



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



In the matter of: )  
)  
) ISCR Case No. 11-10405  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

07/29/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 15, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not find under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On March 19, 2013, Applicant answered the SOR and requested a hearing.

This case was assigned to me on April 16, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on May 3, 2013. The hearing was held as scheduled on June 6, 2013. At the hearing, Department Counsel offered exhibits (GE) 1 through 5 that were admitted into evidence without objection. GE 2 contained documents marked as Tabs A through L. The Government's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through K that were admitted into evidence without objection. The record was initially left open for submission of additional matters until June 20, 2013, and, as reflected in HE 2, later extended to July 3, 2013. Applicant subsequently submitted emails and documents that were marked as AE L through S and admitted into evidence without objection. The transcript (Tr.) of the hearing was received on June 13, 2013.

### Findings of Fact

Applicant is a 52-year-old executive assistant who works for a defense contractor. She has worked for that contractor since October 2010. She graduated from high school in 1979 and earned a bachelor's degree in 1993. She has been married and divorced twice. Her latest divorce was granted in 2005. She has two daughters, ages 17 and 24. Her oldest daughter serves in the U.S. Marine Corps. Her youngest daughter resides with her father. Applicant is not required to pay child support. She has held a security clearance since about 1988 without incident.<sup>1</sup>

The SOR alleged that Applicant had 15 delinquent debts totaling \$52,367 (SOR ¶¶ 1.a – 1.o) and that she received a Chapter 7 bankruptcy discharge in December 2008 (SOR ¶ 1.p). In her Answer to the SOR, Applicant admitted seven allegations (SOR ¶¶ 1.a, 1.c, 1.g, 1.h, 1.i, 1.l, and 1.p); claimed two allegations (SOR ¶¶ 1.f and 1.j) were duplicates of SOR ¶ 1.a; denied three allegations (SOR 1.e, 1.m and 1.o); and claimed she could neither admit or deny four allegations (SOR 1.b, 1.d, 1.k, and 1.n) due to lack of knowledge of them. Her admissions are incorporated as findings as fact.<sup>2</sup>

In January 2007, Applicant filed Chapter 13 bankruptcy following her latest divorce. The bankruptcy petition reflected that her total assets were \$24,675 and her total liabilities were \$78,810. Her monthly income at that time was \$2,317 and her monthly expenditures were \$1,867. Under the Chapter 13 plan, she made payments of \$451 per month. In December 2008, her bankruptcy was converted to a Chapter 7 proceeding. In March 2009, she was granted a Chapter 7 bankruptcy discharge. She indicated that she made all of the payments under the Chapter 13 plan until the proceeding was converted to a Chapter 7 bankruptcy.<sup>3</sup>

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<sup>1</sup> Tr. at 17-28; GE 1, 2A-C; Applicant Answer to the SOR.

<sup>2</sup> Applicant's Answer to the SOR.

<sup>3</sup> Tr. at 25-27; GE 2A, 2H-I, 3; AE K.

In her Answer to the SOR, Applicant attributed her current financial problems to a divorce and to being laid off for 11 months from June 2009 to May 2010. By using the term “divorce” in her Answer to the SOR, she was most likely referring to a later child support/custody settlement agreement in about March 2010. She was responsible for half of the legal fees, *i.e.*, \$2,250, incurred for that agreement. In about February 2011, she had \$356 garnished from her pay every two weeks until those legal fees were paid.<sup>4</sup>

In her Answer to the SOR, Applicant stated that she was working with a debt consolidation company to resolve her delinquent debts. She entered into an agreement with that company in June 2012 and was initially paying the company \$150 every two weeks. She stated that they later increased her payments to \$200 every two weeks and then to \$300. At the same time, they also increased their fees. She provided documentation showing she made regular payments to the company. She also stated that the company was supposed to make settlement arrangements with a medical creditor in about July 2012, but apparently failed to do so. She was served later with a summons to appear in court for a legal action concerning that medical debt. She contacted the debt consolidation company about the summons and was informed the company would take care of it. The debt consolidation company apparently failed to take any action and a judgment of \$467 was entered against her for that medical debt, which was not alleged in the SOR. As a result of the increased fees and the medical judgment, Applicant became dissatisfied with the debt consolidation company and terminated her debt consolidation program about 45 days before the hearing.<sup>5</sup>

The status of the alleged debts at the time of the hearing is reflected in the following table:

<b>SOR/DEBT</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
SOR ¶ 1.a – judgment	\$3,000	This account was a personal loan that Applicant acquired in April 2009 to purchase furniture. The judgment was filed in November 2010. In 2011, she entered in to a settlement agreement with the creditor, but was unable to make those payments. In February 2013, she again entered into a settlement agreement to pay \$50 a month to resolve this debt. She provided no proof of any payments on this debt.	Tr. at 50-54; GE 1, 2A, 3, 4, 5; Answer to the SOR.

<sup>4</sup> Tr. at 23-30, 52-55, 79-81; GE 2A, 2D; Applicant’s Answer to the SOR.

