



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-02297
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

August 24, 2009

**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 December 15, 2008. On April 24, 2009, 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. 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 5, 2009; answered it on May 20, 2009; and requested a hearing before an administrative judge. DOHA received the request on May 26, 2009. Department Counsel was ready to proceed on June 30, 2009, and the case

was assigned to me on July 1, 2009. DOHA issued a notice of hearing on July 2, 2009, scheduling the hearing for July 28, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through K, which were admitted without objection. I kept the record open until August 14, 2009, to enable her to submit additional documentary evidence regarding the delinquent mortgage alleged in SOR ¶ 1.j (Tr. 62). She did not submit any additional evidence. DOHA received the transcript (Tr.) on August 5, 2009. The record closed on August 14, 2009.

### **Amendment of SOR**

The SOR listed only Applicant's first and last names. On my own motion, without objection from Department Counsel, and in accordance with Applicant's preference, I amended the SOR to list her full name (Tr. 5-6).

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the allegations in the SOR except SOR ¶ 1.h. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old analyst for a defense federal contractor. She received an associate's degree in information technology networking and security management from a technical college in June 2005 and a bachelor's degree in computer networking in February 2007. She began work toward a master's degree in management information systems but could not afford to continue it (Tr. 52). She has been employed by her current employer for about six months (Tr. 52-53). She has been married since March 2006, and has one child and one stepchild. She has never held a security clearance.

The SOR alleges ten delinquent debts totaling about \$31,899. Applicant admitted all the debts except the \$17 debt alleged in SOR ¶ 1.h. She admitted that she has shown "some lack of self-control" with her finances (Tr. 33). She testified most of the delinquent debts began to accumulate around February 2008, when her husband's job was cut back to 10 or 15 hours per week (Tr. 58). They had a baby at about the same time, and Applicant was drawing reduced pay while on maternity leave. Her husband's work hours did not increase for about six months. Her husband is now working three part-time jobs (Tr. 53). She was unaware of the full extent of their indebtedness until she received the SOR (Tr. 34).

Applicant negotiated payment plans for the medical debts alleged in SOR ¶¶ 1.a through 1.f. As of the date of the hearing, all the medical debts had been paid.

The debt alleged in SOR ¶ 1.i was the result of a voluntary repossession of a truck, and it is being collected by garnishment of her pay, in the amount of \$1,080 per

month (AX F; AX K). Applicant testified she contacted the lender in an effort to make payment arrangements, but the garnishments were imposed before they reached an agreement (Tr. 38-39).

Applicant and her spouse avoided foreclosure by negotiating a loan modification agreement for their delinquent home mortgage, but the agreement was cancelled when they failed to make the first monthly payment of \$2,370. They have contacted another lender in an effort to renegotiate the loan, but have not reached an agreement (Tr. 40-41). The outstanding balance on the mortgage is \$293,442 (AX G).

Applicant's most recent credit report dated March 16, 2009, reflected four student loans in a deferred status, with balances of \$52,997, \$3,500, \$3,500, and \$2,625 (GX 3 at 2, 4). These loans were not reported as delinquent and were not alleged in the SOR.

The table below summarizes the evidence concerning the delinquent debts alleged in the SOR.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	Medical	\$82	Paid	AX B
1.b	Medical	\$123	Paid	AX A at 2-3; AX B; Tr. 35-36
1.c	Medical	\$551	Paid	AX B
1.d	Medical	\$200	Paid	AX B
1.e	Medical	\$133	Paid	AX B
1.f	Medical	\$84	Paid	AX C; Tr. 36
1.g	Jewelry	\$1,100	Making payments	AX A at 3; AX D; Tr. 36-37
1.h	Credit card	\$17	Paid	AX E
1.i	Truck repossession	\$4,697	Pay Garnished	AX A at 5, 9, 11; AX F & K; Tr. 38-40
1.j	Home mortgage	Past due \$24,912	Loan modified but Applicant failed to make first payment	AX G; Tr. 41

Applicant submitted a monthly budget reflecting family net income of \$5,260 and expenses of \$4,603, leaving \$657 per month to pay the debts alleged in SOR ¶¶ 1.g, 1.i, and 1.j (AX K). One of their two car payments (\$680 per month) is for a sport utility vehicle which is worth less than the amount of the loan. The other car payment (\$350 per month) is for a four-year-old luxury import car (Tr. 55). The loan on this car was obtained by Applicant's mother-in-law, who has better credit and was able to secure a lower interest rate. The budget does not provide for their house payment (Tr. 54). Applicant admitted that they could cut their expenses further by eliminating some items such as cell phones and satellite radio service (Tr. 56-57). Applicant and her spouse have not sought or received financial counseling (Tr. 59).

A coworker from a former job described her as resourceful, a quick study, and a hard worker (AX H). Another colleague from a former job commented favorably on her integrity, responsibility, and ambition, characterizing her as a leader rather than a follower (AX I). Her current supervisors describe her as conscientious and hard-working (AX J). A current coworker and social friend testified she is very responsible, dedicated, and trustworthy (Tr. 65-66).

### **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.

Several disqualifying conditions under this guideline are relevant. AG ¶ 19(a) is raised by an "inability or unwillingness to satisfy debts." AG ¶ 19(c) is raised by "a history of not meeting financial obligations." AG ¶ 19(e) is raised by "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). This mitigating condition is not established. Applicant's delinquent debts were recent, numerous, did not occur under circumstances unlikely to recur, and are not yet fully resolved.

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. There is no evidence that Applicant’s medical bills related to childbirth were unexpected or an emergency. Her spouse’s loss of income, however, was beyond her control. She has reacted responsibly, settling all the medical bills, negotiating payment agreements on other debts when possible, and attempting to renegotiate the home mortgage. I conclude this mitigating condition is established.

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 counseling, and her financial situation is not under control.

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). An applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.* This mitigating condition is partially established. Applicant has made a good-faith effort to resolve her debts, but she does not yet have a viable plan to resolve the delinquent home mortgage.

## **Whole Person Analysis**

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 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 well-educated and intelligent. She was candid and sincere at the hearing. She has worked hard to resolve her financial problems, but she is paying the price for her admittedly poor decisions in the past. She is a good candidate for financial counselling, but she has not sought it. She has a large car payment and owes more than the car is worth. She is in grave danger of having her home foreclosed, and she has no plan in place to avoid foreclosure. She has no reserve funds for unexpected expenses. She will face further financial obligations when her student loans are no longer deferred. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (Debts not alleged in the SOR may be considered in whole person analysis.). She has shown no reasonable likelihood that she will achieve financial stability in the foreseeable future.

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 her financial problems. 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 for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.i:  
Subparagraph 1.j:

For Applicant  
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