



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



In the matter of:	)	
	)	
[Redacted] <sup>1</sup>	)	ISCR Case No. 10-01802
	)	
Applicant for Security Clearance	)	

**Appearances**

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

November 28, 2011

**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 3, 2009. On March 25, 2011, 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. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

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<sup>1</sup> Applicant's last name is reflected on her security clearance application and in the case database as [redacted], and on the Statement of Reasons as [redacted]. At the time of the hearing, she had divorced and resumed use of her maiden name, reflected in the caption of this decision.

Applicant received the SOR on March 31, 2011; answered it on May 24, 2011; and requested a decision on the record without a hearing before an administrative judge. On June 9, 2011, she requested a hearing. Department Counsel was ready to proceed on June 30, 2011, and the case was assigned to me on July 25, 2011. DOHA issued a notice of hearing on September 15, 2011, scheduling it for October 25, 2011.<sup>2</sup> I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Department Counsel submitted a demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until November 14, 2011, to enable her to obtain a signed copy of AX A and to submit additional documentary evidence. DOHA received the transcript (Tr.) on November 1, 2011.

Applicant timely submitted a signed copy of AX A. On November 17, 2011, she submitted AX D, E, and F. Department Counsel did not object to the untimely submissions. I admitted the untimely evidence. Department Counsel's comments regarding the untimely submission are attached to the record as HX II.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.f, 1.h, 1.j, 1.k, 1.p, 1.q, and 1.s-1.v. She denied all the other allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old logistics specialist employed by a defense contractor. She served in the U.S. Air Force from June 1997 to April 2007. She held a security clearance while in the Air Force, and she seeks to continue it. (Tr. 14.)

Applicant married a fellow airman in May 1998, and they divorced in February 2007. (Attachment to Answer; Tr. 42.) She remarried in December 2008 and divorced in October 2010. (GX 1 at 24; Attachment to Answer; Tr. 43.) She has custody of the three children from her first marriage, ages 11, 10, and 8. (Tr. 43, 45.) The oldest child has special educational needs, because he is blind in one eye and has limited vision in the other eye. Applicant incurs extra expenses for his glasses, but his educational expenses have not been significant. (Tr. 44.) The children's father provides only sporadic child support and is currently unemployed. (Tr. 45.)

Applicant took college courses from July to November 2009 but did not receive a degree. She resumed her college education on a part-time basis in October 2011 and was still taking courses as of the date of the hearing. (AX C; Tr. 40-41.) Under the Post-9/11 GI Bill, she is receiving \$1,923 per month in addition to her tuition. She has about 18 months of eligibility remaining. (AX C; Tr. 50-51.)

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<sup>2</sup> Scheduling was delayed to permit consolidation of the docket at the hearing location.

After leaving the Air Force, Applicant worked for a defense contractor until August 2009. She was unemployed for about two months and then began working for her current employer in October 2009. Her spouse could not find steady employment. (GX 2 at 5.) She submitted a personal financial statement (PFS) in August 2010, reflecting monthly income of \$4,287, expenses of \$3,745, and a net remainder of \$542. Her PFS did not reflect any payments on her delinquent debts. At the hearing, she submitted a budget worksheet reflecting monthly net income of \$3,233, expenses of \$2,828, and a remainder of \$405. (AX B.) She lives with her mother to save money. In lieu of rent, she makes her mother's mortgage payment of \$1,072. (Tr. 47.) She recently negotiated a lower monthly car payment, reducing it from \$665 to \$488. (Tr. 49.)

As of the hearing date, none of the debts were resolved. After the hearing, Applicant settled the two debts alleged in SOR ¶¶ 1.j and 1.k. She stated that she had negotiated a payment plan for the delinquent car loan alleged in SOR ¶ 1.g, with payments to begin in December 2011, but she submitted no documentation of the payment plan. The table below summarizes the evidence regarding Applicant's debts:

