 1.a. AE L – AE M. She also submitted additional documentation that she had begun repayment and was current on her student loans, which were alleged in SOR ¶¶ 1.e. and 1.f. The respective amounts were \$16,348 and \$23,644, which comprised the majority of overall debt alleged. Applicant set up a repayment plan at the rate of \$275 per month through direct debit beginning in March 2009. AE C, AE O – AE V.

Additionally, after her hearing she provided evidence of having sought financial counseling and provided updates of her progress in attaining financial stability. She also included a budget reflecting that she is living within her means. AE N, AE W - AE X, AE BB - AE DD.

Applicant provided a reference letter from her supervisor and a performance evaluation covering the period of August 2008 to September 2008. Her reference letter noted Applicant's "high level of performance, attention to detail and a willingness to go above and beyond to ensure the mission of supporting our soldiers is fulfilled." Because of Applicant's exceptional performance, she was promoted from supply analyst to her current position of integrated logistics manager shortly after being employed by her company. Applicant has received an overall "outstanding" on her evaluation on both of her performance reviews. AE F – AE B.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 an applicant 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 overarching 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.

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 [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. 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 (4<sup>th</sup> 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). 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**

Under AG 18, the Government’s concern is:

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 government established that Applicant owed substantial debt as reflected in SOR ¶¶ 1.a. – 1.h. through her admissions and evidence presented. At the time the SOR was issued in January 2009, Applicant owed eight debts approximating \$44,803.

Under AG ¶ 19, two disqualifying conditions raise a security concern:

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

Applicant’s indebtedness stems from an overpayment and recoupment issue while in the Army and two periods of unemployment. This contributed to Applicant being placed in a financial tailspin.

Her financial situation has substantially improved as a result of finding a job which provides her with enough income to support her family and meet her financial obligations. Notably, she paid or resolved five of the eight debts alleged before her hearing commenced, and has made significant progress in resolving her student loans. After her hearing, she provided further documentation of her progress towards repayment of her student loans, and of her having taken out a loan from her 401k account to pay off her cable bill.

She has sought financial counseling, and submitted a credible budget reflecting that she is living within her means. All indicators point to an individual who has taken this process quite seriously and taken what appears to be all reasonable steps to correct her financial situation. What is different now as opposed to before is that she has the means, tools and resolve to achieve financial stability.

Under AG ¶ 20, there are three potential mitigating conditions:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) fully applies. Applicant's indebtedness began while on active duty as a result of an overpayment. She struggled to repay her indebtedness to the Army, and after her discharge from the Army, she experienced two periods of unemployment. She has also been solely responsible for providing full support to her son.

AG ¶ 20(c) applies because Applicant sought financial counseling and there are clear indications that her finances are being resolved and are under control. AG ¶ 20(d) applies because Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. In short, Applicant has made substantial progress in turning her financial situation around. She has established a viable budget, which shows a net remainder after her monthly bills are paid.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. I also gave considerable weight to her years of honorable service in the Army, her years of successfully holding a secret clearance, her service as a defense contractor, and her being the sole provider for her 17-year-old son. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>1</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

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<sup>1</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

## **Formal Findings**

Formal findings for or against Applicant 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.h.:                      For Applicant

## **Conclusion**

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

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ROBERT J. TUIDER  
Administrative Judge