



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 11-02087  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

December 22, 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 September 21, 2010. On August 9, 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.

Applicant received the SOR on August 15, 2011; answered it on August 16, 2011; and requested a hearing before an administrative judge. DOHA received the request on August 19, 2011. Department Counsel was ready to proceed on September

8, 2011, and the case was assigned to me on September 16, 2011. DOHA issued a notice of hearing on September 27, 2011, scheduling it for October 21, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until November 7, 2011, to enable her to submit additional documentary evidence. She timely submitted AX E through I, which were admitted without objection. Department Counsel's comments regarding AX E through I are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on October 31, 2011.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.q, 1.s, and 1.t. She denied the allegations in SOR ¶¶ 1.r and 1.u. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 40-year-old warehouse specialist employed by a federal contractor. She was employed by a private employer in 1998 and began working for federal contractors in May 2004. She was unemployed for about a month in 2005 when she was laid off. She has worked for her current employer since August 2008.

Applicant indicated on her security clearance application that she has never held a clearance, but she stated at the hearing that she was seeking to upgrade an existing clearance. (GX 1 at 43; Tr. 7-8.) She testified that she first received a clearance in 2007. (Tr. 32.)

Applicant attended college from October 2000 to March 2002 and received a degree in computer electronics. She has been attending college classes since August 2006 but has not yet received a diploma or degree. (GX 1 at 14-15.)

Applicant married her current spouse in March 2008. She previously married in March 1994 and divorced in August 2001. She has four children, ages 21, 18, 13, and 3 months. She receives child support from her first husband for the 18-year-old and the 13-year-old, but the payments are about \$16,000 in arrears. (Tr. 30-31.)

Applicant testified that she began falling behind on her payments after her divorce. She did not make the copayments on her medical expenses. Her student loans were deferred, and then they were in forbearance for a short time. She found out that her student loans were delinquent when she returned to school in 2006. (Tr. 50-51.)

The evidence regarding the delinquent debts alleged in the SOR is summarized below.

**SOR ¶¶ 1.a and 1.b (medical--\$178 and \$455).** Applicant testified that she had not yet determined who is collecting these medical debts. Both debts were referred for collection more than two years ago. They are unresolved. (GX 4 at 1; Tr. 39.)

**SOR ¶ 1.c (student loan--\$3,575).** The SOR alleges that this debt is a medical debt. Applicant testified and her March 2011 credit report reflects that this is a student loan. (Tr. 40-41; GX 5 at 1). She is making payments on the student loans alleged in SOR ¶¶ 1.o and 1.p, but there is no evidence of payments on this loan. Applicant testified that she contacted the collection agency and that they have no record of the debt. The debt does not appear on her September 2011 credit report, suggesting that it was consolidated with the other student loans referred for collection. (GX 4; Tr. 41.)

**SOR ¶¶ 1.d and 1.e (medical--\$37 and \$106).** These debts were referred for collection more than three years ago. They are unresolved. (GX 4 at 1; GX 5 at 2; Tr. 44.)

**SOR ¶ 1.f (telephone bill--\$540).** This debt is alleged to be a medical debt, but it is listed on her credit report as a cellular telephone bill. (GX 4 at 1.) It arose after Applicant's divorce, when she was living alone. (Tr. 51.) It is unresolved. (Tr. 44.)

**SOR ¶¶ 1.g and 1.h (medical--\$111 and \$180).** These debts were referred for collection more than three years ago. Applicant made four payments on these debts in September 2011. (GX 4 at 1-2; AX A at 2; Tr. 45.)

**SOR ¶¶ 1.i, 1.j, 1.k, and 1.l (medical--\$40, \$100, \$50, and \$80).** These debts are all more than five years old. Applicant testified that they have been paid. (Tr. 46.) Her documentary evidence shows payment of the \$40 debt and several others not alleged in the SOR. (AX A.) However, none of her documentary evidence specifically shows payment of SOR ¶¶ 1.j, 1.k, and 1.l, which appear to be unresolved.

**SOR ¶¶ 1.m and 1.n (collection accounts--\$496 and \$899).** SOR ¶ 1.m is a delinquent satellite television account, referred for collection more than three years ago. Applicant believes that SOR ¶ 1.n is a bank debt. It was charged off six years ago. These debts have not been resolved. (GX 4 at 2; Tr. 47.)

**SOR ¶¶ 1.o and 1.p (student loans--\$6,521 and \$3,883).** Applicant is making regular \$10 payments on these student loans. (AX C at 3-8; AX G; Tr. 47-48.)

