



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-11087
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: *Pro se*

December 29, 2009

**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), based on six delinquent debts totaling about \$27,217. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on June 11, 2008. On April 27, 2009, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on May 4, 2009; answered it on July 20, 2009; and requested a hearing before an administrative judge. DOHA received the request on July

27, 2009. Department Counsel was ready to proceed on September 8, 2009, and the case was assigned to me on September 10, 2009. DOHA issued a notice of hearing on September 14, 2009, scheduling the hearing for October 7, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection, and Applicant testified. I kept the record open until October 23, 2009, to enable Applicant to submit documentary evidence. She timely submitted Applicant's Exhibits (AX) A and B, and they were admitted without objection. DOHA received the transcript (Tr.) on October 16, 2009.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the delinquent debts alleged in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 37-year-old technical illustrator employed by a defense contractor. She attended an art institute from March 1992 to March 1994 and received an associate's degree. She has worked for her current employer since April 2008. She is also self-employed as a freelance graphic designer. She has never held a security clearance.

Applicant was married in April 1999 (Tr. 31). She and her spouse separated in November 2007, and for about a year she hoped for a possible reconciliation (Tr. 32). As of the date of the hearing, she was saving money for attorney's fees (Tr. 41). After the hearing, she contacted an attorney with a view toward filing for divorce (AX A; AX B).

For about 18 months before their separation, Applicant's husband was unemployed for most of the time. She testified he "would either get fired, or he would quit after a month or two." She decided to separate because her husband was irresponsible and would not contribute financially to the marriage (Tr. 39).

The debts alleged in the SOR were joint debts incurred during their marriage, and they have not yet reached any agreement on responsibility for resolving the debts (Tr. 31). As of the date of the hearing, she had taken no action to resolve the debts (Tr. 33). She has not sought or received financial counseling (Tr. 35, 42).

The SOR alleges an unpaid utility bill for \$261 (¶ 1.a), a medical bill for \$307 (¶ 1.b), a credit card account for \$871 (¶ 1.c), and an installment contract for camera equipment for \$1,347 (¶ 1.e) (Tr. 27-29). The two largest debts are a line of credit for \$7,431 (SOR ¶ 1.d), and \$17,000 deficiency from the repossession of a truck (SOR ¶ 1.f). These two debts were incurred in 2005, before Applicant and her husband separated, and both were connected to his attempt to start his own business to design and construct kitchens and bathrooms. The business failed (Tr. 33-35).

After the hearing, Applicant contacted the collection agency for the medical debt alleged in SOR ¶ 1.b. According to her post-hearing letter (AX A), she asked the representative of the collection agency about the \$307 balance alleged to be due and was informed that “they did not have any information regarding that balance.” She was questioned about this debt by a security investigator in July 2008 (GX 2 at 7), and asked about it in DOHA interrogatories in February 2009 (GX 3 at 3), and in both instances she indicated she did not know anything about it. The credit report reflects that the date of last activity on this account was in February 2005 (GX 4 at 1).

Applicant testified her take-home pay is about \$2,400 per month. She lives with a married couple from whom she rents a master bedroom. She drives a four-year-old car. Her living expenses are about \$1,400, leaving a net monthly remainder of about \$1,000 (Tr. 37).

### **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 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 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 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.

Three potentially disqualifying conditions under this guideline are relevant: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”); AG ¶ 19(c) (“a history of not meeting financial obligations”); and AG ¶ 19(e) (“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 these three disqualifying conditions, shifting the burden to her 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). Applicant's delinquent debts are numerous and not yet resolved. They occurred under circumstances making them unlikely to recur, because she has separated from her husband, whose irresponsibility was the primary cause of her financial problems. However, her lack of any meaningful action to resolve the debts, some of which are almost five years old, raises doubt about her current reliability, trustworthiness, and good judgment. I conclude this mitigating condition is not 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 person's control and responsible conduct, must be established. Applicant's current financial problems were the result of her husband's financial irresponsibility, which was beyond her control. However, she has not acted responsibly to address the debts. She was questioned about the medical debt in SOR ¶ 1.b by an investigator in July 2008 and in DOHA interrogatories in February 2009, and both times she indicated she would investigate it, but she made no inquiries until after the hearing. She has not made any effort to resolve any of the other debts.

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 is not established because Applicant has not sought or received any financial counseling.

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). Good faith means acting 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). This mitigating condition is not established because Applicant has not initiated any effort to resolve her debts.

Security concerns under this guideline also can be mitigated 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). This mitigating condition is not established. Although Applicant has repeatedly questioned whether she owes the medical debt alleged in SOR ¶ 1.b, she has done nothing to dispute it.

## **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 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.

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. 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 mature adult. She presented herself as articulate, intelligent, candid, and sincere, but she acquiesced in her husband's business venture and assumed responsibility for two substantial loans, even though she knew he was financially irresponsible. She has taken no meaningful actions to resolve her financial problems.

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**

Subparagraphs 1.a-1.f:

Against Applicant

## **Conclusion**

In light of all of the circumstances, 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