<sup>5</sup> Tr. at 12-13, 27, 81-85; GE 2B, 2E-G; AE D, K; Applicant’s Answer to the SOR. Applicant testified that, in about May 2013, she entered into a settlement agreement to pay \$50 per month toward the medical judgment until it was paid off.

SOR ¶ 1.b – unpaid debt	\$252	This was a medical debt that was placed for collection in September 2009. Applicant testified that she thought that this was a telephone service account.	Tr. at 55-57; GE 3, 4, 5.
SOR ¶ 1.c – unpaid debt	\$65	This was a medical debt account that was placed for collection in October 2012. Applicant testified that she had an arrangement with the creditor to pay \$10 per month beginning July 4, 2013.	Tr. at 57-58; GE 1, 5; AE J.
SOR ¶ 1.d – charged-off account	\$459	This account was opened in March 2009 and had a date of first delinquency/date of last activity of April 2010. Applicant denied this debt, but listed it in her security clearance application. She testified that she did not remember ordering anything from this creditor. In her background interview, she indicated that she brought Christmas gifts from this company and acknowledged that she defaulted on the payments.	Tr. at 58-59; GE 1, 2A, 3, 4, 5.
SOR ¶ 1.e – charged-off account	\$847	This was a credit card account that was opened in June 2012 and had a date of first delinquency/date of last activity of July 2012. Applicant testified that she entered into a settlement agreement with this creditor in May 2013. The payment was due on July 12, 2013.	Tr. at 59-60; GE 4, 5; AE G, K.
SOR ¶ 1.f – Charged-off account	\$3,031	This debt is a duplicate of SOR ¶ 1.a.	Tr. at 60; Answer to the SOR.
SOR ¶ 1.g – 120 days past-due account	\$1,488	This account was opened in May 2012 and had a date of first delinquency/date of last activity of August 2012. She entered into a settlement agreement to make five payments of \$145. She testified that she made one payment in May 2013, but provided no proof of payment.	Tr. at 60-61; GE 4, 5; AE H, K; Answer to the SOR.

SOR ¶ 1.h – charged-off account	\$9,591	This was a vehicle loan that was opened in March 2009 and had a date of first delinquency/date of last activity of April 2010. Applicant thought this vehicle was repossessed in June 2010. GE 2L indicated that this debt was included in or discharged through bankruptcy.	Tr. at 61-65; GE 2L, 4, 5.
SOR ¶ 1.i – charged-off account	\$9,329	This was a vehicle loan that was opened in February 2011 and had a date of first delinquency/date of last activity of February 2012. Applicant indicated this vehicle was repossessed in March 2012, which occurred well after her personal subject interview in May 2011.	Tr. at 65-66; GE 3, 4, 5.
SOR ¶ 1.j – charged-off account	\$3,052	This debt is a duplicate of SOR ¶ 1.a	Tr. at 66-67; Answer to the SOR.
SOR ¶ 1.k – charged-off account	\$455	This account was opened in June 2009 and had a date of first delinquency/date of last activity of August 2009. Applicant testified that this debt was satisfied. Insufficient evidence was presented to substantiate that claim. <sup>6</sup>	Tr. at 67-68; GE 3, 4, 5; AE F.
SOR ¶ 1.l – collection account	\$8,533	This was a vehicle loan that was opened in March 2009 and had a date of first delinquency/date of last activity of June 2009. This vehicle was repossessed. GE 3 indicated that this debt was included in or discharged through bankruptcy.	Tr. at 68-70; GE 1, 2A, 3.
SOR ¶ 1.m – collection account	\$701	This was a credit card account that was placed for collection in April 2009. Applicant testified that this debt was satisfied in May 2013. She provided a document showing an account from this collection company was paid, but that account involved a different debt. GE 3 indicated this debt was included in or discharged through bankruptcy.	Tr. at 70-71; GE 2H, 2L, 3, 4, 5; AE C.

<sup>6</sup> The receipt in AE F may pertain to the debt in SOR ¶ 1.k. However, insufficient evidence was presented to confirm that it relates to that debt.

SOR ¶ 1.n – charged-off account	\$10,453	This was a vehicle loan that was opened in December 2007 and had a date of first delinquency/date of last activity of February 2008. Applicant thought this debt was discharged in her bankruptcy.	Tr. at 71-75; GE 1, 3, 4, 5.
SOR ¶ 1.o – charged-off account	\$1,111	This loan was opened in June 2008 and had a date of first delinquency/ date of last activity of September 2009. In her Answer to the SOR, Applicant indicated this debt was discharged in her bankruptcy. GE 3 indicated this debt was included in or discharged through bankruptcy.	Tr. at 75-77; GE 2L, 3, 4, 5.