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Answer</b>	<b>Status</b>	<b>Evidence</b>
1.a	Medical	\$29	Admit	Unpaid	GX 3 at 1; GX 5 at 1
1.b	Cable TV	\$296	Admit	Unpaid	GX 3 at 1
1.c	Medical	\$230	Admit	Unpaid	GX 3 at 1; GX 4 at 10
1.d	Bad check	\$35	Deny	Unpaid	GX 2 at 5; GX 3 at 1; GX 4 at 10
1.e	Bad check	\$35	Deny	Unpaid	GX 2 at 5; GX 3 at 1; GX 4 at 10
1.f	Credit card	\$424	Admit	Unpaid	GX 3 at 2; GX 4 at 8; GX 5 at 2
1.g	Car loan	\$28,543	Deny	Unresolved	GX 2 at 5; GX 3 at 2; GX 4 at 8-9; GX 5 at 2; Tr. 58-61; AX D
1.h	Credit card	\$1,117	Admit	Unpaid	GX 3 at 2; GX 4 at 5
1.i	Bad check	\$109	Deny	Unpaid	GX 2 at 5; GX 4 at 4;
1.j	Cell phone	\$400	Admit	Settled	GX 4 at 5; AX F
1.k	Telephone	\$50	Admit	Settled	GX 4 at 6; AX E
1.l	Bad check	\$84	Deny	Unpaid	GX 2 at 5; GX 4 at 7
1.m	Bad check	\$108	Deny	Unpaid	GX 2 at 5; GX 4 at 7
1.n	Medical	\$36	Deny	Unpaid	GX 4 at 9
1.o	Cell phone	\$1,255	Deny	Unpaid	GX 4 at 10
1.p	Bank overdraft	\$300	Admit	Unpaid	GX 4 at 10
1.q	Book club	\$85	Admit	Unpaid	GX 4 at 11
1.r	Bad check	\$56	Deny	Unpaid	GX 2 at 5; GX 4 at 11
1.s	Medical	\$153	Admit	Unpaid	GX 4 at 11
1.t	College Tuition	\$2,214	Admit	Unpaid	GX 4 at 12
1.u	Tuition	\$100	Admit	Unpaid	GX 4 at 12
1.v	Medical	\$86	Admit	Unpaid	GX 4 at 13

Applicant denied the bad checks alleged in SOR ¶¶ 1.d, 1.e, 1.l, 1.m, and 1.r; because the checks were written by her ex-husband before they divorced in 2007. At the hearing, she admitted that she was a joint owner of the account on which the checks were drawn. (GX 2 at 5; Tr. 56.),

Applicant's February 2011 credit report reflects that the debts alleged in SOR ¶¶ 1.a, 1.g, and 1.h are disputed, but it does not reflect the basis for the dispute. (GX 4 at 1-2.) Applicant denied the delinquent car loan alleged in SOR ¶ 1.g, because she disagreed with the amount alleged. The car was repossessed in November 2005, but she was able to redeem it. Shortly thereafter, the car was destroyed in an accident. As a result of the accident, she was charged with reckless driving and paid a fine. She received no insurance money because the insurance on the car lapsed two weeks before the accident. (Tr. 59.) The debt for the balance of the payments on the car loan is unsatisfied. (GX 2 at 5.)

Applicant received credit counseling while in the Air Force, but has not sought or received any counseling since her discharge. (Tr. 76-77.) She has taken no significant actions to dispute, validate, or resolve any of the debts alleged in the SOR. (Tr. 52-71.)

One of Applicant's coworkers, who has known her since October 2009, submitted a letter on her behalf. He described her as "an extremely competent worker with great attention to detail" and a "great team player. (AX A.)

### **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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 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).

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 SOR alleges 22 delinquent debts totaling about \$35,345. Applicant admitted 13 debts and denied 9. The evidence establishes all the alleged delinquent debts.

The concern under this guideline is set out in AG ¶ 18:

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.

Two disqualifying conditions under this guideline are established by the evidence: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). Thus, the burden shifted to Applicant to explain, refute, extenuate, or mitigate the facts.

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 because Applicant’s delinquent debts are ongoing, numerous, and did not occur under circumstances making them unlikely to recur.

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). Applicant’s first spouse was unable to obtain steady work. She has gone through two marital breakups and is solely responsible for her three children. However, the car loan debt alleged in SOR ¶ 1.g was the result of her reckless driving and letting the insurance lapse, which were not circumstances beyond her control. Furthermore, she has not acted responsibly. Instead, she has responded to her financial problems with inaction. I conclude that AG ¶ 20(b) is not 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, notwithstanding her credit counseling while in the Air Force, 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). Applicant took virtually no action to resolve her debts until after the hearing, when she settled the debts in SOR ¶¶ 1.j and 1.k. After the hearing, she stated that she had negotiated a payment plan on the car loan, but she provided no documentation of the plan and had made no payments on the car loan. Resolution of debts motivated by the pressure of keeping a security clearance does not establish good faith. I conclude that AG ¶ 20(d) is not established.

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). Applicant’s most recent credit report reflects that she disputed the three debts alleged in

SOR ¶¶ 1.a, 1.g, and 1.h, but she provided no proof of the basis of the disputes of evidence or actions to resolve them.

### **Whole-Person Concept**

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. In applying 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 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.

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 has served honorably in the Air Force, held a security clearance, and worked successfully for defense contractors. She presented herself at the hearing as an intelligent, articulate woman. She was candid and sincere at the hearing. She has taken some steps to reduce her monthly expenses, and she appears to be living within her means. However, she has little progress in resolving her long-standing delinquent debts, even though she has been employed almost continuously since her discharge from the Air Force and has a modest remainder at the end of each month. Many of the debts are for less than \$100, but she has taken no action to resolve them. A payment plan on the car loan would be a step in the right direction, but she needs to establish a track record of financial responsibility to mitigate the security concerns raised by her financial history.

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 continue 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.v:

Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge