



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



In the matter of: )  
)  
) ISCR Case No. 09-01284  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid Williams, Esquire, and Richard Stevens, Esquire,  
Department Counsel  
For Applicant: *Pro se*

September 30, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant acquired 13 debts totaling \$19,616 that have been delinquent for a number of years. Her evidence is insufficient to establish a good-faith effort in the resolution of these debts, or a current track record of financial responsibility. There are no clear indications that her financial problems are being resolved or are under control. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 25, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

<sup>1</sup> Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On July 6, 2010, DOHA issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant answered the SOR on November 29, 2010. She requested a hearing before an administrative judge. The case was assigned to me on June 3, 2011. DOHA issued a notice of hearing on June 9, 2011, convening a hearing on July 20, 2011. At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified, and offered three exhibits (AE 1 through 3). AE 3 was received post-hearing.<sup>3</sup> All exhibits were received without objection. DOHA received the transcript of the hearing (Tr.) on July 27, 2011.

### **Findings of Fact**

Applicant admitted the factual allegations under SOR ¶¶ 1.c through 1.e, 1.l, and 1.m. She denied SOR ¶¶ 1.a, 1.b, and 1.f through 1.k. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, her answers to the SOR and interrogatories, and her demeanor and testimony, I make the following additional findings of fact.

Applicant is a 45-year-old mail clerk employed by a defense contractor since August 1998. She graduated from high school in 1984. Applicant testified she was granted access to classified information at the top secret level shortly after she submitted her 2008 SCA. Her access to classified information was suspended when she was issued her SOR. She indicated that her position and pay were downgraded after her clearance was suspended. There is no evidence she has compromised or caused others to compromise classified information. She married her husband in May 2007. She has a 28-year-old daughter from a prior relationship, and five stepchildren ages 22, 21, 21, 18, and 15. Her daughter is self-supporting, and it is unclear whether Applicant provides support for her stepchildren.

In her answers to the financial questions in her August 2008 SCA, Applicant indicated that during the last seven years she had no property repossessed for failing to pay a debt, that she did not have any debts over 180 days delinquent, and that she was not currently over 90 days delinquent on any debts. Applicant's background investigation addressed her financial problems and revealed the 13 delinquent debts alleged in the SOR, totaling \$19,616.

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<sup>2</sup> Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

<sup>3</sup> AE3 is an unsigned letter, presumably to the credit bureaus (addressed "To whom it may concern"), dated August 4, 2011 (post-hearing), disputing a \$30 medical debt.

Applicant explained that in 2000, she was in a relationship with a man and they purchased a home together. In July 2007, the relationship ended and she refinanced the home individually to buy out her partner. She took a mortgage, and at the time, she believed that all her insurance and taxes were also included in the monthly mortgage payments. Later on, she discovered that was not the case. She was unable to meet her mortgage payments because of the additional mortgage expenses and because her mortgage payments ballooned. She claimed that even though her financial situation was strained, she was making her payments on time until one of her mortgage payments was lost. After that, she was not able to catch up with the mortgage payments.

Applicant's home was foreclosed in 2007, and sold in a foreclosure auction in April 2008. Her deficiency on the home mortgage payments is alleged in SOR ¶ 1.e. She does not know how much she owes as a result of the mortgage foreclosure and auction of her home. She claimed she tried to contact the lender to modify her mortgage, but received no assistance. Applicant presented no documentary evidence to support her claim of negotiations with the lender.

SOR ¶¶ 1.a, 1.b, and 1.f through 1.k allege seven delinquent medical accounts, which Applicant denied. These accounts are established as Applicant's delinquent debts on the September 2008 (GE 3) and March 2010 (GE 4) credit reports. At her hearing, Applicant claimed she contacted all her medical providers to determine whether these are her delinquent debts. She claimed she was told by some of the medical providers that she is no longer in their accounting systems. She did not receive a response from other medical providers. Applicant also claimed she did not recognize the debt or the creditor alleged in SOR ¶ 1.k. She presented no documentary evidence to support her claims of efforts taken to contact providers, to dispute her debts, or to otherwise resolve those debts.