Applicant provided proof that she either paid off or was making payments on four other debts that were not alleged in the SOR. Those payments were made through the debt consolidation company.<sup>7</sup>

In her post-hearing submission, Applicant presented documents showing that she again filed Chapter 13 bankruptcy on June 13, 2013. She received credit counseling prior to filing both bankruptcies. Her latest bankruptcy petition reflected that her total assets were \$21,881 and her total liabilities were \$55,477. Her current net monthly income was \$2,894 and her currently monthly expenditures were \$2,648. Under her proposed Chapter 13 plan, she will make 60 monthly payments. The payments will increase over time. They will be \$246 starting in July 2013, \$405 starting in July 2014, \$457 starting in July 2015, and \$527 starting in September 2015. The bankruptcy trustee submitted a Direction for Deduction requesting that Applicant's employer deduct the monthly payments from her pay and forward them to him. The bankruptcy petition listed the debts in SOR ¶¶ 1.a, 1.d, 1.e, 1.g, 1.h, 1.i and 1.o. It also apparently contained the medical debts in SOR ¶¶ 1.b and 1.c, but that cannot be confirmed based on the information presented.<sup>8</sup>

Applicant submitted reference letters from coworkers and friends that attest to her professionalism and trustworthiness. She received a work performance evaluation in October 2012 indicated that she met or exceeded expectations.<sup>9</sup>

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<sup>7</sup> AE E, F, I, K.

<sup>8</sup> AE L-R.

<sup>9</sup> AE A-B.

## 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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 unfavourable, 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**

The security concern for Financial Considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts that she was unable or unwilling to pay over an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

(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.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.<sup>10</sup> An applicant is not required, as a matter of law, to establish that he or she has resolved every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action 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.<sup>11</sup>

In 2007, Applicant filed Chapter 13 bankruptcy following a divorce. She was making regular payments under that bankruptcy until it was converted in to a Chapter 7 proceeding. She received a Chapter 7 bankruptcy discharge in March 2009. Five of the alleged debts (SOR ¶¶ 1.h, 1.i, 1.m, 1.n, and 1.o) were most likely discharged in that bankruptcy, although they were not listed in a bankruptcy schedule. Credit report entries indicated most of those debts were "included in or discharged through bankruptcy."<sup>12</sup>

Two of the debts (SOR ¶¶ 1.f and 1.j) were duplicates of the debt in SOR ¶ 1.a. AG ¶ 20(e) applies to those duplicate debts. Excluding the debts discharged in her first bankruptcy and the duplicate debts, the remaining eight debts total \$15,895.

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<sup>10</sup> See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>11</sup> See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

<sup>12</sup> See GE 2L, 3. Absent fraud in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge under Chapter 7 of the Bankruptcy Code, even though such debts were not listed on a bankruptcy schedule. See *Judd v. Wolfe*, 78 F.3d 110, 114 (3<sup>rd</sup> Cir. 1996); *Beezley v. California Land Title Co*, 994 F.2d 1433, 1439, n. 4 (9<sup>th</sup> Cir. 1993); *Francis v. Nat'l Revenue Service Inc.* 426 B.R. 398 (Bankr. S.D. FL 2010); and *First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28 ABIJ 58 (Nov. 2009). There is no requirement to re-open the bankruptcy to discharge the debt. See *Collier on Bankruptcy*, Matthew Bender & Company, Inc. 2010, Chapter 4-523, ¶ 523(a)(3)(A).

From June 2009 to May 2010, Applicant was laid off from work. This period of unemployment had a significant impact on her financial situation. After starting work again, she was saddled with legal fees that further set her back. In June 2012, she established a debt consolidation program. She made regular payments under that program. Through that program, she was able to resolve some of her debts; however, she became dissatisfied with the debt consolidation company and cancelled that program shortly before the hearing. After the hearing, she received financial counseling and again filed Chapter 13 bankruptcy. The monthly Chapter 13 payments will be deducted from her wages and forwarded directly to the trustee.

Particularly troubling is the fact that Applicant continued to open and default on debts well after she obtained her current job. Since starting her current job, she has defaulted on at least a medical debt (SOR ¶ 1.c), a credit card debt (SOR ¶ 1.e), a personal loan (SOR ¶ 1.g), and a car loan (SOR ¶ 1.i). Her car was repossessed in March 2012. Those defaults also occurred well after her security clearance interview in May 2011 that focused on her financial problems.

Applicant has been encountering financial problems for at least the past six years. Her debts are ongoing, significant, and continue to cast doubt on her current reliability, trustworthiness, and good judgment. From the evidence presented, I am unable to find that her financial problems are unlikely to recur or that they are under control. AG ¶ 20(a) does not apply. AG ¶¶ 20(b), AG ¶ 20(c), and 20(d) partially apply, but do not mitigate the security concerns arising from the alleged debts.

### **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 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).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 highly thought of by her friends and coworkers. She is a valued employee. She encountered financial setbacks that were beyond her control. Nevertheless, she had failed to show that she is financially responsible. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the alleged security concerns.

### **Formal Findings**

Formal findings 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 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l – 1.p:	For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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James F. Duffy  
Administrative Judge