**SOR ¶ 1.q (telephone bill--\$540).** This is the same debt as SOR ¶ 1.f.

**SOR ¶¶ 1.r and 1.u (delinquent mortgages (\$35,731 and \$151,000)).** Applicant and her husband purchased a home in July 2006 for \$170,000, with a down payment of \$4,500. They fell behind on their mortgage payments about a year later, when her husband's annual pay went down from \$35,000 to \$28,000. They were unsuccessful in negotiating a loan modification. Applicant's husband filed for Chapter 13 bankruptcy in 2007, and the first and second mortgages alleged in SOR ¶ 1.r and 1.u were included in the bankruptcy. Applicant was not included as a joint debtor in the bankruptcy, because it was filed before she and her husband married. (Tr. 62.) Her husband has been making payments to the bankruptcy trustee by payroll deduction for four years. They

moved out of the home in 2008, and the lender foreclosed on the property. (Tr. 54-55; AX D.) The primary lender sent Applicant and her husband a mortgage interest statement (Form 1098) for tax year 2010, reflecting that their beginning and ending balances were zero, with no interest or taxes paid during the tax year. (AX F.) The lender has not contacted them regarding any deficiency. (Tr. 55.)

**SOR ¶ 1.s (student loan--\$10,766).** This loan was for an online course Applicant attended in 2007 but did not complete. She testified that she made two \$10 payments on this debt, but she did not provide any documentation of the payments. (Tr. 56-58.)

**SOR ¶ 1.t (car loan--\$12,501).** The car loan alleged in SOR ¶ 1.t was 60 days delinquent on Applicant's September 2010 credit report and her October 2011 account statement. (GX 6 at 15; AX H) It is now current. (Tr. 59; AX C at 1; AX I.)

Applicant testified that she and her husband each have monthly take-home pay of \$2,400, and she receives \$385 in child support payments. Their monthly expenses are rent (\$1,350), car payment (\$396), car insurance (\$120), gasoline (\$300-400), utilities (\$520), cable-internet-phone bundle (\$396), groceries (\$300), day care (\$400), school lunches (\$40), and miscellaneous expenses (\$100). Her husband pays the bankruptcy trustee \$600 per month by direct payroll deduction, and she pays \$10 per month on her student loans. She has no savings, but has about \$2,000 in her retirement account. (Tr. 32-37.) Based on her testimony, she and her husband have monthly income of about \$5,185, expenses between \$3,922 and \$4,022, and debt payments of about \$610, resulting in a net monthly remainder of between \$453 and \$553.

### **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 21 delinquent debts totaling about \$92,000. 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.

The student loan alleged in SOR ¶ 1.c appears to be included in the student loans alleged in SOR ¶¶ 1.o and 1.p, and the debt alleged in SOR ¶ 1.q is a duplicate of the debt alleged in SOR ¶ 1.f. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶¶ 1.c and 1.q in Applicant's favor.

Applicant's financial history is established by her credit reports, her responses to the SOR, and her testimony at the hearing. The evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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 numerous, ongoing, 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). Both prongs, *i.e.*, conditions beyond the person's control and responsible conduct, must be established.

Applicant's divorce in 2001, her short period of unemployment in 2005, her ex-husband's child support arrearage of about \$16,000, and her current husband's income reduction shortly after they purchased a home were circumstances beyond her control. She and her current husband acted responsibly regarding the first and second mortgages on the home, alleged in SOR ¶¶ 1.r and 1.u, by filing for Chapter 13 bankruptcy and adhering to the payment plan approved by the bankruptcy court. Applicant has acted responsibly by making regular payments on her student loans alleged in SOR ¶¶ 1.c, 1.o, and 1.p; the medical bills alleged in SOR ¶¶ 1.g, 1.h, and 1.i, and the car loan alleged in SOR ¶ 1.t. However, she has taken no action to verify, dispute, resolve, or otherwise settle the other debts alleged in the SOR. She claimed she was making payments on the student loan alleged in SOR ¶ 1.s, but she produced no documentary evidence of payments. I conclude that this mitigating condition is established for the debts alleged in SOR ¶¶ 1.c, 1.g, 1.h, 1.i, 1.o, 1.p, 1.r, 1.t, and 1.u, but not for the other delinquent debts alleged in the SOR.

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). Applicant submitted no evidence that she has sought or received 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). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). For the reasons set out in the above discussion of AG ¶ 20(b), I conclude that Applicant has shown good-faith efforts to resolve the student loans alleged in SOR ¶¶ 1.c, 1.o, and 1.p; the medical bills alleged in SOR ¶¶ 1.g, 1.h, and 1.i; the car loan alleged in SOR ¶ 1.t; and the defaulted mortgage debts alleged in SOR ¶¶ 1.r and 1.u; but not the other delinquent debts alleged in the SOR.

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 applicable because Applicant has not disputed any of the debts alleged in the SOR.

### **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 is a mature, well-educated adult. She has worked for federal contractors since 2004 and held a security clearance for about four years. She and her husband have sufficient family income to generate a small remainder each month. She is making good-faith efforts to resolve some of her debts, but she has ignored many of them. She has not verified the validity of several long-standing debts alleged in the SOR. She has no savings for unexpected expenses, and she lacks a coherent plan for gaining control of her finances.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraphs 1.g-1.i:	For Applicant
Subparagraphs 1.j-1.n:	Against Applicant
Subparagraphs 1.o-1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraphs 1.t-1.u:	For 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