Applicant admitted the delinquent medical account alleged in SOR ¶ 1.c. She claimed she paid that debt in April 2011. She presented no documentary evidence to support her claim. Concerning SOR ¶ 1.l, Applicant testified she telephonically contacted the creditor two years ago, and again the Friday before her hearing (July 15, 2011). She claimed the creditor informed her telephonically that she was no longer in their system. (Tr. 46-47) She presented no documentary evidence to support her claims. Concerning the debt alleged in SOR ¶ 1.m, Applicant admitted that she purchased a dining table on credit, and that account became delinquent six years ago. She claimed she contacted the creditor the day before her hearing and settled the \$700 delinquent account for \$400. (Tr. 36) She has to pay the \$400 sometime in the near future to take advantage of the settlement offer. She presented no documentary evidence of any payments made.

A review of Applicant's credit reports (GE 2, 3, and 4) show that she paid other delinquent debts, including some delinquent medical accounts. The credit reports also document the debts alleged in the SOR as Applicant's debts, which have been delinquent for a number of years. She presented no documentary evidence of any payments made toward any of the SOR debts. Applicant's November 2009 personal

financial statement indicates a net monthly income of approximately \$1,760. Her monthly expenses totaled \$1,275. She listed no monthly debt payments. Applicant did not participate in financial counseling, and she does not have a working budget. (Tr. 67)

Applicant expressed remorse for her financial situation. She understands she is responsible for her financial obligations and intends to pay them sometime in the future. She needs her job to pay her delinquent obligations and support her family. Without her security clearance, she believes she would lose her job. She developed financial problems because she was a single parent and struggled to make ends meet. She believes she was doing all that she could do under her circumstances. Although Applicant is currently married and her spouse works, he does not contribute financially to the household. (Tr. 66-67)

### **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 to reach his 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

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**

Under Guideline F, the security concern is that 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. AG ¶ 18.

The evidence established that Applicant acquired the 13 delinquent debts alleged in the SOR, totaling \$19,600, that have been delinquent for a number of years. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

Applicant has a history of ongoing financial problems, dating back to 2004, and the evidence fails to show they developed under circumstances that are unlikely to recur. She continues to acquire delinquent debt without resolving her past delinquent financial obligations. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, e.g., her 2004 separation from her

partner, and she was self-supporting until she married her husband in 2007. According to Applicant, her husband does not currently contribute financially to the household.

Notwithstanding, Applicant has been gainfully employed for the same Government contractor since 1998. Her circumstances do not fully explain her precarious financial situation. Applicant presented no evidence of contacts with creditors, settlement agreements, or payments made to the SOR creditors. The only documentary evidence of efforts to dispute her debts was an unsigned letter, dated August 4, 2011, that was submitted post hearing. (AE 3) Applicant's documentary evidence is not sufficient to show that she made good-faith efforts to resolve her debts, or that she has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply because there are no clear indications that her financial problems are being resolved or under control. She did not receive financial counseling. The remaining mitigating conditions are not reasonably supported by the facts in this case.

Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited documentary evidence of efforts to resolve her legal financial obligations, Applicant's information is insufficient to establish that her financial problems will be resolved in the foreseeable future, or that they are unlikely to recur.

### **Whole-Person Concept**

Under the whole-person concept, the 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. The 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her work history with a Government contractor. She has held a security clearance since 2008, with no adverse incidents. She is a good mother and wife.

Considering the record as a whole, I find that security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant's evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve her financial problems in a timely manner, or a current track record of financial responsibility. Applicant's information is insufficient to establish that her financial problems will be resolved in the foreseeable future, or that they are unlikely to recur. The mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. Applicant failed to mitigate the security concerns arising from her financial considerations.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.m:	Against Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge