



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 11-05446  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2012

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on May 24, 2010, seeking to continue a clearance she received in July 2007. On April 13, 2012, the Defense Office of Hearings and Appeals (DOHA) notified her that it was unable to find that it was clearly consistent with the national interest to continue her access to classified information, and it recommended that her case be submitted to an administrative judge for a determination whether to grant or deny her application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), 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 April 20, 2012; answered it on May 18, 2012; and requested a hearing before an administrative judge. DOHA received the request on May 21, 2012. Department Counsel was ready to proceed on June 13, 2012, and the case was assigned to me on June 19, 2012. DOHA issued a notice of hearing on June 25, 2012, scheduling it for July 24, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until August 20, 2012, to enable Applicant to submit additional documentary evidence. She timely submitted AX D through H, which were admitted without objection. Department Counsel's comments regarding AX D through H are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on August 1, 2012.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.g. She denied the allegations in SOR ¶¶ 1.b, 1.e, and 1.h-1.m. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old security officer employed by a federal contractor since August 2006. She received an associate's degree in criminal justice in April 2006, and she has worked in the security field since April 2004. She had two periods of unemployment, from December 2003 to April 2004 and May 2006 to August 2006.

Applicant and her then boyfriend bought a home in 2004. They paid about \$160,000. Her boyfriend made a \$5,000 down payment and they obtained an adjustable-rate mortgage for the remainder of the purchase price. In 2006, they refinanced the loan and withdrew about \$40,000 in equity to make repairs and improvements on the house. The balance on the refinanced loan was about \$199,000, with monthly payments of \$837. In February 2007, Applicant's boyfriend moved out of the house, stopped contributing to the payments, and refused to communicate with her. (Tr. 38-41.)

Applicant was unable to make the house payments on her income alone. She contacted the lender and negotiated a loan modification, but her ex-boyfriend refused to sign the documents. Applicant hired an attorney, who contacted her ex-boyfriend's attorney and asked for his assistance in completing the loan modification. Applicant also offered, through her attorney, to purchase her ex-boyfriend's interest in the home for \$20,000. (GX 4 at 10; AX A-C.) Her ex-boyfriend has not responded to her request or purchase offer.

Applicant listed her home for sale and obtained the lender's approval for a short sale. She received an offer to purchase the home for \$70,000, but her ex-boyfriend has not responded to requests to cooperate with the short sale. Applicant still lives in the home, but she has not made any mortgage payments for a year and a half. She was informed by the creditor that any payments she made would be held in escrow. Instead

of paying \$837 into an escrow account, she has been using the money to pay off other debts. (Tr. 43-48.) The delinquent home mortgage is alleged in SOR ¶ 1.d. As a result of being financially overextended because of the home mortgage, Applicant fell behind on other financial obligations, which are alleged in SOR ¶ 1.a-1.c and 1.e-1.m.

Applicant settled the \$846 credit card debt alleged in SOR ¶ 1.a for \$600. She made the \$600 payment on August 16, 2012. (Tr. 34-35; AX E.) She paid the \$165 medical debt alleged in SOR ¶ 1.b in February 2012. (Answer to SOR, Enclosure 2.)

Applicant has been unable to resolve the \$4,402 credit card debt alleged in SOR ¶ 1.c. She testified that she contacted the creditor three times during March and April of 2011, but the creditor insists on payment in full, which she cannot afford. (Tr. 32, 37-38.) She testified that she did not recognize the \$185 debt to the same creditor, alleged in SOR ¶ 1.e. (Tr. 48-49.) The debt alleged in SOR ¶ 1.e does not appear on her most recent credit report. (GX 2.)

At the hearing, Applicant testified that she had settled the \$1,076 cell phone debt alleged in SOR ¶ 1.g for \$505. On July 3, 2012, she received a payment reminder for the \$505 payment. On July 19, 2012, she sent a check for \$505. After the hearing, her check was returned, with a letter stating that the collection agency was no longer servicing the account. She contacted the original creditor, who informed her that the collection agency still was servicing the account. (Tr. 51; AX D; AX G.)

In May 2012, Applicant negotiated a payment agreement on the \$6,337 credit card debt alleged in SOR ¶ 1.f. Pursuant to the agreement, \$227 is automatically paid from her checking account each month. (Tr. 49-50; AX F.) She has consolidated the delinquent student loans alleged in SOR ¶¶ 1.g-1.i and her payments are current. (Tr. 53-54; Answer to SOR, Enclosure 3; AX H.) The \$990 cell phone debt alleged in SOR ¶ 1.m was paid in March 2012. (Answer to SOR, Enclosure 1.)

Applicant married in April 2011. Her husband is a truck driver who works outside the United States. (Tr. 33-34.) They live apart and she visits him twice a year. (Tr. 58.)

Applicant's monthly take-home pay is about \$2,400. She did not list her husband's monthly take-home pay on the personal financial statement (PFS) that she submitted to DOHA in March 2012. Her monthly expenses no longer include the \$837 mortgage payment. Her current monthly expenses are about \$1,600, leaving a net remainder of about \$800 that is available to resolve her delinquent debts. Her husband and she each pay their own household expenses, because they are living apart. (GX 4 at 8; Tr. 55-58.)

### **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 that 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 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.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an appellant’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Appellant’s credit reports, admissions in response to the SOR, responses to DOHA interrogatories, and testimony at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): 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.

Security concerns based on financial considerations may be mitigated by any of the following conditions in AG ¶ 20. The following mitigating conditions are relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; or

AG ¶ 20(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.

Applicant's debts are ongoing and numerous, but she is not likely to take on another financial obligation under the circumstances in which she purchased and refinanced her home. The break-up of her relationship with the co-owner of her home, her income reduction as a result of the break-up, and her former partner's lack of cooperation were conditions beyond her control. She has acted responsibly by staying in contact with her creditors, paying off some of her debts, arranging payment agreements, and complying with the payment agreements. She obtained legal advice, but she has not sought or received financial counseling. She did not dispute the debt in SOR ¶ 1.e, even though she was been unable to identify it. However, it no longer is reported on her credit report. She negotiated a settlement of the debt alleged in SOR ¶ 1.g and tendered the agreed amount, but her payment was mistakenly returned by the collection agency. I conclude that AG ¶¶ 20(a), 20(b), and 20(d) are established. AG ¶¶ 20(c) and 20(e) are not established.

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) 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). Applicant has systematically addressed her delinquent debts and taken significant actions to resolve them. She has acted reasonably and made good-faith efforts to resolve the credit card debt alleged in SOR ¶ 1.c and the delinquent home mortgage alleged in SOR ¶ 1.d, but she has been stonewalled in both instances.

### **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 was sincere, candid, and credible at the hearing. She has worked for her current employer for six years and held a security clearance for more than five years. She recognizes that she exercised bad judgment when she and her boyfriend assumed a heavy debt obligation on their home. She appears to have learned a valuable lesson. She has been stymied in her good-faith efforts to resolve her delinquent home mortgage, but it eventually will be resolved by foreclosure, a loan modification, or some other legal means. In the meantime, rather than paying \$837 per month into an escrow account, she has used her available funds to resolve other delinquent debts. The creditor alleged in SOR ¶ 1.c has refused to negotiate, but I am confident that she will resolve the debt in SOR ¶ 1.c when she has accumulated sufficient funds to have some negotiating leverage. She has adopted a systematic, determined, and reasonable approach to her financial problems, leaving me with no doubts about her current reliability, trustworthiness, and good judgment.

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 mitigated the security concerns based on financial considerations. Accordingly, I conclude she has 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): FOR APPLICANT

Subparagraph 1.a-1.m:

For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge