



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 09-07439
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

June 22, 2011

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On May 7, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an

administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant answered the SOR on November 2, 2010, and elected to have her case decided on the written record in lieu of a hearing.

A complete copy of the file of relevant material (FORM), dated March 1, 2011, was provided to her by letter dated March 9, 2011. Applicant received the FORM on March 18, 2011. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not submit any materials, comments, or objections in response the FORM. The case was assigned to me on May 12, 2011.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1a through 1j, and 1m through 1r. She denied the allegations in SOR ¶¶ 1k, 1l, and 1s, and stated that she is making payments on these three debts. She contends that SOR ¶ 1b and SOR ¶ 1r are the same debt. Applicant further stated the debt alleged in SOR ¶ 1n was paid in December 2009. She substantiated her claims with documentation. Applicant's admissions and explanations are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

### **Background Information**

Applicant is a 55-year-old independent contractor driver, who has been employed by a defense contractor since February 2009.<sup>1</sup> She has a "high school diploma or equivalent" that was awarded in June 1974. No further information regarding Applicant's education background is available. Applicant was previously married two times and is currently married to her third husband. She was married to her first husband from June 1975 to November 1978 and married to her second husband from June 1979 to November 1986. Those marriages ended by divorce. She married her third and current husband in January 1992. She has five adult children and four adult stepchildren. Applicant did not serve in the armed forces. She is a first-time applicant for a security clearance.

### **Financial Considerations**

Applicant disclosed several areas of concern regarding her financial history in her May 2009 e-QIP. These areas of concern included disclosure of a repossession, bills turned over to a collection agency, and debts currently over 90 days delinquent. (Item 4.) In August 2009, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. During that interview, the investigator discussed in detail Applicant's

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<sup>1</sup> The source for Applicant's biographical information is derived from her May 2009 e-QIP unless otherwise stated.

financial situation with her. The investigator reviewed Applicant's debts from her credit report and discussed the circumstances that led to her indebtedness. (Item 5.)

During her OPM interview, Applicant explained that her financial problems began in December 2007. She and her husband were working for the same employer. That employer sold the company to a new owner, who eliminated their benefits and had difficulty making payroll. As a result of these problems with the new owner, Applicant's husband quit in May 2008 and Applicant quit in July 2008. In summer 2008, Applicant and her husband obtained their commercial driver's licenses to become truck drivers and enrolled in driving school. In August 2008, Applicant developed an eye affliction and had to leave driving school before completing the course. Applicant was unemployed and was recovering until January 2009. Applicant's spouse secured employment as a truck driver after completing driving school. However, he was fired in December 2008 shortly after beginning his new job when he was involved in an accident. His employer held him responsible for the accident and withheld his last pay check of approximately \$5,000 to cover damages. The combination of these events contributed to Applicant's current financial situation. Although Applicant and her husband received financial help from family members, the help they received was not enough to make up their financial shortfall. (Item 5 (101).)

Applicant's SOR alleges 19 debts totaling \$25,959. (SOR ¶¶ 1a – 1s.) Apart from the three debts that Applicant is making payments on, the two debts that Applicant stated are duplicates, and the debt that is paid, the FORM contains no further documentation that the remaining debts have been or are being resolved. (SOR Answer, Item 5.)

Applicant presented no evidence that she has participated in financial counseling or that she is following a viable budget. Her January 2009 personal financial statement indicates that she and her husband earn a net monthly income of \$4,238 and have a net monthly remainder of \$389. As assets, Applicant listed \$5 in her savings account and no other assets such as money in a checking account, real estate, stocks, bonds, car, etc. (Item 5 (99).) Applicant summarized her position, "We have always been able to pay our bills on time till now and it has been very hard as well as stressful to have to go through this at our age but we do plan to keep working and paying them until all are paid off. We are honest people with a low income but we still have pride that we have survived the hard changes in our lives." (Item 5 (104).) As of March 2011, Applicant presented no additional documentary evidence of efforts to contact creditors, settle debts, make payments, or otherwise resolve her financial obligations.

### **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.” *Egan* at U.S. 528.

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 SOR alleges and the evidence establishes that Applicant owes 14 debts discounting the three debts she is making payments on, the two debts that are duplicates, and the one debt that is paid. These debts have been ongoing for several years and remain unpaid or unresolved. AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations" apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (a) 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) 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; and
- (f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. Her financial problems are ongoing, and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast

doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts such as loss of employment in 2008, uncovered medical bills, and reduction in income. Notwithstanding, Applicant presented little or no documentary evidence showing that she acted responsibly in the acquisition of her debts, 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 Applicant did not receive financial counseling and there are no clear indications that her financial problems are being resolved or are under control. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited evidence of efforts to resolve her financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

### **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). My comments in the Analysis section are incorporated in the whole-person discussion.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for the years she was able to maintain financial responsibility. The record supports the notion that Applicant and her husband are good and decent people, who have worked hard their adult lives.

None the less, security concerns remain about Applicant's current financial responsibility. Applicant's documentary 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. Her failure to address the remaining SOR debts indicates she is financially overextended. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude 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 1a – 1j:	Against Applicant
Subparagraphs 1k – 1l:	For Applicant
Subparagraph 1m:	Against Applicant
Subparagraph 1n:	For Applicant
Subparagraph 1o – 1q:	Against Applicant
Subparagraph 1r – 1s:	For 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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ROBERT J. TUIDER  
Administrative Judge